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Volume III.

(EVIDENCE FOR COMPLAINANT.)

# TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1911.

No. ~~820.~~ 446

THE UNITED STATES OF AMERICA, APPELLANT,

vs.

THE UNION PACIFIC RAILROAD COMPANY ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF UTAH.

FILED OCTOBER 9, 1911.

(22896)

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1519 ROOM 508, CUSTOM HOUSE, NEW YORK CITY,
*Thursday, January 7, 1909—3 p. m.*

Present at the above time and place, the Special Examiner, Hon. Sylvester G. Williams, and Mr. G. E. Husted, of counsel for the complainant.

Mr. HUSTED. If your Honor please, counsel have been engaged in reaching a stipulation as to the admission of certain testimony, and are now at work upon that matter. Mr. Kellogg and Mr. Severance asked to be excused on that account, and it is asked by all the counsel that an adjournment be taken until to-morrow morning at 10.30.

The EXAMINER. Very well. Just enter an order to that effect. We will adjourn until to-morrow morning at 10.30.

(An adjournment was accordingly taken until the morning of Friday, January 8, 1909, at 10.30 o'clock.)

ROOM 508, CUSTOM HOUSE, NEW YORK CITY,
*Friday, January 8, 1909—10.30 a. m.*

The hearing was resumed before the Special Examiner, Hon. Sylvester G. Williams, at the above time and place.

Present on behalf of the complainant, Mr. C. A. Severance, and Mr. G. E. Husted. On behalf of the defendant, Mr. R. S. Lovett.

1520 GEORGE T. SMITH,

being duly sworn on behalf of the Complainant, testified as follows:

Direct examination by Mr. SEVERANCE:

Q. Mr. Smith, where do you reside?—A. In Jersey City.

Q. Until recently what has been your business?—A. General agent of the Pennsylvania Railroad.

Q. At what place?—A. 2 Beaver street, New York.

Q. For how many years?—A. Seven and a half.

Q. Previous to that time what was your business?—A. Commercial agent of the same company, on Broadway, New York.

Q. For how many years?—A. I should say ten.

Q. What is your business now?—A. Banker.

Q. Where?—A. Jersey City.

Q. How long ago did you leave the railroad service?—A. The first of January last.

Q. Of this year?—A. Yes.

Q. The other day?—A. The first of January, this year.

Q. Are you familiar with the competition existing in New York for transcontinental business while you were railroading?—A. Not of late; I mean not of the immediate past.

Q. Prior to 1901?—A. Yes.

Q. What roads were competing for transcontinental business? I mean by that what transcontinental lines were competing for it?

The lines west of the Missouri River are commonly called the transcontinental lines, aren't they?—A. Do you refer to the Pacific coast as a whole?

1521 Q. Well, referring to California points.—A. Southern Pacific, Union Pacific, Santa Fe.

Q. You remember when Mr. Hawley was the general agent of the Southern Pacific here?—A. Yes, sir.

Q. And were you, at the same time that he was representing them, acquainted with the representatives of the Union Pacific here?—A. Yes.

Q. And were those two lines in competition for business to the coast?—A. Yes, sir.

Q. Did you learn at that time the way Mr. Hawley was routing his business to the coast—by what line, whether by the Sunset or by Ogden?—A. By the Sunset.

Q. Mr. Smith, how did freight prior to 1901 move from New York to Portland, Oregon? Over what transcontinental lines?—A. Oregon Short Line, Northern Pacific, Great Northern.

Q. And the Southern Pacific?—A. At one time.

Q. Well, I didn't mean continuously.—A. Well, I mean to say I have a memory, a recollection, of the Southern Pacific competing for Portland business.

Q. That is what I mean.—A. I don't know how much they did of it.

Q. Mr. Smith, did you ever know of business moving to San Francisco by rail to Portland, and thence by boat to San Francisco?—A. Yes, sir.

Q. How long ago?—A. I should say twenty years ago.

Q. Do you remember how that happened?—A. In general terms, the effort of the Northern Pacific to overcome the influence of

1522 Southern Pacific in using boats from San Francisco up; it was a competitive effort.

Q. And you knew that the O., R. & N. which is part of the Pacific system, had a boat line there, did you not?—A. That the O., R. & N. had.

Q. A boat line from San Francisco.—A. I am not sure as to the ownership of that boat line.

Q. No, but you knew that traffic moved that way via the boat line from Portland?—A. Yes.

Q. What do you know about the way that traffic moved to Colorado common points from this region during the years prior to 1901?—A. I am not clear when the rail movement was largely decreased by the movement via the Gulf, so when you ask me about a specific year I can not answer.

Q. Well, I am endeavoring to bring out the situation after the Gulf route was opened.—A. Yes.

Q. Now, how did business move to Colorado common points after the Gulf route was opened?—A. To a large proportion by the all-rail line, which is also true of the Gulf route.

Q. That is, by the Gulf line you mean the boats to what place?—A. Boats to Gulf ports, and rail.

Q. Now, did the Pennsylvania lines participate in that movement?—A. Which movement?

Q. To Colorado common points, all rail.—A. Yes, sir.

Q. And were you also interested in the transcontinental business? A. Yes, sir.

Q. And were you also interested in the transcontinental business?—ness?

A. To Chicago or the Mississippi River and St. Louis.

1523 Q. What was the nature of the competition that existed prior to 1901 between these transcontinental lines for transcontinental business?

A. Very active.

Q. I asked you a moment ago with reference to the movement of traffic to Colorado common points; do you know anything of the movement of traffic to Utah common points?

A. The same rule applies.

Q. Was that traffic to Colorado and Utah common points trifling in amount, or was it considerable in amount?

A. Why, I never knew the figures, but it must have been important.

Cross-examination by Mr. LOVETT:

Q. In answer to questions from counsel for complainant you named only the Southern Pacific, the Santa Fe, and the Union Pacific as the transcontinental lines engaged in competing for transcontinental traffic?

A. No, sir, I answered that for San Francisco traffic.

Q. California traffic?

A. San Francisco traffic, as I recollect the question.

Q. Then do you mean to say that those were the only lines engaged in competition for San Francisco traffic, Mr. Smith?

A. They were the only terminal lines.

Q. Is the Union Pacific a terminal line?

A. In connection with their Central Pacific extension or connection, that is all.

Q. Whose Central Pacific connection?

A. Well, at the present time the Southern Pacific.

1524 Q. How long has the Southern Pacific controlled the Central Pacific, do you know?

A. I don't know.

Q. Did the Union Pacific ever control it?

A. I don't believe that they did financially.

Q. Or in any other way? What is the answer to the last question?

A. No; you asked me if they ever controlled it as far as I know, and I say, no.

Q. Where are the Union Pacific lines located, do you know?

A. For transcontinental business?

Q. Yes.

A. From Omaha to Ogden.

Q. About how far is that?

A. I couldn't tell you the miles.

Q. You don't know?

A. Not sufficiently, no, sir. I could not answer and give you the mileage.

Q. What do you understand it to be? Have you any information on the subject at all?

A. I would say a thousand miles.

Q. Ogden is the western terminus, isn't it?

A. Yes.

Q. How far is that from San Francisco, do you know?

A. I should say 500 miles.

Q. Isn't it more than that?

A. I couldn't tell you.

Q. You don't know?

A. That is my guess.

Q. Then, as a matter of fact, the Union Pacific was not a terminal line for California business, was it?

A. Not a terminal line, no, sir.

Q. Didn't the Burlington also engage in transcontinental business?

A. As a connection.

Q. In the same way that the Union Pacific did?

A. Yes, sir.

Q. Didn't it get a longer haul out of that business than the
1525 Union Pacific would if it were going from Chicago to Denver?

A. Yes, sir, of recent years; I mean comparatively recent years.

Q. What do you mean by comparatively recent years?

A. Well, probably the last fifteen years.

Q. For at least fifteen years the Burlington has had its own line from Chicago to Denver, hasn't it?

A. Yes, sir.

Q. And is engaged actively with the other lines in transcontinental business?

A. Yes.

Q. How about the Rock Island?

A. They have a line to Denver, also from Chicago.

Q. How long has that line been operated?

A. I should say comparatively fifteen years.

Q. Hasn't it a line also from Chicago to El Paso?

A. Yes.

Q. Hasn't it during that period been engaged in transcontinental business over those lines?

A. I should say yes, although I never participated in any such work.

Mr. SEVERANCE. May I ask what that question was?

Mr. LOVETT. If the Rock Island didn't engage in the transcontinental business over its line from Chicago to Denver and from Chicago to El Paso.

Q. Didn't you ever do any business with the Rock Island of that kind?

A. Not by El Paso, that I know of.

Q. By Denver?

A. Yes, sir.

Q. How about the Missouri Pacific?

A. They have a line to Denver.

Q. From where?

A. From St. Louis.

Q. Then there were other lines that were engaged in trans-
1526 continental business, in addition to the three that you first named, Mr. Smith?

A. There were a great many other lines; the Pennsylvania, for instance. If I conveyed the impression that you indicate I did not understand the question.

Q. Well, I did not think you did, Mr. Smith; I didn't think you meant to say that.

Mr. SEVERANCE. I think he understood the question. I asked him about that transcontinental business, but I didn't ask that question the way you did.

Mr. LOVETT. Mr. Stenographer, will you turn to the question asked on direct examination, the early part of the direct examination where he mentioned the lines engaged in competing for transcontinental business, and where he named them.

The reporter read as follows:

"Q. What roads were competing for transcontinental business? I mean by that what transcontinental lines were competing for it? The lines west of the Missouri River are commonly called the transcontinental lines, aren't they? A. Do you refer to the Pacific Coast as a whole? Q. Well, referring to California points. A. Southern Pacific, Union Pacific, Santa Fe."

Mr. SEVERANCE. When you mentioned the lines I understood the question to be as to routes.

Q. You didn't mean to say that those were the only three companies that were engaged in transcontinental business west of the Missouri River?

A. No, sir, I didn't.

Q. The Denver & Rio Grande also engages in transcontinental business?

A. Yes.

Q. And has during the period that you mentioned?

A. Yes.

1527 Q. Now will you please name the lines east of the Missouri River that during the same period were engaging in competition for the transcontinental business in connection with either of the other lines that have been mentioned?

A. Practically every east and west line.

Q. Will you name the principal ones?

A. Yes, sir; New York Central, Erie, Pennsylvania, Baltimore &

Ohio, the Lehigh Valley, Chesapeake & Ohio, Norfolk & Western; all the lines that we consider of any importance in the east.

Q. Engaged in that transcontinental business?

A. Yes.

Q. In connection with the lines west?

A. Yes.

Q. Take the Pennsylvania, for example, a great deal of transcontinental business originated on its lines, didn't it?

A. Yes.

Q. And that business generally moved which way?

A. If it were controlled by the Pennsylvania employee, it moved the longest haul to St. Louis.

Q. To St. Louis?

A. Or Chicago.

Q. About the distance from the eastern terminus of the Pennsylvania to St. Louis, about how far is that by the Pennsylvania line?

A. In round figures I should say a thousand miles.

Q. And Chicago a little less than that?

A. Practically the same. Chicago a little less than a thousand, and St. Louis a little more.

Q. Practically a thousand miles?

A. Yes.

Q. And about the same distance by all the principal trunk lines?

A. Practically, yes.

Q. And then between Chicago and St. Louis there were
1528 several lines, I presume?

A. Yes.

Q. Engaged in the same business?

A. Yes.

Q. The North-Western, the St. Paul, the Illinois Central, in addition to those that have been previously named?

A. Those lines on the north were commonly known as the Iowa lines; the same way between St. Louis and Kansas City.

Q. The Short Line?

A. The Iowa lines, we used to call them.

Q. You said that wherever it was controlled by the Pennsylvania agents it moved the long haul, that is, by way of St. Louis or Chicago?

A. Chicago, yes.

Q. St. Louis and Chicago, or Chicago. And then west of the Missouri River which way would it go, ordinarily? Over which lines?

A. By one of the Iowa lines before mentioned.

Q. By what?

A. One of the Iowa lines before mentioned—the St. Paul, the North-Western, the Burlington.

Q. And west of the Missouri River do you know how it usually moved?

A. The bulk of it possibly moved by the northern line.

Q. What do you mean by the northern line?

A. The Union Pacific, or the D. & R. G., as against the Southern Pacific.

Q. The Union Pacific or the Denver & R. G.?

A. Yes.

Q. Did not the great bulk of your transcontinental business go to Chicago rather than to St. Louis, Mr. Smith?

A. Yes.

Q. It moves ordinarily, I suppose, on joint rates agreed to by the various connecting lines?

A. Generally.

Q. If it went over the Union Pacific or the Denver & R. G., what line took the business west of that terminus?

A. West of the Union Pacific?

1529 Q. Yes.

A. The Central Pacific.

Q. West of the Denver & Rio Grande?

A. The Central Pacific.

Q. That was the only way, wasn't it? The only outlet for those lines?

A. Yes.

Q. And it moved under joint rates established by each company owning any part of the transcontinental line?

A. Through rates participated in by each line.

Q. The competition to which you referred as between the Southern Pacific, the Sunset Route of the Southern Pacific, and the Union Pacific was competition existing on the one hand by the Sunset Route, that is, by steamer from New York to Galveston, or to New Orleans, and thence by rail to California, and, on the other hand, by the all-rail lines of which the Central Pacific constituted a part?

A. Yes.

Q. Has not the Central Pacific been operated by the Southern Pacific ever since you have known it, Mr. Smith?

A. I could not answer that question. That is a question of memory, and I am uncertain.

Q. As far back as you recollect (if you have any definite recollection) it was operated by the Southern Pacific, wasn't it?

A. It has been operated by the Southern Pacific for a great many years.

Q. At least fifteen years, hasn't it?

A. I should think easily.

Q. And the Southern Pacific Company was a party to these joint rates via these all-rail lines that were competing with the Sunset Route, wasn't it?

A. Undoubtedly.

Q. You could send your traffic, I presume, to California by

1530 way of the Atchison from Chicago?

A. Yes, sir.

Q. Or you could send it by the other lines you have mentioned; and I suppose when you got west of Chicago you were largely indifferent, weren't you, as to which way it went?

A. Usually it was a freight solicitor's matter. We didn't care, as a corporation. One freight solicitor paid his debts to another.

Q. The solicitation of the Union Pacific and Denver & Rio Grande was really against the Atchison route, wasn't it, Mr. Smith?

A. Really against the Atchison?

Q. Yes.

A. It was against the Southern Pacific.

Q. Against the Sunset Route of the Southern Pacific?

A. Yes.

Q. But was not the co-operation between the Union Pacific and the Southern Pacific, after the Sunset Route was passed, against the Atchison—I mean as against——

A. I never saw that distinction drawn.

Q. You never knew of any Southern Pacific agent attempting to work business by way of the Ogden Route when he found he couldn't get it by the Sunset Route? In other words, didn't you understand that he acted on the same principle that you acted in soliciting freight—sending the freight the way he would get the longest haul?

A. I never knew a Southern Pacific solicitor to let go.

Q. They generally held on, did they? But you don't know what his interest would be if he had let go on any occasion? You don't know which way it would go?

A. Why, naturally he would have gone where his company was interested.

Q. So, if any Southern Pacific solicitor had ever let go,
1531 naturally, if he was actuated by the considerations that ordinarily control a solicitor, his next effort would have been in the interest of the line where he was interested?

A. The line west of Ogden——

Mr. SEVERANCE. That is merely speculative—if he did let go.

Q. I want an answer, if it is speculative; what is your answer to that?

A. The line west of Ogden.

Q. The Sunset Route of the Southern Pacific has always sought to control for the Morgan line and the Sunset Route business originating on the Pennsylvania east of Pittsburg, hasn't it, as well as in other territory east of Pittsburg and Buffalo?

A. Yes, sir.

Q. They were working against your solicitation in respect of that business, too, weren't they?

A. To a certain extent.

Q. Naturally you would prefer to send it to Chicago or St. Louis than to New York, because you would get the longer haul?

A. That would depend upon the point of origin.

Q. I mean east of Pittsburg.

A. Generally, yes.

Q. You were asked about some movement of traffic, I think you said about twenty years ago, by way of Portland to San Francisco?

A. Yes, sir.

Q. Have you any distinct recollection as to that, as to when it was?

A. As to when it was?

Q. Yes.

A. I should say twenty years ago.

Q. And the movement was by the Union Pacific or Northern Pacific?

A. Northern Pacific.

1532 Q. Wasn't that really from Puget Sound rather than Portland? Wasn't it by the boat-line from Puget Sound?

A. I don't recollect the Pacific Coast port. My recollection was distinctly in connection with the Northern Pacific, which I assume was Portland.

Q. Then the Northern Pacific has to go by way of Tacoma——

A. Yes.

Q.—in order to reach Portland, doesn't it?

A. Yes.

Q. And it would reach the Puget Sound before it would get to Portland?

A. Naturally.

Q. And wasn't its effort in connection with the Pacific Coast Steamship Company from Puget Sound points rather than from Portland?

A. The accepted terminal of the Northern Pacific was Tacoma, but I don't recollect that there was any established line between Tacoma and San Francisco. I carry in my mind that the steamship line was from Portland to San Francisco.

Q. How about Seattle?

A. I don't recall that either.

Q. Don't you know that the Pacific Coast Steamship vessels touch at all of those ports as far north as British Columbia?

A. No, I couldn't testify to that.

Q. You never heard of any movement by way of the Union Pacific and Portland to San Francisco, did you?

A. No, sir.

Q. Do you know anything about the volume of traffic that moved from this territory to Colorado and Utah common points, Mr. Smith?

A. No.

Q. You don't know anything about the volume of it, whether it was large or small?

A. No, there were never any figures compiled here by the trunk lines that I know of.

1533 Q. And you don't know whether it was large or small?

A. No.

Q. The Atchison system has been a very active competitor for California business, hasn't it?

A. Yes.

Q. Its line extending as far east as Chicago from the Pacific coast, and working in connection with lines east of the Missouri River?

A. Yes.

Redirect examination by Mr. SEVERANCE:

Q. Mr. Smith, Judge Lovett was asking you about traffic moving from east of Pittsburg to the seaboard and then around by the Morgan line; did you ever know of traffic moving that way from points west of Pittsburg?

A. I think not.

Q. You never did?

A. I think not.

Q. When traffic moved that way, the Pennsylvania rate, or whatever road brought it to the coast, was absorbed by the Morgan line, wasn't it?

A. It was supposed to be.

Mr. LOVETT. You mean the Atlantic coast?

Mr. SEVERANCE. Yes, I mean the seaboard.

WITNESS. Allow me to qualify that; supposed to be, with limitations. They probably fixed their arbitraries.

Q. Well, whatever the advantage was whether it was the local rate, or an arbitrary, or however it was arrived at, that was absorbed, was it not, from the interior to New York?

A. At least some part of it. They didn't always absorb it all.

Q. Oh, they didn't?

A. No.

Q. How was it paid, if they didn't absorb it all?

A. The amount they did not absorb was added to the freight bill at destination, paid by the consignee.

1534 Q. Yes, but it appears from the testimony of Mr. Hawley and others, and from the tariffs that have been introduced, that the business moves to the Coast from here, including New York common points, which go out as far west as Pittsburg, at the same rate they go all-rail. Now, if the Southern Pacific took it clear through from New York, wasn't it necessary for them to absorb the entire local?

A. Your previous question was whether I knew of any business originating west of Pittsburg?

Q. Yes, but I thought you said you didn't know of any.

A. No, I don't; of my own personal knowledge I don't know of any specific shipments.

Q. Oh, I see; we misunderstood each other.

A. Yes.

Q. I am speaking now of the business originating east of Pittsburg.

A. Then it is absorbed.

Q. It is all absorbed, that is what I thought; did you ever know of the movement of traffic to California points all-rail by way of the Northern Pacific or Great Northern from the east here?

A. Northern Pacific or Great Northern?

Q. Yes; to California points; I don't mean by boat now from Puget Sound, but by all-rail.

A. I understand, by all-rail. I don't think that I do.

Q. Did you know of the movement of traffic to Portland by those lines?

A. All-rail?

Q. Yes.

A. Yes, sir.

Q. Also lake and rail?

A. Yes, sir.

Recross-examination by Mr. LOVETT:

Q. What other lines were participating in this movement of
1535 Colorado and Utah business from the Atlantic seaboard, Mr. Smith, do you know?

A. I am afraid I don't understand that question.

Q. What lines besides the Southern Pacific, that is the Morgan line, participated in this Utah and Colorado business from this territory, moving by the Gulf?

A. What other water line?

Q. And rail lines?

A. The Savannah line from here; the Mallory line.

Q. And by their rail connections at Savannah and Galveston?

A. Yes. I have already mentioned Chesapeake & Ohio and Norfolk & Western, which is the Old Dominion Line.

Q. They also engaged in it?

A. Yes.

Q. There has been no change in that condition in recent years, has there, Mr. Smith?

A. No, sir.

Q. Hasn't that competition gone on since 1901 as well as before?

A. Yes, sir.

Q. Has not the solicitation of business by agents of the Union Pacific and by the Southern Pacific for California points and Pacific points continued without interruption, as far as you know?

A. Yes, sir.

Q. They both actively solicit business, don't they, in this territory?

A. Yes.

Mr. SEVERANCE. They are still competing lines?

WITNESS. Yes.

Q. You mean by competing lines that the Union Pacific is a part of the rail lines that engaged in competition for that business against the Sunset Route?

A. Yes.

1536 Mr. SEVERANCE. So that Mr. Stubbs will understand thoroughly just what you mean to testify to, when I asked you as to their being competing lines you meant to testify, didn't you, that the agents of the Union Pacific were endeavoring to route traffic over their line and thence to the coast, and the agents of the Southern Pacific were endeavoring to route it by the Sunset Route?

WITNESS. That is exactly what I mean.

1537 HARRY C. BLYE,

recalled on behalf of the Complainant, testified:

Direct examination by Mr. SEVERANCE:

Paper marked Complainant's Exhibit 98 (Blye).

Q. Mr. Blye, I show you Complainant's Exhibit 98; is that the table that you made up pursuant to the request made of you the day before yesterday?

A. It is.

Q. Now, this, I infer from the notes upon it, covers all traffic destined to Pacific coast points?

A. Yes.

Q. Not simply California points, but to the North Pacific coast points.

A. It includes everything going to the territory mentioned there.

Q. Well, the note at the bottom is, "Under California is included all traffic destined to—British Columbia—California—Idaho west of and including Kuna—Nevada—Oregon—Washington and all Trans-Pacific Traffic."

A. Yes, sir.

Q. Now, does that include the business that reaches the coast over the Canadian Pacific?

A. No, I don't think it does.

Q. Well, you speak of British Columbia, and Vancouver is the port?

A. I understand, but it includes—let me see how I can get that to you right—California traffic in our office, for our statistics, includes all the traffic that goes to the points mentioned, whichever route it goes. If any trunk line out of New York carried California traffic, or what we call California traffic, to Chicago, or if it carried a shipment consigned to a connection with the Canadian Pacific at Minneapolis, and that was destined to Vancouver, it would go into
1538 our report just the same as if it took a shipment for the Empire of Japan or for China or for Australia or for Honolulu; that would be California traffic.

Q. And this includes, then, all the traffic moving out of New York over the trunk lines going across the Pacific Ocean, whether it goes in Canadian Pacific ships or American ships?

A. It doesn't make any difference where it goes.

Q. And it may move to the coast, as you say, by way of the Soo and the Canadian Pacific as well as by the American lines?

A. Yes.

Q. It merely leaves New York by trunk line?

A. That is all.

Q. I notice, in looking over your testimony given the other day, that you didn't mention the Erie; isn't that one of your lines?

A. Well, I forgot it. I used to work for it years ago, and I forgot all about it.

Q. I didn't notice any other omission.

A. I suppose something happened to take it out of my mind for the moment. Of course it includes every trunk line out of New York.

Q. Yes, that is what I supposed.

A. What is called a trunk line. Now, Mr. Severance, you will understand that paper better, perhaps, if I tell you that the object of those statistics in the first place was to show how much the rail lines carried of California traffic in distinction to what the Southern Pacific and the Cromwell and the Mallory line got out of New York. It was simply a distinction between those lines.

Q. Now, this begins in 1883 and runs down to March, 1902?

A. Yes.

1539 Q. Is that the last date that you are able to furnish?

A. That is when Mr. Spence, or I think Mr. Hawley, wasn't it, stopped reporting, that is all.

Q. That is, when the Morgan line stopped reporting.

A. They stopped reporting. You will notice down at the bottom there is a little foot-note that says that up to a certain date, waybills; after that date, statements only. Now, up to that date where it says waybills, the Southern Pacific office here in New York furnished us a tissue copy of the waybills of traffic that they carried, with a statement that this was all the lading on that ship going to the Pacific coast points. We work it over and take it out of the waybill. After a while, for some reason of their own, they quit that, and they simply sent us a statement of the tonnage.

Q. This includes business only originating in New York?

A. New York City only.

Q. Now you say here in the foot-note, "Morgan Line Data Received, from June 18th, 1883, to November 17th, 1893—waybills."

A. That consisted of copies of their waybills. That is the way they made their report.

Q. Then you have, "From November 18th, 1893, to March 31st, 1902—statements only."

A. They sent us a statement of how much tonnage they had carried.

Q. Now, how do you get your trunk line information?

A. From the waybills.

Q. You still get the waybills just the same?

A. Oh, yes.

Q. This is a true statement from the records in your office?

A. It is intended to be, yes.

1540 Mr. Severance. I offer in evidence Complainant's Exhibit 98 (Blye).

Mr. Lovett. Defendants will object to Complainant's Exhibit No. 98 as being mere hearsay.

Mr. Severance. I will examine a little further in regard to the exhibit, and re-offer it.

Q. Now, Mr. Blye, this information, you say, is furnished you by the trunk lines, by impression copies of the waybills?

A. Yes.

Q. What is the organization of your office? How many men do you employ?

A. Oh, I suppose there are 50 or 60 there. I think there are forty clerks working in that department where those reports are made up.

Q. Now, when the waybills come in from the railroads, or in the old days when they came in from the Morgan line, what was done with them.

A. They were all analyzed, the traffic picked out from them and recorded in different books.

Q. What do you mean by analyzed and traffic picked out from them?

A. Well, we picked out all the Chicago traffic, for instance, by one particular route, and found out how much traffic the Erie road, for instance, took to Chicago; how much of the traffic of each day's business was going to Chicago, how much was going to Buffalo, how much was going to Cincinnati, how much of it was consigned to Indianapolis, and several other points that we kept tabs on.

Q. And how much was——

A. Going to California.

Q. And how much was for Pacific Coast points?

A. Yes.

Q. Now, that was done by a force of about how many clerks?

1541 A. In the early part of the figures there, along in 1883 and 1884 and 1885, I think there were about 300 clerks in the office.

Q. About 300 doing that work of dissecting waybills and determining the destination of traffic?

A. Not determining it, but finding it.

Q. Well, finding it, that is what I mean?

A. Yes.

Q. From the original waybills or impression copies of them?

A. Yes.

Q. Is that right?

A. Yes. The general machinery of the office was on the same plan as the ordinary auditor's office in any concern, classifying the business that was done.

Q. Well, now, having picked out from these waybills the destination of the tonnage, what was done with the figures thus obtained?

A. They were recorded in books of record; made up into reports at the end of each month or each week or each day, and issued to all the parties in interest.

Q. Were copies of those reports sent to the Morgan Line people, the Southern Pacific Company?

A. Yes.

Q. How often did you say they were sent to them?

A. Oh, some of the reports went out daily, some of them went out weekly, and some of them went out monthly, and then there were some reports made annually.

Q. How often did you furnish, for instance, to the Morgan Line a statement of the tonnage that had gone out over the trunk lines?

A. Oh, I think at least once a week.

Q. During all the years that they were parties to this arrangement?

A. All the time that they reported.

1542 Q. During all the time that was covered by this document?

A. All the time that they reported.

Q. And did you likewise furnish to the trunk lines reports as to the amount moving over each one?

A. Yes.

Q. And also the amount moving over the Morgan Line?

A. Yes.

Q. Now, from what sources of information was this table made up?

A. From those reports; from the copies of reports that are on file in my office.

Q. That is, the same reports that were furnished the Morgan Line and the railroads from time to time?

A. Yes.

Q. Now, would it be feasible to bring into court here for examination all of these books and data, or does it consist of hundreds and hundreds of volumes and documents?

A. No, I suppose I could bring you in a few of the yearly reports—that is only one sheet of paper—showing the movement for the year.

Q. Would it be feasible to bring in the waybills, for instance?

A. No, sir, it would not.

Q. Or the books into which the waybills were entered?

A. No, I guess those were destroyed.

Q. They are destroyed?

A. They are no good after I get through with them, once I issue my reports. My reports are issued under the Edison method of stencil reports. A stencil is cut, and the form is filled up, and then there is a sheet of paper put over, and there is a stencil made over it, and from that stencil the report is printed and after I have got the report out I don't care very much about the waybills or anything else.

1543 I generally keep the waybills on hand for about a year, in case we want to go digging out some other information that we haven't got.

Q. But the way-bills for the years 1883 up to 1902, are any of them in your hands now?

A. No.

Q. They have all been destroyed?

A. Yes, I haven't got any way-bills behind 1907. I don't think I have got anything later than 1908, the first part of 1908.

Q. Was the same system of arriving at those figures from the waybills and reports pursued during the whole of the time covered by this exhibit?

A. Just exactly, yes.

Q. And it was always under your direction?

A. Under my direction and my supervision; yes, sir. These way-bills come into the office from the different stations, and they have with them a certificate of the agent. They are entered up on abstracts, and the agent certifies that this bunch of papers includes all the way-bills covering all the traffic destined to and beyond the western termini of the trunk lines for the day or the period mentioned. That is his certificate, and we accept it just the same as the auditor of the road accepts his statement that those are the copies of all the way-bills he has made. When the Morgan Line sent their reports in we took their word that that was all they had to report, the same as we took any other agent's.

1544 Q. Did the Morgan Line, during the time that they reported to you, contribute to the expense of maintaining your office?

A. No, I don't think they did.

Q. They did not?

A. No; not that I recall.

Q. Was this exhibit made up under your direction?

A. Yes, sir.

Q. You stated the other day that when you had to put your name to a thing you wanted time to examine it—when I asked you how long it would take to make this.

A. I generally do. That was a mere pleasantry. I said if I went digging around among those papers I would have to go and ask half a dozen people where they were. I could start a clerk or two who knew where they were and who would go and make it up.

Q. You examined this statement sufficiently so that you are satisfied of its correctness?

A. I believe it to be correct. When I went back to the office I sent for my chief clerk and told him what I wanted, and suggested the kind of reports that he go for to get, and I asked him if he had them handy as far back as that, and told him to make them up. I blocked out the form that I wanted them put in, and he brought me those figures. I looked at them and did not see anything in them that struck me as being remarkably strange, and I take it for granted that they are right.

Q. What is the name of your chief clerk?

A. Mr. Porcher.

Q. He made up this statement from the books, did he?

A. I don't know whether he did or not. He may have put on some clerk who made it. I reckon he did not put those figures in;

1545 when you come right down to that, the typewriter made it. It was made on the type machine.

Mr. SEVERANCE. I will call Mr. Porcher and find out from him who did do it, if Judge Lovett will not waive that part of the objection.

Q. Mr. Porcher had charge of the work of physically making it up, didn't he?

A. Yes.

Mr. SEVERANCE. I will re-offer Complainant's Exhibit 98 (Blye) in evidence.

Mr. LOVETT. The defendants object to Complainant's Exhibit 98, not on the ground that it is not a correct record of the figures as reported to Mr. Blye by the railroads and steamship companies, but otherwise they object to it as hearsay.

Complainant's Exhibit 98 (Blye) is as follows:

COMPLAINANT'S EXHIBIT 98. (Blye.)

(R. D. S. No. 27.)

JANUARY 5TH, 1909.

*California traffic from New York City via trunk lines and Gulf lines from June 18th, 1883, to March 31st, 1902.*

| Years. | Trunk Lines. | | Gulf Lines. | | | | | | Grand total. | |
|---|---|---|---|---|---|---|---|---|---|---|
| | | | Morgan Line. | | Mallory and Cromwell Lines. | | Total Gulf Lines. | | | |
| | Tons. | % | Tons. | % | Tons. | % | Tons. | % | Tons. | % |
| 1883—6 months | 10,421 | 37.8 | 16,845 | 61.1 | 314 | 1.1 | 17,159 | 62.2 | 27,580 | 100 |
| 1884 | 23,849 | 49.3 | 24,236 | 50.2 | 255 | 0.5 | 24,491 | 50.7 | 48,340 | 100 |
| 1885 | 13,614 | 27.5 | 35,726 | 72.3 | 75 | 0.2 | 35,801 | 72.5 | 49,415 | 100 |
| 1886 | 12,564 | 13.0 | 84,031 | 87.0 | 14 | 0.0 | 84,045 | 87.0 | 96,609 | 100 |
| 1887 | 18,838 | 18.4 | 83,732 | 81.6 | 0 | 0.0 | 83,732 | 81.6 | 102,570 | 100 |
| 1888 | 22,578 | 21.2 | 70,600 | 75.8 | 0 | 0.0 | 70,600 | 75.8 | 93,178 | 100 |
| 1889 | 25,942 | 35.6 | 46,868 | 64.4 | 0 | 0.0 | 46,868 | 64.4 | 72,810 | 100 |
| 1890 | 29,838 | 37.4 | 49,988 | 62.6 | 0 | 0.0 | 49,988 | 62.6 | 79,826 | 100 |
| 1891 | 26,856 | 33.2 | 54,074 | 66.8 | 0 | 0.0 | 54,074 | 66.8 | 80,930 | 100 |
| 1892 | 24,880 | 30.7 | 56,242 | 69.3 | 0 | 0.0 | 56,242 | 69.3 | 81,122 | 100 |
| 1893 | 13,129 | 13.8 | 82,003 | 86.2 | 0 | 0.0 | 82,003 | 86.2 | 95,132 | 100 |
| 1894 | 9,859 | 20.8 | 37,513 | 79.2 | 0 | 0.0 | 37,513 | 79.2 | 47,372 | 100 |
| 1895 | 11,768 | 22.3 | 40,948 | 77.7 | 0 | 0.0 | 40,948 | 77.7 | 52,716 | 100 |
| 1896 | 15,036 | 31.0 | 33,520 | 69.0 | 0 | 0.0 | 33,520 | 69.0 | 48,556 | 100 |
| 1897 | 31,432 | 52.6 | 28,272 | 47.4 | 0 | 0.0 | 28,272 | 47.4 | 59,704 | 100 |
| 1898 | 38,364 | 58.7 | 26,669 | 40.8 | 321 | 0.5 | 26,990 | 41.3 | 65,354 | 100 |
| 1899 | 42,640 | 57.9 | 29,165 | 39.6 | 1,810 | 2.5 | 30,975 | 42.1 | 73,615 | 100 |
| 1900 | 40,809 | 56.0 | 31,462 | 43.2 | 589 | 0.8 | 32,051 | 44.0 | 72,860 | 100 |
| 1901 | 45,808 | 58.8 | 30,040 | 38.6 | 2,039 | 2.6 | 32,079 | 41.2 | 77,887 | 100 |
| January, February, March, 1902 | 11,716 | 57.3 | 7,886 | 38.6 | 833 | 4.1 | 8,719 | 42.7 | 20,435 | 100 |

Under California is included all traffic destined to—British Columbia—California—Idaho west of and including Kuna—Nevada—Oregon—Washington and all trans-Pacific traffic.

Morgan Line data received: From June 18th, 1883, to November 7th, 1893—waybills. From November 18th, 1893, to March 31st, 1902—statements only.

1547 Cross-examination by Mr. LOVETT:

Q. Mr. Blye, did all of the railroad companies, that is, the trunk lines, as you described them the other day, send you copies of waybills from which these statements were compiled, or did they give you information in some other form?

A. No, they sent me copies of the way-bills.

Q. Of course you had no means of knowing and did not attempt to verify the question as to whether they sent you all?

A. Except their certificate that these included all.

Q. Whose certificate?

A. The agent's certificate, the agent who made up the record.

Q. He certified that it included all?

A. He certified that this was a correct list of the way-bills made at his station during the preceding twenty-four hours for this traffic.

Q. How did the Mallory Line make its reports? Did it send you a copy of its way-bills or manifests, or did it simply send it in a letter or otherwise?

A. I don't really know. The Mallory Line was such a small thing that I did not pay any attention to it.

Q. How did the Morgan Line do it?

A. The Morgan Line up to the date I mentioned there sent us tissue copies of the way-bills. These are tissue copies, impression copies, of the way-bills; they are not pen way-bills. They are impression copies of the way-bills.

Q. I thought you said that they simply reported to you how much they had sent?

A. Who?

Q. The Morgan Company.

1548 A. Up to the date mentioned there they sent us the copies of the way-bills; after that they sent us a letter stating their tonnage, and that letter generally came in over Mr. Hawley's signature.

Q. To what date was that done?

A. It is down there at the bottom, Judge. From June, 1883, to November 17, 1893, we received from the Morgan Line tissue copies of the way-bills, covering their traffic out of New York for Pacific Coast, what we called California traffic.

Q. After that date, what?

A. After that date we had a report signed by the general eastern agent of the Morgan Line, giving us the number of tons that his line had carried for a stated period.

Q. But not furnishing copies of the way-bills?

A. Not furnishing copies of the way-bills. Those things came in generally over Mr. Hawley's personal signature, to my recollection.

Q. You had no copies of the Morgan Line way-bills, then, after November 17, 1893?

A. No, sir.

Q. I think you stated on your examination two days ago that your statistics for the trunk lines included traffic originating in Baltimore, Philadelphia, New York, and Boston.

A. Yes.

Q. In Complainant's Exhibit 98 you have included only that originating in New York?

A. Yes, sir.

Q. Handled by the trunk lines?

A. Yes, sir.

Q. For the Morgan Line you have included in this Exhibit 98 all traffic handled by that line out of New York to the Pacific Coast as reported in the manner that you have stated?

A. Yes.

Q. During that period didn't the Morgan Line secure a great
1549 deal of traffic in the territory east of Pittsburg and north of Norfolk on which it absorbed the local charges into New York and shipped it out from New York to California points—that New York traffic?

A. Yes, I guess they did.

Q. You did not exclude that traffic from this statement?

A. Yes, I did.

Q. Did you?

A. Yes, sir.

Q. How did you do that, Mr. Blye?

A. I did not enter it in my records.

Q. Beg pardon?

A. I did not enter it in my record. I cut it out if they reported it.

Q. How did you identify it?

A. By the fact that it had back charges on it, and from the further fact that, to the very best of my recollection, Mr. Hawley insisted it should not go in.

Q. After they stopped furnishing you way-bills in 1893, you could not tell where the traffic originated, could you, Mr. Blye?

A. No, except that Mr. Hawley stated to us in the letter that it would not include anything except New York City traffic.

Q. Have you that letter?

A. There is a reference to it somewhere in the office, but I do not find the letter. That was written years ago.

Q. When you say New York City, do you mean within lighterage limits?

A. Oh, yes; what is called the port of New York.

Q. Is that for all lines, rail lines?

A. That includes Brooklyn and Staten Island and Jersey City and Hoboken and all the railroad terminals around New York. That is New York, so far as we are concerned.

Mr. SEVERANCE. That is both boat and rail shipments, is it?
1550 WITNESS. Yes.

Mr. SEVERANCE. As shown in this table?

WITNESS. Yes. It includes what we know as New York city traffic. When I was on the stand before I think I said it was meant to include shipments delivered to the lines by shippers in New York.

Mr. LOVETT. I haven't finished, brother Severance.

Mr. SEVERANCE. I just asked a question to be sure that I understood what he meant by his answer.

WITNESS. Lighterage limits covers it.

Q. Some of the witnesses have testified here, Mr. Blye, that on the traffic originating east of Pittsburg the Morgan line would absorb

the charges from the point of origin to the New York port; that is to say, that that local charge was included in the rate of the Southern Pacific; the Southern Pacific bore that itself, did not charge it against the shipper. Now, how could you tell from advance charges where the freight originated? There were no advance charges, were there, in cases of that sort, where the company absorbed it?

A. Well, Judge, most of those things came in, the great bulk of them—for instance, if a man wanted to make a shipment from Harrisburg or from Syracuse: he consigned that to John Smith, San Francisco, care of E. Hawley, New York, and that was marked right on the box.

Q. But you did not see the box.

A. And when the Morgan line billed it out, it came in that way for identification. When the Morgan line billed it out it came that way; came to us on the way-bills that way.

Q. Well, of course you didn't see the box, and you had to go
1551 by the way-bill?

A. Sure.

Mr. SEVERANCE. He had to believe your company.

WITNESS. We didn't see any of it; we didn't see any of the tonnage that went out.

Q. I didn't suppose you did. The way-bill that you saw, however, was a Morgan line way-bill?

A. Yes.

Q. Originating in New York?

A. Yes.

Q. That way-bill would not show any advance charges where the company absorbed the rate from Syracuse to New York, would it?

A. Not always; no, it didn't need to.

Q. How could you identify it, then?

A. When I spoke about advance charges I was not speaking to be mathematically correct about it. I could pick up a way-bill and read it and see whether it was one of those outside shipments, and probably more than that. It was not the intention that those outside shipments should go in. Mr. Hawley was very particularly insistent that they should not go in. He made the arrangement about the reporting, and the report was made first to show the relative amount of tonnage that the Morgan line and the trunk lines out of New York competed for, and the trunk lines did not compete for any tonnage out of Harrisburg—that is, all of the trunk lines.

Q. Didn't they compete for tonnage out of Philadelphia?

A. Yes, some of them did; the Pennsylvania and the Reading and the Lehigh Valley did.

Q. Well, didn't the trunk lines or some of them——

A. But that hadn't anything to do with New York. There would not anybody ship business from Philadelphia over to New York
1552 and leave it open for all the trunk lines to come in and try to get it from the line that brought it here, and when the South-

ern Pacific Company brought traffic in from the interior they did not go and try to shop it off around among the trunk lines to see which one would make the best trade on it—they got it themselves.

Q. So your statement then is that you would select from the way-bills sent in by the Southern Pacific Company and exclude those covering traffic originating outside of the port of New York?

A. Yes. We were careful to do to the best of our ability, to keep out of our accounts any traffic that there was any question about as to whether it originated in New York, whether we had any right to do anything with it or not.

Q. I think your statistics, according to your statement the other day, included Baltimore, Philadelphia, New York and Boston?

A. No, not in these statistics. We make statistics for all shipments from Philadelphia, and we make statistics of shipments from Baltimore, but they haven't anything to do with New York.

Q. And you would not include in your statistics of Philadelphia the traffic shipped by the Southern Pacific from that point?

A. I couldn't; they wouldn't report it to me. They did not report to me any traffic out of Philadelphia that was destined or consigned to any point east of Pittsburg.

Q. I see that your statement shows that from and including the year 1886 until and including the year 1897 the Mallory did not handle a pound of freight out of New York to the Pacific coast?

A. That is what they reported. Either they didn't report it or else they reported there wasn't anything to report.

1553 Q. Now this traffic handled by the trunk lines out of New York and included in this statement, Mr. Blye, would be carried by the trunk lines as far west, I presume, as their lines extended or as they could control the traffic, and then move to the Pacific coast over their connections. Now what lines of transportation were there during this period over which the trunk lines could get this traffic to the Pacific coast?

A. A shipment might leave New York—we will take one road for illustration. If a shipment went out for San Francisco and had to go by the New York Central road, the New York Central road would probably carry it to Chicago. At Chicago it might give it to the Atchison, or the Rock Island, or the Burlington, or the North-Western, or the Milwaukee & St. Paul. If it was going to the Northern Pacific coast it could be sent up to Minneapolis or St. Paul to go over the Great Northern or the Northern Pacific, or it could be sent to Omaha and given to the Union Pacific to take it over the Oregon Short Line. If it was going to San Francisco it would probably have been consigned by some line to Omaha and given to the Union Pacific and delivered to the Central Pacific and taken into San Francisco because that was the most direct route and the ordinary route. Somebody, for experiment, if he felt like it, might give it to the Illinois Central to carry it down to New Orleans and give it to the Southern Pacific—he might do that if he was reasonably crazy, but he wouldn't try it very often.

Q. Any all-rail shipments by these trunk lines for any point on the Pacific coast south of Portland had to go either by the Atchison or the Southern Pacific to destination, hadn't they?

A. The rail lines? Yes.

1554 Q. They were the only rail lines west of——

A. Had to go to the Southern Pacific. Well, there couldn't anybody get into California with any traffic anyhow unless the Southern Pacific got some of the money, no matter how they sent it.

Q. Or the Atchison?

A. Well, even in those days—even then I think the Atchison had to go into San Francisco over the Southern Pacific rails.

Q. Yes, that is correct.

Mr. STUBBS. Not Southern California?

WITNESS. Not Southern California, no.

Mr. STUBBS. Then you qualify it; you don't mean the whole of California?

WITNESS. I don't mean the whole of California.

Q. All of these trunk lines whose reports were made to you and whose tonnage is included in this statement, so far as reported, were connections of the Southern Pacific, that is, the Southern Pacific operating the line west of Ogden, as well as of the Atchison, weren't they? That is to say they, either directly or through their connections, all connected and worked with the Southern Pacific line between Ogden and the Pacific Ocean?

A. They had to, necessarily.

Q. How far is it from New York to the Missouri by the routes over which this traffic ordinarily moved that way, that is, the trunk lines and their connections?

A. I suppose somewhere between 1,300 and 1,500 miles, according to the route which you took.

Q. About 1,400 or 1,500 miles?

1555 A. About 1,450 miles. The distance from New York to Chicago ordinarily is taken to be 1,000 miles (it is not quite 1,000, but that is as near as you can guess), and it is about 500 miles to Omaha; it is about 1,000 miles from Omaha to Ogden, and it is pretty close to 800 miles from Ogden to San Francisco, as near as I can remember. That figures up about 3,300 miles. I think the post office distance is 3,200 miles.

Q. The distance from New York to Omaha, then, or to the Missouri River, where most of the lines cross, is approximately 1,500 miles?

A. Approximately, yes.

Q. Now, the Union Pacific lines lie entirely west of the Missouri River, do they not?

A. Yes, sir.

Q. And the distance from Omaha to Ogden, I believe you said, is about 1,000 miles?

A. About 1,000 miles.

Q. And the Union Pacific has no line west of Ogden?

A. Not to California.

Q. Its line west of Ogden extends up to Portland?

A. The Oregon Railroad & Navigation Company.

Q. The Oregon Railroad & Navigation Company and the Oregon Short Line?

A. Yes. When they get to Portland they are about as far away from San Francisco as they were at Ogden.

Q. A little farther, aren't they?

A. About the same distance.

Mr. SEVERANCE. Not quite so far.

Mr. LOVETT. Not quite.

Q. And Ogden, you say, is about 800 or 850 miles from San Francisco?

A. About that, yes; 800 and some odd miles. It is about 800 miles.

1556 Q. Then, according to your statement of the situation, Mr. Blye, the Union Pacific is merely an intermediate line, an intermediate carrier, having a length of about 1,000 miles in the all-rail routes to San Francisco?

A. That is all it ever was, in my judgment.

Q. A link of about 1,000 miles in the transcontinental system made up of various lines of about 3,300 miles in length?

Mr. SEVERANCE. I object to this examination as not being cross-examination.

Q. And the Union Pacific had no means of moving its traffic all-rail to California except in connection with the Southern Pacific operating the Central Pacific line west of Ogden?

Mr. SEVERANCE. May my objection stand to all testimony of this character?

Mr. LOVETT. Yes, that is understood.

Q. Will you answer the question, Mr. Blye?

A. Not that I know of.

Q. You are pretty familiar with the railroad systems of the country, aren't you?

A. Somewhat.

Q. How long have you been in the business?

A. 32 or 33 years.

By Mr. SEVERANCE:

Q. Counsel was examining you a moment ago with reference to the position of the Union Pacific as to transcontinental business. You remember when Mr. Hawley was the agent of the Southern Pacific, prior to 1901, for many years?

A. Yes.

Q. You remember that at that time the Union Pacific had a general eastern agent and still have?

A. Yes, sir.

1557 Q. And before 1901, both Mr. Hawley and the Union Pacific eastern agent had a force of solicitors, hadn't they?

A. Yes.

Q. Soliciting traffic? That is true, isn't it?

A. I guess so, yes.

Q. And isn't it a fact that Mr. Hawley and his solicitors were soliciting business by way of New Orleans, the Morgan line of steamers, for the coast?

A. Yes.

Q. And were not the solicitors of the Union Pacific soliciting business over their line in competition with Mr. Hawley and his subordinates?

A. Yes.

Q. The Union Pacific was endeavoring to route everything it could over its line, wasn't it?

A. The same as all the other trunk lines.

Q. The same as all the other lines, certainly. So that the Southern Pacific agents here were endeavoring to send everything they could by New Orleans or Galveston?

A. Yes.

Q. And the Union Pacific everything they could by Kansas City or Omaha? Isn't that true?

A. Yes.

Q. You know that the Union Pacific has a line from Kansas City west, don't you?

A. Yes.

Q. And that reaches their main line where?

A. I don't know what junction.

Q. Cheyenne?

A. No, I don't think it is Cheyenne.

Q. Doesn't it go to Denver and thence north to Cheyenne?

A. No; I am not familiar; I have forgotten that junction point. I think there is a junction that used to be called the old Central branch.

Q. Well, you know they have a line from Kansas City to
1558 Denver, don't you?

A. Yes.

Q. Then you know they have a line from Denver north to a connection with the main line from Omaha to Ogden?

A. They run from Denver to Cheyenne.

Q. What is that?

A. They run from Denver to Cheyenne and then go east out of Denver.

Q. I am not speaking of east; I am speaking of west.

A. Yes.

Q. Traffic to the Pacific coast from Kansas City over the Union Pacific would move first to Denver, would it not?

A. If it started from Kansas City?

Q. Yes, if it started from Kansas City.

A. Oh, it could, yes.

Q. Well, wouldn't it naturally?

A. I don't think it would naturally.

Q. How would it go—from Omaha to Kansas City?

A. No, to the junction this side of Omaha. On the same through rate it would pay the Union Pacific better to get it from Omaha and carry it out over their main line. I never knew much about that.

Q. That is not what I am asking you. Judge Lovett has been examining you as an expert on those western lines.

A. Only out of New York, I understood.

Q. No, he was asking you about the Union Pacific, and you gave your views as to what the Union Pacific was, and so on?

A. All right.

Q. I want to find out something about that Union Pacific system, as long as you know about it. Have they got a line from Kansas City to Denver?

A. I think they have.

Q. Have they got a line from Kansas City to Omaha and
1559 west of Omaha?

A. No, I don't know that they have. I guess I got——

Q. How did they take traffic from Kansas City to the west?

A. Well, I guess my geography was off a little bit there, Mr. Severance; I will take that back. That was a little break. What I was thinking about was the western end, carrying it through Denver and then carrying it up to their line, and then carrying it west from Cheyenne. I was mixed on that, I will admit that.

Q. It would go from Kansas City out to Denver, up to Cheyenne, and out to Ogden?

A. It could.

Q. That is, if it was delivered to them at Kansas City?

A. Yes.

Q. If it was delivered to them at Omaha, it would go directly west to Ogden?

A. Yes.

Q. Now, the Pennsylvania road makes its western terminus where?

A. The Pennsylvania Railroad proper?

Q. The Pennsylvania lines.

A. You mean the Pennsylvania system?

Q. Yes.

A. St. Louis and Chicago. I should think the Pennsylvania Railroad system would call their line a line to Chicago.

Q. They run to St. Louis, don't they?

A. They do. They have got a connection from St. Louis. I don't know whether that is their system or not.

Q. They run through trains from St. Louis to New York?

A. Oh, yes; everybody runs through trains everywhere, but that don't mean they own the road.

Q. Oh, they do?

A. Lots of them.

Q. Run through trains over any line, wherever they please?
1560 A. By agreement, yes. The Pennsylvania line runs over the Southern Pacific, but they don't own it.
Q. The Pennsylvania Railroad operates a line from New York to St. Louis, don't they?
A. Yes.
Q. A freight line and a passenger line?
A. Yes.
Q. Do they take transcontinental traffic that way?
A. To St. Louis?
Q. Yes.
A. Well now, I can't tell you about that.
Q. You don't know?
A. The best of my recollection is that the Pennsylvania's transcontinental traffic is routed to Chicago.
Q. It probably is.
A. I could dig that out and tell you.
Q. If they take transcontinental traffic to St. Louis it could move westerly over the Union Pacific, couldn't it, by way of Kansas City, going to Kansas City from St. Louis over a connection?
A. Yes.

By Mr. LOVETT:

Q. Mr. Severance asked you about the soliciting agents of the Union Pacific and the Southern Pacific. Has the Chicago & Northwestern soliciting agents in New York?
A. Yes, sir.
Q. For this transcontinental traffic?
A. Yes, sir.
Q. It is not a competitor of the Union Pacific for that traffic, is it? It is a connection, isn't it?
A. A connection, yes.
Q. So with the Chicago, Milwaukee & St. Paul?
A. Yes, sir.
Q. And the Burlington?
A. Yes, sir.
Q. The Burlington is a competitor of the Union Pacific for some of that traffic, isn't it?
A. Denver business—a very lively one, I guess.
Q. Yes. From Denver and in connection with the Denver &
1561 Rio Grande?
A. Yes.
Q. Traffic might move over the Burlington to Ogden without touching the Union Pacific at all?
A. Yes.
Q. As a matter of fact much of it does move that way?
A. Yes.
Q. The same is true of the Rock Island, isn't it?

A. I am not so familiar with the Rock Island and connections west, but I think so.

Q. It has a line to Denver, hasn't it?

A. Yes.

Q. They all have soliciting agents here, haven't they?

A. Yes.

Q. And so with the Missouri Pacific?

A. Why, every railroad between Chicago and the Missouri River, I imagine, is in New York trying to get business for transcontinental traffic to go over their line.

A. And all of those lines would have to send that business to California points either by the Atchison or the Southern Pacific company, wouldn't they, ultimately, in order to get it in there?

A. The Atchison road is in here for business, soliciting, to go straight over their line.

Q. But you did not quite answer the question. I said that all of the roads we have mentioned, the St. Paul, the Northwestern, the Burlington, the Rock Island, the Missouri Pacific—all of those roads might carry business as against the Union Pacific transcontinental business, and yet would have to deliver it, in order to get it to or from California, either to the Atchison or the Southern Pacific?

A. Undoubtedly.

Q. And might do that without touching the Union Pacific at all?

A. Yes.

1562 Q. Well, the Union Pacific would have to meet that competition by solicitation or rely on the Southern Pacific as a traffic connection, wouldn't it? In other words, suppose that the Southern Pacific was indifferent, the Union Pacific would have to solicit this business in competition with the other lines west of the Missouri River, wouldn't it?

A. Yes.

Q. Unless it was traffic by the Southern Pacific, and the Southern Pacific itself solicited for it?

A. Yes, sir.

Q. Mr. Severance asked you about your knowledge of these rates. Isn't much of this freight that moves on way-bills that comes into your office handled on through way-bills?

A. You mean all the way through to the coast?

Q. Yes.

A. No.

Q. How far does through billing extend?

A. It is billed to Chicago or St. Louis; it is billed to the end of our billing rate.

Q. There isn't much of it billed to the Missouri River crossings?

A. I don't remember. I haven't looked at any way-bills for a long time, but when I was handling way-bills I never saw anything billed west of the Mississippi River.

Q. West of the Mississippi River?

A. West of the Mississippi River. I don't mean bills of lading, you know; I mean way-bills. The way-bill generally shows the traffic up to Chicago or the Mississippi River and shows how much the road east of there wants, and how much there is for the road west to get.

Q. And shows the final destination?

A. And shows the final destination, of course.

Q. In case of through billing it does not show the rate beyond the terminus of the billing, does it? or does it sometimes?

1563 A. Sometimes it shows. The way-bill generally shows exactly what is on the shipping receipt, and the shipping receipt shows how the package is marked, in fact it has got on it all sorts of hieroglyphics and pictures and instructions, that will show on the way-bill; care of so-and-so, notify somebody, and the whole thing that is on the package is on the shipping receipt, and that will be on the way-bill, and the way-bill is made up from that—more for identification than anything else.

By Mr. SEVERANCE:

Q. Just one other question. Judge Lovett interrogated you again in reference to the Union Pacific. The Sunset Route from New York to the Coast is known as a hundred per cent route, isn't it, and is commonly spoken of that way in railroad parlance, because they get the full rate from here to the Coast?

A. I never heard that term mentioned in connection with the Sunset.

Q. You never did?

A. No.

Q. In connection with the Sunset?

A. No, or any other road.

Q. If the Morgan line of steamers takes traffic from New York city for San Francisco, the Morgan line being owned by the Southern Pacific Company, that company gets one hundred per cent of the whole rate, doesn't it?

A. It gets all of it, yes.

Q. That would be one hundred per cent, wouldn't it?

A. Yes, I guess so.

Q. Now, if the traffic, instead of moving by the Southern Pacific to San Francisco by the Sunset Route, goes over the

1564 trunk lines, and then over the lines from Chicago to the Missouri River, and from the Missouri River, Omaha to Ogden, over the Union Pacific, the Union Pacific gets a part of that 100 per cent of the through rate?

A. Surely.

Q. And it is to get that business, to get the traffic to move over their line in competition with the Sunset, that they maintain these soliciting agents here; isn't that true?

A. Who maintains them?

Q. The Union Pacific.

A. Yes.

Mr. LOVETT. The Southern Pacific also gets parts of it that goes that way, doesn't it?

A. Surely.

The EXAMINER. Gentlemen, at this time I would like to have your suggestions with reference to the signing of this testimony by the witnesses, if you have any to make. Under the rule it is necessary for witnesses to sign their testimony, and they are being dismissed now without any reference to that.

Mr. SEVERANCE. We will waive the signing of the testimony except in cases where Judge Lovett and myself find something that seems to us to be a typographical error or mistake, and then if we cannot agree on the correction, we will ask to have the witness look it over.

1565 The EXAMINER. We will assume, then, that the testimony as taken by the reporter is correctly transcribed, unless some objection be made by counsel on either side or attention is called to some discrepancy.

Mr. SEVERANCE. That is right.

Mr. LOVETT. That is true.

The EXAMINER. That is the understanding?

Mr. LOVETT. Yes.

1566 S. FREDERICK TAYLOR.

being duly sworn as a witness on behalf of the Complainant, testified as follows:

By Mr. SEVERANCE:

Q. Mr. Taylor, what is your business?

A. I am vice-president of Borden's Condensed Milk Company.

Q. And what was your position before you became vice-president?

A. Secretary.

Q. What did you have to do with routing traffic before you were vice-president? Was that in your charge?

A. Yes.

Q. How long have you been vice-president?

A. Since 1902.

Q. And prior to that time for how long did you have charge of the traffic?

A. Since 1887.

Q. And from 1887, when you took charge of the traffic of the Borden Company, did you have transcontinental and Oriental shipments?

A. Yes, sir.

Q. In considerable volume?

A. Yes, sir.

Q. What companies were soliciting that business, competing for that business? Eliminate the Oriental business and take only the Pacific Coast business.

A. Why, all companies.

Q. Please name them.

A. The Santa Fe, the Southern Pacific, the Northern Pacific, the Great Northern, the Canadian Pacific, and all their eastern connections.

Q. The Union Pacific?

A. The Union Pacific.

Q. You didn't name the Union Pacific?

A. I call that an eastern connection, more or less.

Q. Did you ever ship by the Sunset Route?

A. No, sir.

Q. Were you solicited to do so?

A. Yes, sir.

Q. Were you solicited by agents of the Union Pacific for
1567 their route?

A. Yes, sir.

Q. And did you ship that way?

A. The Union Pacific?

Q. Yes.

A. Yes, sir.

Mr. LOVETT. To what point is that?

Mr. SEVERANCE. He shipped by the Union Pacific. He said he did not ship by the Southern Pacific.

Mr. LOVETT. To what place?

Mr. SEVERANCE. To the Coast, I mean.

WITNESS. You are speaking of California points?

Mr. SEVERANCE. California points, yes.

Mr. LOVETT. California points or Pacific Coast points?

WITNESS. California points I intended to answer for only.

Mr. SEVERANCE. That is right.

Q. Mr. Taylor, do you remember one time prior to 1901, when you sent out a special train-load shipment?

A. I can't fix the date.

Q. Do you remember of that train going out?

A. Oh, yes, sir.

Q. You don't remember when it was?

A. No, I can't remember the year.

Q. Was it while you had charge of the traffic?

A. Yes, sir.

Q. What was the object of that special train?

A. Advertising.

Q. Was it a full train?

A. A full train, yes, sir.

Q. What solicitation did you have for that train?

A. I couldn't tell you.

Q. Do you remember what lines solicited it?

A. No.
Q. You don't remember that?
A. I don't remember anything about that detail.
Q. How did that move?
1568 A. The Union Pacific and Southern Pacific, as all Frisco business had been doing for some time.
Q. You sent all your Frisco business that way?
A. Yes, sir. Our traffic was divided according to territory.

Cross-examination by Mr. LOVETT:

Q. You say your traffic was divided according to territory. What territories? I am speaking now of Pacific Coast traffic.
A. I mean it was an established custom of ours for years to divide our business according to the terminal territory and the route reaching there more directly. Southern California business went by Santa Fe, with rare exceptions. Frisco business went almost entirely Union Pacific-Southern Pacific. Portland business by Oregon Short Line. Seattle, Great Northern. Tacoma, Northern Pacific. And British Columbia by Canadian Pacific. Now and then there might have been exceptions, but they were rare.
Q. By your statement in your direct examination that you shipped to San Francisco by the Union Pacific, you meant the Union Pacific and Southern Pacific west of Ogden?
A. Certainly.
Q. The line thus formed?
A. Yes, sir, through line.
Q. You never shipped to California by way of Portland, did you?
A. No, sir.
Q. Where did most of your shipments for the Pacific Coast originate?
A. Illinois and Wisconsin.
Q. Isn't it true that the Southern Pacific actively solicited that business by way of Ogden?
A. The Southern Pacific?
Q. Yes?
A. Yes, sir.
Q. The Southern Pacific and Union Pacific both solicited?
A. Yes, sir.
1569 Q. Mr. Severance asked by whom you were solicited for that special trainload of milk, and you were unable to answer. Generally, weren't you solicited for shipments by all lines in that territory, whether they reached the Pacific Coast or not?
A. Oh, yes.
Q. The Northwestern and the St. Paul ——
A. So much so that I paid very little attention to solicitation because we had our schedules made out as to how we were going to ship our goods.
Q. For California business you were actively solicited by the Northwestern, the St. Paul ——

A. All the lines.

Q. —— the Burlington, the Rock Island, the Missouri Pacific, and all of those lines having any share in that character of traffic?

A. Yes, sir.

By Mr. SEVERANCE:

Q. How did your Oriental business move?

A. It moved via the Suez up to, I think, 1889, and then the first trans-Pacific arrangement was made with the Canadian Pacific in that year. The American lines carried none of that business until along in 1892.

Q. What lines carry it now?

A. It is divided.

Q. Between what lines?

A. It is mostly going Canadian Pacific now on account of the through rate being withdrawn on the American lines; but prior to that it was divided according to convenient sailings and facilities offered.

Q. Between what lines was it divided?

A. Northern Pacific, Southern Pacific, and Union Pacific, Great Northern, and Canadian Pacific.

1570 Q. Is that business solicited by the various companies or their representatives?

A. I don't know anything about it now; I don't pay any attention to it.

Q. Was it in your day, when you were running the traffic?

A. Yes, sir.

A recess was here taken until 2 o'clock P. M.

AFTERNOON SESSION.

Present: On behalf of the Complainant, Mr. Frank B. Kellogg, Mr. C. A. Severance.

On behalf of Defendants, Mr. R. S. Lovett, Mr. Kelly, and Mr. Hines.

1571 LAURENT C. DEMING,

being duly sworn on behalf of the Complainant, testified as follows:

Direct examination by Mr. SEVERANCE:

Q. Mr. Deming, where do you live?

A. I live here in this city.

Q. What is your business?

A. I am the assistant secretary of the Atchison, Topeka & Santa Fe Railway Company.

Q. As such officer do you keep the records of the stockholders and directors meetings?

A. I do.

Q. And you have them in your possession?

A. I have.

Q. Have you made copies of the proceedings at certain meetings of the directors and stockholders of that company at our request?

A. Yes, sir.

Q. And these copies are all true copies of the original record, are they?

A. They are.

Papers marked Complainant's Exhibits 99 to 103 (Deming), inclusive.

Q. I show you Complainant's Exhibit 99. Is that a true and correct copy of proceedings at a meeting of the Board of Directors of the Atchison, Topeka & Santa Fe Railway Company on February 8, 1905?

A. It is.

Q. I show you Complainant's Exhibit 100. Is that a true and correct copy of certain of the proceedings at the annual stockholders' meeting of the Atchison, Topeka & Santa Fe on October 26, 1905?

A. It is.

Q. So far as relates to the election of certain directors?

A. Yes, sir.

1572 Q. I show you Complainant's Exhibit 101. Is that a true and correct copy of certain proceedings at a meeting of the stockholders on October 22, 1908?

A. It is.

Q. Of the Atchison, Topeka & Santa Fe?

A. Yes.

Q. I show you Complainant's Exhibit 102. Is that a correct copy of certain proceedings at a meeting of the Board of Directors of the Santa Fe on December 5, 1906?

A. Yes, sir.

Q. And were the directors present and voting in favor of that resolution who are shown in the list at the bottom of the exhibit?

A. Yes, sir.

Q. I show you Complainant's Exhibit 103. Is that a correct copy of certain proceedings at a certain meeting of the Board of Directors of the Atchison, Topeka & Santa Fe on December 5, 1906, and were the directors present and voting shown in the list at the bottom of the exhibit?

A. Yes, sir.

Mr. SEVERANCE. I offer in evidence Complainant's Exhibits 99, 100, 101, 102, and 103. Any objection, Mr. Lovett?

Mr. LOVETT. No.

Mr. SEVERANCE. You do not object on the ground that we do not bring the books in?

Mr. LOVETT. No.

Mr. SEVERANCE. In fact, at this time you do not make any objection?

Mr. LOVETT. No.

Mr. SEVERANCE. Then I suppose they will be received?

1573 Complainant's Exhibit 99 is as follows:

COMPLAINANT'S EXHIBIT 99.

This is to certify that at a meeting of the Board of Directors of The Atchison, Topeka and Santa Fe Railway Company held in New York City on February 8, 1905, at which a quorum was present, viz, Messrs. Berwind, Cheney, Duval, Haven, Jobes, McCullough, Morawetz, Smith and Steele, the following action was taken as appears from the records of said meeting:

The resignation of Mr. E. D. Kenna as a Director of the Company was presented and on motion duly made and seconded, it was

*Voted*, that the resignation of Mr. Kenna be accepted with regret.

On motion duly made and seconded, it was

*Voted*, to proceed to the election of a Director to fill the vacancy caused by the resignation of Mr. Kenna for the term ending at the Annual Meeting of 1908.

Mr. Henry C. Frick of Pittsburg, Pennsylvania, was nominated and on motion duly made and seconded, it was unanimously

*Voted*, that the Secretary be instructed to cast one ballot for each of the Directors present in favor of Mr. Frick.

The Secretary reported that nine votes had been cast in favor of Mr. Henry C. Frick and he was thereupon declared elected a Director of the Company to fill the vacancy caused by the resignation of Mr. E. D. Kenna for the term ending at the Annual Meeting of 1908.

Mr. Frick having taken the required oath of office thereupon entered the meeting.

Mr. McCullough tendered his resignation as a Director of the Company and on motion duly made and seconded, it was

*Voted*, that the resignation of Mr. McCullough be accepted with regret.

On motion duly made and seconded, it was

*Voted*, to proceed to the election of a Director to fill the vacancy caused by the resignation of Mr. McCullough for the term ending at the Annual Meeting of 1905.

Mr. H. H. Rogers of New York was nominated and on motion duly made and seconded, it was unanimously

*Voted*, that the Secretary be instructed to cast one ballot for each of the Directors present in favor of Mr. Rogers.

The Secretary reported that nine votes had been cast in favor of Mr. H. H. Rogers and he was thereupon declared elected a

1574 Director of the Company to fill the vacancy caused by the resignation of Mr. McCullough for the term ending at the Annual Meeting of 1905.

Mr. Rogers having taken the required oath of office thereupon entered the meeting.

(Seal.) L. C. DEMING,
*Ass't. Secretary.*

The Atchison, Topeka and Santa Fe Railway Company, incorporated, Kansas, Dec. 12, 1895.

1575 Complainant's Exhibit 100 is as follows:

COMPLAINANT'S EXHIBIT 100.

This is to certify that at the Annual Stockholders' Meeting of The Atchison, Topeka and Santa Fe Railway Company held at Topeka, Kansas, October 26, 1905, the following action was taken as appears from the records of said meeting:

The Inspectors and Tellers having given an opportunity for every one present to vote, and the polls having remained open for more than one hour, and all the Stockholders present in person or by proxy having cast their votes, the Inspectors and Tellers closed the polls at 1.08 o'clock p. m. and presented and read to the meeting their reports of ballots cast for the election of three Directors and of Independent Auditors and on the adoption of said resolution (said reports are attached at the end of these records and marked Exhibits "G", "H" and "I"), and showing that from the certified stock list of the Company, it appeared that the total amount of its outstanding Capital Stock consisted of 2,161,996 shares, of which the holders of 1,701,659 shares, being more than three-fourths of the entire Capital Stock, were present in person or by proxy and had voted; and

(First.) That upon the election of Directors ballots were cast by the Stockholders present in person or by proxy, holding 1,701,659 shares of stock, and that 1,701,659 votes upon said 1,701,659 shares of stock were duly cast for each of the following named three Directors to hold office for four years: Benjamin P. Cheney, Boston; George G. Haven, New York; Henry H. Rogers, New York.

1576 That no votes were cast for any other Director and that each of the persons named was duly elected Director of the Company for the term of four years.

* * * * * * *

(Seal.) L. C. DEMING,
*Assistant Secretary.*

The Atchison, Topeka and Santa Fe Railway Company, Incorporated, Kansas, Dec. 12, 1895.

1577 Complainant's Exhibit 101 is as follows:

COMPLAINANT'S EXHIBIT 101.

This is to certify that at the Annual Stockholders' Meeting of The Atchison, Topeka and Santa Fe Railway Company held at Topeka, Kansas, October 22, 1908, the following action was taken:

The Inspectors and Tellers having given an opportunity for every one present to vote, and the polls having remained open for one hour, and all the Stockholders present in person or by proxy having cast their votes, the Inspectors and Tellers closed the polls at 1.15 o'clock p. m., presented and read to the meeting their reports of ballots cast for the election of four Directors and of Independent Auditors (which reports are attached at the end of these records and marked Exhibits "G" and "H"), showing that from the certified stock list of the Company, it appeared that the total amount of its outstanding capital stock consisted of Two million one hundred and seventy-one thousand and three hundred and three (2,171,303) shares, of which the holders of One million three hundred and fifty-nine thousand four hundred and seventy-five (1,359,475) shares, being more than a majority of the entire Capital Stock, were present in person or by proxy and had voted; and

(First.) That upon the election of Directors ballots were cast by the Stockholders present in person or by proxy, holding 1,359,475 shares of stock, and that 1,359,475 votes upon said 1,359,475
1578 shares of stock were duly cast for each of the following named four Directors to hold office for four years: Edward J. Berwind, New York; John G. McCullough, Vermont; Henry C. Frick, Pittsburgh, Pa.; Andrew C. Jobes, Wichita, Kas.

That no votes were cast for any other Director and that each of the persons named was duly elected Director of the Company for the term of four years.

* * * * * * *

(Seal.)

L. C. DEMING,
*Assistant Secretary.*

The Atchison, Topeka and Santa Fe Railway Company, Incorporated, Kansas, Dec. 12, 1895.

1579 Complainant's Exhibit 102 is as follows:

COMPLAINANT'S EXHIBIT 102.

This is to certify that at a meeting of the Board of Directors of The Atchison, Topeka and Santa Fe Railway Company held on December 5, 1906, a quorum being present and voting, the following action was taken as appears from the records of said meeting:

Whereas it is desirable to vest in one corporation the lines of railways and properties of the California Northwestern Railway Company, the San Francisco and North Pacific Railway Company, the Eureka and Klamath River Railway Company, the North Shore Railroad Company, the San Francisco and Northwestern Railway Company and the Fort Bragg and Southeastern Railway Company, and to cause to be constructed a line of railway connecting the railways of the California Northwestern Railway Company and of the San Francisco and North Pacific Railway Company with the railway of the San Francisco and Northwestern Railway Company, and a line of railway connecting the railway of the Fort Bragg and Southeastern Railway Company with the railway of the San Francisco and North Pacific Railway Company, and other extensions and branch lines in Mendocino and Humboldt Counties, California, and to provide for the future construction of a branch line into Lake County, to the end that the said counties may be furnished with better railway transportation facilities and that their natural resources may be further developed; but on account of the great cost of construction of such extensions and branches and the necessity of
1580 operating said lines of railway together as one property, it is believed that such new construction cannot be undertaken profitably and advantageously except with the co-operation of this Company and of the Southern Pacific Company.

*Resolved*, That this Company will co-operate with the Southern Pacific Company to accomplish said objects and to that end the President of this Company is authorized to execute under the corporate seal of the Company, the following agreements:

An agreement between the Southern Pacific Company and The Atchison, Topeka and Santa Fe Railway Company relating to said various railways in northwestern California and substantially of the tenor of the draft agreement herewith submitted and here referred to as "Exhibit A;"

An agreement between the Southern Pacific Company, The Atchison, Topeka and Santa Fe Railway Company and the Northwestern Pacific Railway Company for the sale to the last mentioned Company of various stocks, bonds and indebtedness of the aforesaid California corporations, and for other purposes, such agreement to be substantially of the tenor of the draft agreement herewith submitted and here referred to as "Exhibit B;"

An agreement between the Southern Pacific Company, The Atchison, Topeka and Santa Fe Railway Company and the Consolidated Corporation to be hereafter formed, as provided in said two agreements last mentioned, which shall give to the Southern Pacific Company and to this Company the right to prevent defaults by said consolidated corporation under any of the mortgages upon any part of its properties, such agreement to be substantially of the tenor of
1581 the draft agreement herewith submitted and here referred to as "Exhibit C;"

An agreement between the Southern Pacific Company, The Atchison, Topeka and Santa Fe Railway Company and The Farmers Loan and Trust Company, providing for the deposit with the last mentioned Company of the shares of Capital Stock of said consolidated corporation upon the terms therein set forth, such agreement to be substantially of the tenor of the draft agreement herewith submitted and here referred to as "Exhibit D." All such agreements to be subject to the approval of the General Counsel as to form.

*Resolved further*, That the President of this Company is hereby authorized to do any and all things necessary to carry out the plan set forth in said agreements.

A true copy.

Attest:
(Seal.)

L. C. DEMING,
*Ass't Secretary.*

The Atchison, Topeka and Santa Fe Railway Company, Incorporated, Kansas, Dec. 12, 1895.

At the above meeting there were present Directors Berwind, Cheney, Duval, Fowler, Frick, Haven, Jobes, Jones, McCullough, Morawetz, Ripley, Rogers and Steele (13).

L. C. DEMING,
*Ass't Secretary.*

1582 Complainant's Exhibit 103 is as follows:

COMPLAINANT'S EXHIBIT 103.

This is to certify that at a meeting of the Board of Directors of The Atchison, Topeka and Santa Fe Railway Company held on December 5, 1906, a quorum being present and voting, the following action was taken as appears from the records of said meeting:

The President laid before the Board draft of an agreement between this Company, party of the first part and the Southern Pacific Company, party of the second part (to which are attached drafts therein referred to of trackage agreements marked Exhibits A and B, respectively), providing for the sale by this Company to the Southern Pacific Company of all the shares of the Capital Stock and all indebtedness of the Phoenix and Eastern Railroad Company, and providing further that the Southern Pacific Company will cause to be constructed a line of railroad from a point on the Southern Pacific Railroad between Lordsburg, New Mexico, and Bowie, Arizona, to a point on the Phoenix and Eastern Railroad, and for a connection between the Phoenix and Eastern Railroad with the Southern Pacific Railroad at some point south or west of Phoenix so as to constitute a low grade line between Phoenix, Arizona, and Deming, New Mexico, and for the joint use of such last mentioned line by this Company; and providing further that this Company will cause to be constructed

a line of railroad from a point of connection with the Santa Fe, Prescott and Phoenix Railway near Wickenburg, Arizona, to a point of connection near Bengal, San Bernardino County, Cali-
1583 fornia, with the line of railroad operated by this Company, so as to constitute a line of railroad between Phoenix, Arizona, and Mojave, California, and for the joint use of such last mentioned line by the Southern Pacific Company.

*Voted*, that the President be and he hereby is authorized to execute under the seal of this Company an agreement substantially of the tenor of said draft agreement now submitted.

A true copy.

Attest: L. C. DEMING,
(Seal.) *Ass't Secretary.*

The Atchison, Topeka and Santa Fe Railway Company, Incorporated, Kansas, Dec. 12, 1895.

At the above meeting there were present Directors Berwind, Cheney, Duval, Fowler, Frick, Haven, Jobes, Jones, McCullough, Morawetz, Ripley, Rogers and Steele (13).

L. C. DEMING,
*Ass't Secretary.*

1584 Papers marked Complainant's Exhibits 104, 105 and 106 (Deming).

Q. Mr. Deming, I show you Complainant's Exhibit 104. Is that the agreement between the Atchison, Topeka & Santa Fe and the Southern Pacific Company with reference to the sale of the Phoenix & Eastern to the Southern Pacific?

A. It is.

Q. I show you complainant's Exhibit 105, and ask you if that is a copy of what is termed "Exhibit B," the trackage contract mentioned in this contract?

A. It is.

Q. I show you Complainant's Exhibit 106, and ask you if that is a copy of the trackage contract relating to the line between Phoenix and Mojave, mentioned as "Exhibit C," in this contract?

A. Yes, sir.

Mr. SEVERANCE. You gentlemen do not object to these as copies, as long as you furnish them?

Mr. LOVETT. No; they are all understood as being the contract referred to in the resolution.

Mr. SEVERANCE. Yes.

Q. This contract, Exhibit 105, to which the other two contracts are exhibits, is the contract mentioned in the resolution of the Board of Directors concerning the sale of the Phoenix & Eastern, which you produced here and identified, is it?

A. Yes, sir.

Mr. SEVERANCE. I offer in evidence Complainant's Exhibits 104, 105 and 106 (Deming).

Mr. LOVETT. No objection at this time.

(No cross-examination.)

1585 Complainant's Exhibit 104 is as follows:

COMPLAINANT'S EXHIBIT 104.

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY

and

SOUTHERN PACIFIC COMPANY.

AGREEMENT

with respect to sale of Phoenix and Eastern Railway and joint trackage agreements. Dated December 7, 1906.

Agreement, Made this seventh day of December, 1906, between The Atchison, Topeka and Santa Fe Railway Company (herein called the "Atchison Company"), a corporation of the State of Kansas, party of the first part; and

Southern Pacific Company (herein called the "Southern Company"), a corporation of the State of Kentucky, party of the second part.

Whereas, The Atchison Company owns or controls all the shares of the capital stock and all indebtedness of the Phoenix and Eastern Railroad Company (herein called the "Phoenix Company"), a corporation of the Territory of Arizona, which has constructed a line of railroad extending from Phoenix to Dudleyville in said Territory.

It has been agreed between the Atchison Company and the Southern Company that the Atchison Company shall sell to the Southern Company, and that the Southern Company shall purchase

1586 from the Atchison Company, all said capital stock and indebtedness, at and for a sum equal to the exact cost of the construction and acquisition of the railroad and properties of the Phoenix Company, including in such cost expenses of organization and management of the Phoenix Company, with interest on all expenditures from the dates thereof, at the rate of four and one-half per cent. per annum to the first day of July, 1905, and at the rate of four per cent. per annum thereafter, it being understood that any deficit in the operation of said railroad and properties shall be charged and any net income shall be credited to such cost.

The Atchison Company has furnished to the Southern Company a detailed statement showing such cost to have been two million three hundred and twenty thousand five hundred and sixty-two dollars and fourteen cents ($2,320,562.14) on September 30, 1906, and the interest thereon up to December 1, 1906, to be

one hundred and twenty-eight thousand three hundred and ninety-four dollars and twelve cents ($128,394.12) making the aggregate sum of two million four hundred and forty-eight thousand nine hundred and fifty-six dollars and twenty-six cents (2,448,956.26).

The Southern Company has agreed to cause to be constructed and established the low-grade line of railway between Phoenix and Deming, hereinafter described, and to cause the companies owning said line to grant to the Atchison Company the right to run its through trains thereon, on the terms and conditions hereinafter set forth.

The Atchison Company has agreed to cause to be constructed
1587 and established the low-grade line of railway between Phoenix and Mojave, hereinafter described, and to cause the companies owning said line to grant to the Southern Company the right to run its through trains thereon, on the terms and conditions hereinafter set forth.

Now, therefore, the parties hereto do hereby mutually agree with each other as follows:

ARTICLE I.

The Atchison Company agrees to sell to the Southern Company, and the Southern Company agrees to buy from the Atchison Company, all the shares of the capital stock and all indebtedness of the Phoenix Company, at and for the aggregate sum of Two million four hundred and forty-eight thousand nine hundred and fifty-six dollars and twenty-six cents ($2,448,956.26), with interest at the rate of four per cent. per annum from and including December 1, 1906, on so much of said sum as constituted principal September 30, 1906, to-wit, Two million three hundred and twenty thousand five hundred and sixty-two dollars and fourteen cents ($2,320,562.14) to the date of payment. Such sale shall be completed simultaneously with the execution of a certain trust agreement between the Southern Company, the Atchison Company and The Farmers' Loan and Trust Company, a corporation of the State of New York, which trust agreement shall be substantially in the form of the draft of agreement hereto attached and marked "Exhibit A."

If after the completion of the sale it shall be ascertained that there were any errors or omissions in such statement furnished by the Atchison Company, each party shall make such payment to
1588 the other as may be necessary to adjust such errors or omissions; and the Southern Company shall, upon demand, at or after the completion of such sale, pay to the Atchison Company any additional sums that shall have been paid after September 30, 1906, for the construction or acquisition of such railroad and properties of the Phoenix Company or in the operation thereof if in excess of the income of the Phoenix Company, with interest on such sums at the rate of four per cent. per annum to the date of payment.

ARTICLE II.

The Southern Company will cause a line of railroad to be constructed or put in operation from a point of connection with the present line of railway of the Southern Pacific Railroad Company between Lordsburg and Bowie, in the Territory of New Mexico, to a point of connection with the railroad of the Phoenix Company, and will connect the Railroad of the Phoenix Company by some existing line or by a newly constructed line with the present line of the Southern Pacific Railroad Company at some point south or west of Phoenix. The grade of the line so to be constructed shall be as low and the curvature as light as the contour of the country will reasonably admit. Such line, including the railroad of the Phoenix Company, shall be made first-class in every particular, and, in conjunction with the line of the Southern Pacific Railroad Company from Deming to such point of connection between Lordsburg and Bowie, shall be made suitable for use as a low-grade transcontinental line so that the portion thereof between Phoenix and Deming may be used jointly by the Southern Company and the Atchison Company in case of the execution of the trackage contract marked "Exhibit B," hereto attached.

1589 The Southern Company agrees, subject to the conditions hereinafter expressed, to cause the company or companies owning such line between Phoenix and Deming, within ninety days after delivery of the instrument specified in condition (a) hereinafter in this Article set forth, to execute an agreement, substantially of the tenor of Exhibit B, hereto attached, and by such agreement to grant to the Atchison Company on the terms and conditions in said Exhibit B set forth, the right for the term of fifteen years to run its through trains upon such line between Phoenix and Deming, as in said exhibit set forth. It is understood that the recitals in said Exhibit B shall be revised and amended and the blanks shall be filled in accordance with the facts as they shall exist at the time of the execution of such agreement. Such agreement shall be dated on the first day of the month next succeeding the day of the actual execution thereof, and shall be subject to existing mortgages upon any of said lines and to a first mortgage, to be executed upon the line of the Phoenix Company and to a first mortgage to be executed upon the portion of such line yet to be constructed or put in operation between Phoenix and Deming, to secure an issue of mortgage bonds.

The Joint Line to be described in said trackage contract (Exhibit B) shall not include any terminals or terminal properties at Phoenix or at Deming. In case there is any property appurtenant to or connected with said line between Phoenix and Deming, but not required for the maintenance or operation thereof, which the Atchison Company shall not desire to use, it shall, within thirty days after

1590 making the written request specified in condition (a) hereinafter in this Article set forth, specify such property which it shall not desire to use, and the property so specified shall be excluded from the Joint Line to be described in said trackage contract (Exhibit B.)

For the purpose of fixing the agreed value of the Joint Line to be specified in such trackage contract (Exhibit B), the portion of such entire line yet to be constructed, including the Phoenix and Eastern Railroad from Phoenix to Dudleyville, shall be deemed of a value equal to the actual cash cost of construction (which cost shall include interest at four and one-half per cent per annum for the period of eighteen months), together with the cost of additions and betterments; and upon the request of the Atchison Company, the Southern Company will furnish to the Atchison Company a detailed statement showing the actual cash cost of such construction. The portions of such entire line heretofore constructed shall be deemed of a value equal to the cost of construcing a new line of like character, when the execution of such trackage contract shall be requested; and such cost of duplication, unless agreed to by the parties, shall be fixed by an engineer to be selected by both the parties hereto. Such agreement of the Southern Company to cause such trackage contract (Exhibit B) to be executed is, however, subject to the following conditions precedent, viz:

(a) That at a date not later than two years after the completion of such low-grade line between Phoenix and Deming, the Atchison Company shall deliver to the Southern Company an instrument, signed by the President and authorized by the Board of Directors of the Atchison Company, requesting the Southern Company
1591 to cause such trackage contract (Exhibit B) to be executed, and agreeing to cause the same to be executed by the Atchison Company.

(b) That the Atchison Company shall have caused the line between Phoenix and Mojave, described in Article III hereof, to be completed.

(c) That the sale of the stock and indebtedness of the Phoenix Company under Article I hereof shall have been completed; and

(d) That the Atchison Company shall have performed all its other agreements herein contained.

The Southern Company further agree that it will cause such line between Phoenix and Deming to be completed within three years after delivery to it of an instrument signed by the President and authorized by the Board of Directors of the Atchison Company, requesting the Southern Company to cause such line to be completed, and to execute such trackage contract (Exhibit B), and agreeing that the Atchison Company will execute such trackage contract if said line between Phoenix and Deming shall be completed within three years after delivery of such request.

Such low-grade line shall be deemed completed whenever the Southern Company shall have commenced to run through freight trains thereon between California and Texas.

## Article III.

The Atchison Company will cause the Arizona and California Railway Company to construct a line of railroad from a point of connection with the line of the Santa Fe, Prescott and Phoenix

Railway Company at or near Wickenburg, and thence in a
1592 westerly direction across the Colorado River, to a point of connection with the railroad operated by the Atchison Company at or near Bengal, County of San Bernardino, California.

The Atchison Company agrees, subject to the conditions hereinafter expressed, that it will execute, and cause the Arizona and California Railway Company and the Santa Fe, Prescott and Phoenix Railway Company (or their respective successors or assigns), within ninety days after delivery of the instrument specified in condition (a) below set forth, to execute an agreement substantially of the tenor of Exhibit C, hereto attached, and by such agreement to grant to the Southern Company, on the terms and conditions in said Exhibit C set forth, the right during the term of fifteen years to run its through trains upon such line between Phoenix and Mojave, as in said Exhibit C set forth. It is understood that the recitals in said Exhibit C shall be revised and amended, and the blanks shall be filled in accordance with the facts as they shall exist at the time of the execution of such agreement. Such agreement shall be dated on the first day of the month next succeeding the date of the execution thereof, and shall be subject to existing mortgages upon any of said lines and to a first mortgage, to be executed upon the line of the Arizona and California Railway Company to secure an issue of first mortgage bonds.

The Joint Line to be described in said trackage contract (Exhibit C) shall not include any terminals or terminal properties at Phoenix or at Mojave. In case there is any property, appurtenant to or connected with said line between Phoenix and Mojave but not re-
1593 quired for the maintenance or operation thereof, which the Southern Company shall not desire to use, it shall, within thirty days after making the written request specified in condition (a) hereinafter in this Article set forth, specify such property which it shall not desire to use, and the property so specified shall be excluded from the Joint Line to be described in said trackage contract (Exhibit C). For the purpose of fixing the agreed value of such line to be specified in such trackage contract (Exhibit C), the line of the Arizona and California Railway Company shall be deemed of a value equal to the actual cash cost of construction, which cost shall include interest at the rate of four and one-half per cent. per annum for the period of eighteen months, together with the cost of additions and betterments; and upon the request of the Southern Company, the Atchison Company will furnish to the Southern Company a detailed statement showing the actual cash cost of such construction. The portions of such entire line between Phoenix and the point of junction at or near Wickenburg and between Mojave and the point of junction at or near Bengal with the line of the Arizona and California Railway Company shall be deemed of a value equal to the cost of constructing a new line of like character, when the execution of such trackage contract shall be requested; and such cost of duplication, unless agreed to by the parties, shall be fixed by an engineer to

be selected by both the parties hereto. Such agreement of the Atchison Company to cause such trackage contract (Exhibit C) to be executed is, however, subject to the following conditions precedent, viz:

(a) That at a date not later than two years after the completion of such line between Wickenburg and Bengal, the Southern Company shall deliver to the Atchison Company an instru-
1594 ment, signed by the President and authorized by the Board of Directors of the Southern Company, requesting the Atchison Company to cause such trackage contract (Exhibit C) to be executed and agreeing to cause the same to be executed by the Southern Company.

(b) That the Southern Company shall have caused the line between Phoenix and Deming, described in Article II hereof, to be completed.

(c) That the sale of the stock and indebtedness of the Phoenix Company under Article II hereof shall have been completed; and

(d) That the Southern Company shall have performed all its other agreement herein contained.

The Atchison Company further agrees that it will cause such line between Phoenix and Mojave to be completed within three years after delivery to it of an instrument signed by the President and authorized by the Board of Directors of the Southern Company, requesting the Atchison Company to cause such line to be completed and to execute such trackage contract (Exhibit C), and agreeing that the Southern Company will execute such trackage contract, if said line between Phoenix and Mojave shall be completed within three years after delivery of such request.

Such line shall be deemed completed whenever the Atchison Company shall have commenced to run through freight trains thereon between Phoenix and Mojave.

In witness whereof, each of the parties hereto has caused these presents to be signed by its President or a Vice-President, and its corporate seal to be hereto affixed and attested by its
1595 Secretary or an Assistant Secretary the day and year first above written.

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY,
By E. P. RIPLEY, *President.*

(Seal The A., T. & S. F. Ry. Co.)
Attest:
L. C. DEMING,
*Ass't. Secretary.*

SOUTHERN PACIFIC COMPANY,
By E. H. HARRIMAN, *President.*

(Seal S. P. Co.)
Attest:
ALEX. MILLAR,
*Secretary.*

1596 COMPLAINANT'S EXHIBIT 105. (Deming.)

AGREEMENT

between

SOUTHERN PACIFIC RAILROAD COMPANY,

THE PHOENIX AND EASTERN RAILWAY COMPANY

and

SOUTHERN PACIFIC COMPANY

and

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY,

granting to

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY

TRACKAGE RIGHT

Between Phoenix and Deming.

An agreement made this first day of by and between Southern Pacific Railroad Company (hereinafter called "California Company"), a corporation of the State of California and of the Territories of Arizona and New Mexico, party of the first part,

The Phoenix and Eastern Railroad Company (hereinafter called "Phoenix Company"), a corporation of the Territory of Arizona, party of the second part,

Southern Pacific Company (hereinafter called "Southern Company"), a corporation of the State of Kentucky, party of the third part, and

1597 The Atchison, Topeka and Santa Fe Railway Company (hereinafter called "Atchison Company"), a corporation of the State of Kansas, party of the fourth part.

Whereas, The Phoenix Company owns and operates a line of railway in the Territory of Arizona, extending from a connection at a point located (here describe precise point of connection) in the City of Phoenix, in the Territory of Arizona, with the line of railway of the Santa Fe, Prescott and Phoenix Railway Company, to Dudleyville, a distance of about miles. Said line of railway of the Phoenix Company, hereinafter more particularly described, is hereinafter called "Section A" of the Joint Line hereinafter mentioned.

The Southern Company owns a line of railway extending from a point of connection with said "Section A" of the Joint Line at or near Dudleyville, to a point of connection with the line of railway of the California Company at a point (here describe precise point of connection) between Lordsburg, in the Territory of New Mexico, and Bowie, in the Territory of Arizona, a distance of about

miles. Said line of railway of the Southern Company, hereinafter more particularly described, is hereinafter called "Section B" of the Joint Line.

The California Company owns a system of railways in the State of California, and also a line of railway extending across the eastern boundary of the State of California, at or near Yuma, Arizona, through the Territory of Arizona and the Territory of New Mexico in an easterly direction via Bowie, Arizona, and Lordsburg, New Mexico, to a connection with the railway of the Atchison
1598 Company at Deming, New Mexico, and thence to the Rio Grande River, near El Paso, Texas. The Southern Company owns a large majority of the shares of the capital stock of the California Company and holds and operates as lessee all the lines of railway owned by the California Company, except that portion of its line extending from Mojave to Needles, in the State of California, heretofore leased to the Atchison Company. The portion hereinafter more particularly described of the line of railway of the California Company, commencing at the point of connection with said "Section B" of the Joint Line between Lordsburg and Bowie and extending thence to a connection at a point located (here describe precise point of connection) in the Town of Deming, in the Territory of New Mexico, a distance of about miles, is hereinafter called "Section C" of the Joint Line.

Said Sections A, B and C together constitute a continuous line of about miles in length for the passage of railway trains between said point of connections at Phoenix, with the line of the Santa Fe, Prescott and Phoenix Railway Company and said point of connection at Deming with the line of the Atchison Company.

Each of said Sections, when hereinafter referred to, shall be deemed to include the turntables, passing tracks, sidings, stations, water and telegraph service and other facilities, additions, appurtenances and improvements now existing or hereafter acquired upon or along such Section, except as hereinafter expressly provided; and said Sections A, B and C taken together, are herein called the "Joint Line."

1599 The portion of the main line of the Atchison Company, commencing at a point of connection with the tracks of the California Company at or near Mojave Junction Station in the State of California and extending thence in an easterly direction through the station of Bengal to the town of Needles is held and operated by the Atchison Company under an indenture of lease and contract, dated July 15, 1898, by and between the California Company, of the first part, the New Mexico and Arizona Railroad Company, of the second part, and Sonora Railway Company, Limited, of the third part, the Atchison Company, of the fourth part, and the Southern Company of the fifth part, to which indenture of lease and contract reference is hereby made.

Said Santa Fe, Prescott and Phoenix Railway Company owns and operates a line of railway in the Territory of Arizona extend-

ing from Ash Fork through Wickenburg to said point of connection at Phoenix with said "Section A" of the Joint Line; and the Atchison Company owns a large majority of the shares of the capital stock of the Santa Fe, Prescott and Phoenix Railway Company.

A contract dated the 7th day of December, 1906, has been executed between the Atchison Company of the first part and the Southern Company of the second part, in and by which contract the Atchison Company, among other things has agreed upon certain specified conditions to cause the Arizona and California Railway Company, a large majority of whose capital stock is owned by the Atchison Company, to construct a line of railroad from a point of connection with said line of the Santa Fe, Prescott and Phoenix
1600 Railway Company at or near Wickenburg, and thence in a westerly direction across the Colorado River to a point of connection with said railroad operated by the Atchison Company at or near Bengal, County of San Bernardino, California, such newly constructed line to be suitable for use as part of a low-grade transcontinental line as more particularly set forth in said contract; and the Atchison Company in and by said contract has further agreed to execute and cause the Arizona and California Railway Company and the Santa Fe, Prescott and Phoenix Railway Company (or their respective successors or assigns) to execute an agreement granting and leasing to the Southern Company the right to use said line of railway between Phoenix and Mojave for the continuous through passage of its trains, engines and cars, for the term of fifteen years, as more fully set forth in said contract, to which reference is hereby made, with the same effect as if such contract were herein set forth at length.

The Atchison Company desires to acquire the right to use said Sections A, B and C, constituting the Joint Line herein mentioned for the continuous passage of its trains, engines and cars from said point of connection with the railway of the Santa Fe, Prescott and Phoenix Railway Company at Phoenix, to said point of connection with the Railway of the Atchison Company at Deming.

The Southern Company owns a large majority of the shares of capital stock of the California Company and of the Phoenix Company respectively.

The Southern Company, the California Company and the Phoenix Company, collectively, are hereinafter called the "Grantors."

The term "Grantor" when used in this agreement shall be
1601 deemed to mean the Grantor or the successors, lessees and assigns of the Grantor for the time being in possession of and operating such Grantor's Section of the Joint Line.

Now, therefore, it is mutually agreed by and between the parties hereto as follows, viz:

ARTICLE I.

The Grantors grant and lease to the Atchison Company the right during the continuance of the term hereinafter mentioned and upon the terms and conditions and subject to the limitations hereinafter expressed, to use, equally with the Grantors, the Joint Line hereinafter more particularly described, an aggregate distance of about miles, for the operation of the trains, engines and cars of the Atchison Company from said point of connection with the railroad of the said Santa Fe, Prescott and Phoenix Railway Company in the City of Phoenix, in the Territory of Arizona, to said point of connection with the main line of railroad of the Atchison Company in the town of Deming in the territory of New Mexico.

Sections A, B and C of the Joint Line are described as follows:

SECTION A.

SECTION B.

SECTION C.

Including the turntables, passing tracks, sidings, stations, water and telegraph service and other facilities, additions, appurtenances and improvements now existing or hereafter acquired upon or
1602 along said joint line, suitable for the operation of such trains, engines and cars of the Atchison Company.

Such right of use is granted to the Atchison Company for the sole purpose of enabling Atchison Company to operate over the Joint Line its through trains, engines and cars from said point of connection at Phoenix to said point of connection at Deming, and to transport in such trains and cars passengers and freight in one continuous passage the entire distance between said points of connection; and the Atchison Company shall not have the right to transport over any part of the Joint Line any passengers, freight or other property received upon or to be discharged from such trains or cars at any point upon the Joint Line.

It is understood and agreed that the grant and lease of the Joint Line shall be deemed and construed as a several grant by each of the grantors of the section of the Joint Line operated by it as owner or lessee, viz: Section A by the Phoenix Company, as owner, Section B by the Southern Company, as owner, and Section C by the California Company, as owner, and by the Southern Company, as lessee. It is further understood and agreed that each covenant and agreement herein contained shall be deemed and construed as a several covenant and agreement by each grantor with respect to its section of the Joint Line.

The term during which the right to use the Joint Line is hereby granted as aforesaid shall commence on the day of the date hereof, and shall continue fifteen years from and after that date, unless sooner terminated as hereinafter provided.

1603 ARTICLE II.

SECTION 1. For the purposes of this agreement the present value of the several sections of the Joint Line shall be deemed to be as follows:

Section A, $

Section B, $

Section C, $

SECTION 2. The Atchison Company hereby covenants and agrees that it will pay, at the times and in the manner hereinafter provided, during the said term of fifteen years, as rental for the use of the Joint Line, the following sums, viz:

(A) To each Grantor for each of the fifteen consecutive years constituting the term a sum equal to a share proportionate to car mileage as hereinafter provided of interest for such year at the rate of four and one-half per cent per annum on the present value of such Grantor's Section of the Joint Line, and upon the cost of any additions or betterments that shall have been added to such section of the Joint Line, as provided in Section 3 of Article III hereof. The share so payable by the Atchison Company under this clause (A) in respect of interest on the value of each Section of the Joint Line for each year shall be a sum bearing the same ratio to the whole of such interest as the number of miles traveled by the cars of the Atchison Company on such Section shall bear to the total number of miles traveled by all cars thereon during such year; it being understood that each engine shall be rated as three cars and that
1604 neither the switching of cars within actual yard limits, nor the movement of work trains engaged in work upon the Joint Line shall be counted.

Provided, nevertheless, that

(a) If such car mileage of the Atchison Company during any one of the five consecutive years from and after the expiration of five years after the date hereof, should be less than one-fourth of the total car mileage upon such section during such year, then the share so payable by the Atchison Company under this clause (A) in respect of such year shall nevertheless be a sum equal to one-fourth of the whole of such interest for one year;

(b) If such car mileage of the Atchison Company during any one of the five consecutive years from and after the expiration of ten years after the date hereof should be less than one-third of such total car mileage during such year, then the share so payable by the Atchison Company under this clause (A) in respect of such year shall nevertheless be a sum equal to one-third of the whole of such interest for one year; and

(c) The Atchison Company shall not be required under this clause (A) to pay for any one of the fifteen consecutive years of the term a sum in excess of one-half of the whole of such interest for that year.

Such payment by the Atchison Company under this clause (A) shall be made as follows:

Within thirty days after rendition of a bill therefor upon the expiration of each calendar month during the first period of
1605 five years of the term, the Atchison Company shall pay to each Grantor a sum equal to a share of interest for such month proportionate to such car mileage, upon the Section of such Grantor during such month.

Within thirty days after rendition of a bill therefor upon the expiration of each calendar month during the second period of five years of the term, the Atchison Company shall pay to each Grantor a sum equal to one-fourth of such interest for one month.

Within thirty days after rendition of a bill therefor upon the expiration of each calendar month during the third period of five years of the term, the Atchison Company shall pay to each Grantor a sum equal to one-third of such interest for one month.

The foregoing payments shall be deemed merely payments on account of the sums to become due under this clause (A) for each entire year, and shall be subject to readjustment as follows: Within thirty days after the expiration of each year of the term, each Grantor shall furnish to the Atchison Company a statement showing the car mileage as aforesaid for such year upon the Section of such Grantor and the sum payable by the Atchison Company to such Grantor for such year under this clause (A). If the aggregate monthly payments made by the Atchison Company to any Grantor under the foregoing provisions shall exceed the sum payable by the Atchison Company for such entire year, then such Grantor, within thirty days after the expiration of such year, shall repay the excess to the Atchison Company; but if the aggregate monthly payments made by
1606 the Atchison Company to any Grantor shall be less than the sum payable by the Atchison Company for such entire year, then the Atchison Company, within thirty days after the rendition of such statement for the entire year, shall pay to such grantor the deficiency.

(B) To each Grantor, from time to time, a share, to be fixed according to car mileage as hereinafter provided, of all taxes, assessments and other governmental charges which, during such term shall accrue upon or in respect of all or any part of such Grantor's Section of the Joint Line. Any taxes, assessments or governmental charges for any year, of which any part is included in said term shall be apportioned, and the Atchison Company shall pay a part thereof proportionate to the part of such year included in the term. So long as any section or part of the Joint Line shall not be taxed or assessed separately, but shall be taxed or assessed together with or as part of any other railroad or property, it is understood and agreed that the taxes, assessments and other governmental charges accruing upon such Section or part of Section shall be deemed and taken to be such part of the taxes, assessments, and governmental charges upon the entire railroad or property so taxed or assessed together or as an entirety, as shall bear to the whole of such taxes, assessments and charges thereon the same ratio as that which the mileage of such Sec-

tion shall bear to the mileage of the whole of the railroad so taxed or assessed together or as an entirety.

The share so payable by the Atchison Company under this clause (B) in respect of taxes, assessments and governmental
1607 charges upon each Section of the Joint Line shall be a sum bearing the same ratio to the whole of such taxes, assessments and governmental charges as the number of miles traveled by the cars of the Atchison Company upon such Section shall bear to the number of miles traveled by all cars thereon during the period of the term in which such taxes, assessments, or charges accrued; it being understood that each engine shall be rated as three cars, and that neither the switching of cars within actual yard limits nor the movement of work trains engaged in work upon the Joint Line shall be counted.

Provided, nevertheless, that

(a) If such car mileage of the Atchison Company during any such period included in the five years beginning at the expiration of five years after the date hereof and ending ten years after the date hereof, should be less than one-fourth of the total car mileage upon such Section during such period, then the share so payable by the Atchison Company under this clause (B) in respect of such period shall, nevertheless, be a sum equal to one-fourth of such taxes, assessments or charges for such period;

(b) If such car mileage of the Atchison Company during any such period included in the five years beginning at the expiration of ten years after the date hereof and ending with the term fifteen years after the date hereof, should be less than one-third of the total car mileage upon such Section during such period, then the share so payable by the Atchison Company under this clause (B) in respect of such period shall, nevertheless, be a sum equal to
1608 one-third of such taxes, assessments and charges for such period: and

(c) If such car mileage of the Atchison Company during any such period included in the term shall be one-half or more than one-half of the total car mileage upon such Section during such period, then the share so payable by the Atchison Company under this clause (B) in respect of such period shall be one-half of such taxes, assessments and charges for such period.

Each sum payable under this subdivision (B) in respect of any taxes, assessments or governmental charges shall be payable by the Atchison Company within thirty days after such tax, assessment or governmental charge shall have been paid and the Grantor or the Southern Company shall have caused a written statement thereof to be furnished to the Atchison Company.

(C) To each Grantor, each calendar month of said term, a share, to be fixed according to car mileage as hereinafter provided, of the cost and expense of maintaining, repairing and operating such Grantor's Section during such month, including also insurance premiums and expenses paid during said term for insuring any build-

ing or structure jointly used. Such cost and expense shall include all wages of trackmen, gatemen, towermen, signalmen, switchmen, watchmen, train dispatchers, telegraph operators and such other station and yard employes as shall have supervision and charge of or be required to perform service in respect to the maintenance or repair and operation of such Section or the movement of through trains thereon, and all other expenses connected with the use and operation of such Section as a through line, but general expenses of the Grantor and salaries of employes who are not employed
1609 upon or connected with the maintenance, repair or operation of such Section or in the movement of through trains thereon, shall not be included.

The share so payable by the Atchison Company under this clause (C) in respect of each Section of the Joint Line shall be a sum bearing the same ratio to the total cost and expense of maintaining, repairing and operating such Section during such calendar month, as the number of miles traveled by the cars of the Atchison Company on such Section shall bear to the total number of miles traveled by all cars thereon during such month, it being understood that each engine shall be rated as three cars, and that neither the switching of cars, within actual yard limits, nor the movement of work trains engaged in work upon the Joint Line shall be counted.

The cost and expense of maintaining, repairing and operating the Joint Line in respect of which the Atchison Company shall contribute as aforesaid under this Article, shall, except when otherwise specially provided for herein, include freight charges upon all materials used for such maintenance, repair or operation at the rate of one-half a cent per ton per mile for the haul of such materials upon the railway lines operated by the Grantors or any of them, unless such charge shall exceed the published tariffs, in which case tariff rates shall apply. In fixing the amount of such cost and expense for each month, any item to be included therein which cannot be definitely determined for each month shall be estimated, and the estimated amount included in the monthly bills, subject to correction by the Grantors when subsequent bills are rendered: and ex-
1610 penses, like insurance, covering more than one month shall be apportioned and the ratable estimated share applicable to each month shall be included in the bills rendered by the Grantors for such month, subject to correction when subsequent bills are rendered.

The sums payable by the Atchison Company under this clause (C) shall be payable monthly within thirty days after a written bill therefor shall have been rendered to the Atchison Company by the Southern Company or by the Grantor to whom such sum shall be payable; but every such bill and every such payment shall be subject to correction for errors or omissions, and for the purpose of enabling the Atchison Company to verify the correctness of such bills the Grantors shall give to the Atchison Company, upon its request, reasonable information as to the charges and expenditures embraced

in any such bill, and shall permit the Atchison Company to examine the books, accounts and vouchers relating thereto, as provided in Section 4 of Article III hereof.

## Article III.

Section 1. The supervision, management and operation of each Section of the Joint Line, the furnishing of water, and the movement of trains, engines and cars upon such Section, shall be under the exclusive direction and control of the Grantor of such Section; but all time-cards, rules, regulations or orders for the movement of engines, trains and cars upon such Section shall be reasonable, just and fair and without preference or discrimination in favor of
1611 either party. All passenger trains shall be given preference over other trains, and the trains of all parties shall be given equal despatch according to their class.

Section 2. Each Grantor at all times during the continuance of the term, at the written request of the General Manager of the Atchison Company, for reasonable cause shown, shall remove from service upon the Joint Line any employe of any Grantor who may not be satisfactory to the Atchison Company; and the Atchison Company, on its part, upon the written request of the General Manager of any Grantor, for reasonable cause shown, shall remove from service on its engines, trains or cars operated on or over the Section of such Grantor, any employe who may not be satisfactory to such Grantor.

Section 3. Each Grantor shall be entitled, from time to time, to make such additions and betterments to the Section of such Grantor as in its judgment shall be necessary or desirable. The actual cost of such additions and betterments shall be added to the present value of such Section for the purpose of ascertaining the amount payable by the Atchison Company as rental under clause (A) of section 2 of Article II hereof; but if the Atchison Company shall deem any such addition or betterment to be unnecessary or undesirable, then, upon its written request, the question as to the necessity or desirability of any such addition or betterment (except when the same shall be made in pursuance of any law or municipal ordinance or regulation) shall be submitted to arbitration in the manner hereinafter provided, and the cost thereof shall not be added
1612 to such value if it shall be determined by such arbitration that such addition or betterment was not necessary or desirable.

In determining whether expenditures upon the Joint Line or any part thereof are for additions or betterments or for maintaining, repairing or operating the Joint Line, such expenditures as according to the then prevailing railroad usage are chargeable to cost of property or "capital account" shall be deemed expenditures for additions or betterments in respect of which the Atchison Company shall be liable to pay the equivalent of interest under said clause (A) of section 2 of Article II hereof, and expenditures which according to such usage would be included in "operating expenses" shall be deemed

expenses of maintaining, repairing and operating the Joint Line in respect of which the Atchison Company shall contribute as provided in clause (C) of section 2 of Article II hereof.

SECTION 4. So much of the books, accounts and vouchers of each Grantor as relate to the construction or acquisition of additions or betterments or to the maintenance, repair or operation of the Joint Line or any part thereof, shall at all reasonable times be open to inspection by the proper officers and agents of the Atchison Company, who shall, if they so desire, be permitted to make copies of such part of such books, accounts and vouchers or extracts therefrom.

SECTION 5. Each Grantor reserves the right at all times to grant to other railway companies the right to use such Grantor's Section of the Joint Line or any part thereof in common with itself and
1613 the Atchison Company and such other company or companies as may at the time have the right to use the same; provided that such admission of any other railway company to the right to use such Section or any part thereof shall not materially obstruct or interfere with the Atchison Company in the fair and reasonable enjoyment of the rights herein granted or leased to it.

SECTION 6. All engines, trains and cars operated by the Atchison Company shall be regarded for all purposes of this agreement as the engines, trains and cars of the Atchison Company. All engines, trains and cars operated by any Grantor, or the successors, assigns or lessees of any Grantor for the time being in possession or control of the Section of such Grantor, shall be regarded for all purposes of this agreement as the engines, trains and cars of such Grantor.

SECTION 7. The Grantors shall furnish all water required for the operation of engines and trains upon the Joint Line, and the cost and expense of furnishing such water, including a charge of one-half cent per ton of two thousands pounds for each mile that such water shall be hauled, shall be included in the cost and expense of maintaining and operating the Joint Line, in respect of which the Atchison Company shall contribute a share, as provided in clause (C) of section 2 of Article II hereof.

SECTION 8. Each of the parties shall furnish its own fuel oil or coal for the operation of its engines upon the Joint Line. The
1614 Atchison Company shall be entitled to establish, maintain and operate its own fuel oil tanks or coal bunkers at points upon the Joint Line to be designated by the respective Grantors for supplying its engines operated on the Joint Line with fuel oil or coal necessary for the operation thereof, but in case the Atchison Company so establishes, maintains and operates its own fuel oil tanks or coal bunkers it shall not be required to pay interest, taxes, rental or a share of the cost of maintaining or operating the fuel oil tanks or coal bunkers of the Grantors.

SECTION 9. A proportion of the cost and expense of maintaining and operating the telegraph lines upon the Joint Line, bearing the same ratio to the total cost and expense of maintaining and operating the telegraph lines upon the Joint Line as the number of wires

used in the joint service bears to the total number of wires strung on the telegraph poles, shall be included in the cost and expense of maintaining and operating the Joint Line; and the Atchison Company shall be entitled to the use and benefit of such telegraph service in the operation of its trains, engines and cars upon the Joint Line.

SECTION 10. Each party shall be entitled to operate upon the Joint Line such helper-engines as shall be required for the operation of the trains of such party upon any portion of the Joint Line.

ARTICLE IV.

SECTION 1. All rentals or other sums payable under any of the provisions of this agreement by the Atchison Company to
1615 any of the Grantors shall be payable at the office of the Southern Company, in the City of San Francisco, California. In case any rental or other sum payable hereunder shall not be duly paid on or before the date when the same shall be payable, as herein provided, such sum shall bear interest at the rate of five per cent per annum from the date when the same became payable until the same shall be duly paid, whether or not the party to whom such sum was payable shall exercise its right and privilege under Article V hereof to terminate this agreement.

SECTION 2. The California Company and the Phoenix Company hereby severally and respectively authorize and direct the Atchison Company to pay to the Southern Company all rentals and other sums which under the terms of this agreement shall be payable to them or either of them, and agree that the receipt of the Southern Company for any sum so paid to it by the Atchison Company shall bind them respectively as a full acquittance and discharge in respect of the sum so paid; but every such authority and direction may be revoked by the California Company or the Phoenix Company by giving notice in writing of such revocation to the Atchison Company or by executing an assignment or lease of its Section of the Joint Line, vesting in the assignee or lessee the right to receive such rentals or other sums and by causing notice in writing of the execution of such assignment or lease to be given to the Atchison Company. The Southern Company hereby agrees with the California Company and the Phoenix Company to account to them respectively for any and all
1616 sums paid by the Atchison Company hereunder for account of the California Company and the Phoenix Company, or either of them; but the Atchison Company shall not be responsible for any failure of the Southern Company so to account for any sum paid to it by the Atchison Company.

SECTION 3. The Atchison Company may serve upon the Southern Company all notices and demands which under this agreement are required or authorized to be served upon the Grantors or any of them, and such service upon the Southern Company shall in all respects bind the Grantors and each of them, with the same effect as if served

upon each of the Grantors; and the Southern Company shall have authority and power on behalf of the Grantors and each of them to serve upon the Atchison Company all notices and demands which under this agreement are required or authorized to be served by the Grantors or any of them upon the Atchison Company. Nevertheless, any Grantor may revoke such authority as to it by giving notice in writing of such revocation to Atchison Company and thereafter such notices and demands shall be served upon and be served by such Grantor directly. All notices and demands herein authorized or required to be given to any party shall be given by serving the same upon the President or a Vice-President or General Manager of such party.

SECTION 4. If and so long as any one of the Grantors shall operate more than one of said Sections of the Joint Line then all such Sections so operated by one Grantor shall be treated together as one combined Section. Such combined Section shall be deemed to be of a
1617 value equal to the aggregate of the separate values of the several sections combined and the charges in respect of the rental, taxes and cost and expenses of repairing, maintaining and operating the combined Section shall be fixed according to the car mileage upon such combined Section taken together.

## ARTICLE V.

SECTION 1. If the Atchison Company shall fail to perform or to comply with any of the covenants or conditions to be performed or complied with by it under this agreement and such failure shall continue for a period of thirty days after written demand for performance or compliance shall have been made upon the Atchison Company by the Grantors, or either or any of them, coupled with notice in writing that the parties or party giving such notice elect to put an end to the term hereby granted on account of such failure of the Atchison Company to perform or comply with such covenant or condition, then the term hereby created and all rights of the Atchison Company shall forthwith cease and terminate, anything herein contained to the contrary notwithstanding; but no such termination shall deprive any of the parties hereto of the right to enforce any liability of any other of the parties hereto that shall have accrued prior to such termination of the term. Provided, however, that if the Atchison Company, within thirty days after the receipt of any statement rendered to it hereunder by any Grantor shall give notice in writing to such Grantor that it contests the correctness of any specified item or items in such statement and shall pay
1618 to such Grantor all sums due to it other than the item or items so specified and also shall pay on account of such specified item or items such part thereof as shall not be contested and further shall furnish such Grantor (if demanded by it) reasonable security for the payment of the item or items or parts of items contested,

then so long as the Atchison Company in good faith shall contest the correctness of such item or items or parts of items specified in such notice, the term hereunder and the rights of the Atchison Company shall not be terminated under this Section 1 of Article V by reason of the failure of the Atchison Company to pay or allow in full such item or items so contested.

SECTION 2. If for any cause other than its own failure to perform or comply with the terms and conditions of this agreement the Atchison Company should be deprived of or lose the right to operate its trains, engines or cars under this agreement upon any Section of the Joint Line, then and in that event the term hereby created shall forthwith cease and terminate as to the entire Joint Line, anything herein contained to the contrary notwithstanding.

SECTION 3. If the Atchison Company should fail to perform and comply with any of the covenants or conditions of said contract, bearing date the seventh day of December, 1906, between the Atchison Company and the Southern Company, and such failure should continue for the period of sixty days after the Southern Company shall have served upon the Atchison Company written demand to perform or comply with such covenant or condition, then and in that event, at the election of the Southern Company, to be expressed in a
1619 written notice of such election served by the Southern Company upon the Atchison Company, the term hereby created and all rights of the Atchison Company hereunder shall forthwith cease and terminate, anything herein contained to the contrary notwithstanding.

SECTION 4. In case after the execution of the trackage contract referred to as "Schedule C" in the said contract dated the seventh day of December, 1906, the said trackage contract between the Atchison Company and the Southern Company, should be terminated by the Southern Company, its successors or assigns, by reason of any default or failure of any of the parties to such trackage contract to perform or comply with the terms and conditions thereof, or in case the Southern Company, its successors or assigns, for any cause other than its or their default or failure to perform and comply with the terms and conditions of said trackage contract, should be deprived of or lose the right to operate its or their trains, engines and cars upon the terms and conditions of said contract upon said line extending from a point of connection with Section A of the Joint Line, herein mentioned, to a point of connection with the main line of the California Company at Mojave then and in any such event, at the election of the Southern Company, to be expressed in a written notice of such election to be given by the Southern Company to the Atchison Company, the term hereby created and all rights of the Atchison Company to use the Joint Line shall forthwith cease and terminate, anything herein contained to the contrary notwithstanding.

1620 ARTICLE VI.

SECTION 1. The grantors shall be bound to use only reasonable and customary care, skill and diligence in maintaining and repairing the roadway, tracks, structures and appliances of and pertaining to the joint line.

The Atchison Company shall not, by reason of any defect in any such roadway, track, structure or appliances, or by reason of the failure or neglect of the grantors to repair such defect, have or make against the grantors any claim or demand for any loss, damage, or injury whatsoever arising from such defect, neglect or failure; but in case the grantors shall fail to repair any such defect as aforesaid within a reasonable time after the Atchison Company shall have given to the grantors written notice specifying the defect and requesting that it be repaired, then the Atchison Company shall have the right to make the necessary repairs at once, and the grantors shall and will pay the cost thereof, which shall thereupon be apportioned between the parties as hereinbefore provided.

SECTION 2. Except enginemen and trainmen in revenue train service, all employes of the grantors in anywise engaged in maintaining, repairing or operating the joint line shall, as between the parties hereto, be deemed joint employes of both parties; but while performing any service for or on behalf of said grantors or the Atchison Company upon such section shall be regarded and held for the time being the employes solely of the party for whom or in whose behalf such service is performed.

SECTION 3. The Atchison Company hereby assumes all risks
1621 of all loss, damage or injury which shall in any manner occur in and upon any track, building or premises, the use whereof is herein granted, whether to property of the Atchison Company, or to property in its custody, or to its passengers or to its employes, or which third persons or the property of third persons shall suffer by reason of the movement of any engine, car or train of the Atchison Company in all respects as if the Atchison Company had then been in the exclusive use and control of such track, building or premises, excepting only such loss, damage or injury as shall be caused by the negligence of the employes solely of the grantors; and, excepting only as aforesaid, the Atchison Company hereby agrees to save the grantors harmless from all such loss, damage and injury, from all liability and claim therefor and from all consequent costs and expenses.

SECTION 4. Each party hereto hereby agrees to save the other party harmless from all loss, damage and injury caused by the negligence of its own sole employes, from all liability and claim therefor and from all consequent costs and expenses.

SECTION 5. The parties hereto expressly covenant and agree that in case of a collision between their respective engines, cars or trains while on any of the premises aforesaid, the party whose employes are alone in fault shall be solely responsible for, and shall settle and pay for, the entire loss and damage caused thereby, and shall so

save the other party harmless therefrom; and that in case any such collision is caused by the fault of the employes of both parties
1622 or by the fault of any joint employe or employes, or in case the cause of the collision is so concealed that it cannot be determined whose employe or employes are at fault, each party shall bear and pay all the loss, damage and injury which its own property or property in its custody, or its employes or passengers may have suffered in consequence thereof.

SECTION 6. All liability for damages to persons or property accruing in connection with the maintenance or operation of the joint line from any cause except as herein otherwise provided, shall be apportioned and paid by the parties in the same proportions as the cost and expense of operating the Section of the Joint Line upon which the accident or damage occurred during or for the month during which such accident or damage happened.

SECTION 7. In case any of the Atchison Company's trains shall be wrecked while running on the joint line such wreck may be picked up and removed by the grantors, and the cost of such service shall, except as herein otherwise expressly provided, be borne and paid by the Atchison Company.

SECTION 8. Each of the parties hereto who under the terms and provisions of this agreement is to be liable for or is to bear any liability, loss, damage, cost, charge or expense, or by reason of whose acts or omissions any penalty may be imposed upon any other party, shall and will indemnify and save harmless the other parties from and against such loss, damage, cost, charge, expense or penalties and from all liability therefor.

1623 If a judgment shall be recovered against any of the parties hereto on account of any liability which either of the other parties under the provisions of this agreement should bear or satisfy in whole or in part, then such last-mentioned party shall on demand of the party against whom such judgment was recovered, promptly repay to it any moneys which it may have paid or have been required to pay on account of such liability, together with the costs, fees and other expenses incurred in defending such suit or a proportionate share of such costs, fees and other expenses if such liability is to be divided between them.

No party hereto shall be concluded by any judgment or decree at law or in equity against any other party hereto unless it had reasonable notice from such other party requiring it to appear in the suit in which such judgment or decree was rendered and to make defence thereto for its own account, or jointly with the party against which such judgment or decree was rendered. If such notice shall have been given and the party receiving the same shall have failed to appear and make defence it shall be concluded by the judgment or decree in such suit.

SECTION 9. Each Grantor may make settlement of claims for deaths or injuries to persons and for loss of or damage to property to which such grantor and the Atchison Company are to be jointly liable here-

under; except that in case the Atchison Company shall give notice in writing to any Grantor of objection to such settlement by the Grantor of any claim, or class of claims, then such Grantor shall not
1624 voluntarily pay or settle any such claim so objected to, at a cost in excess of $500 for each claim paid or settled, without first obtaining the written consent of the Atchison Company. Upon making a voluntary settlement, as aforesaid, each Grantor shall procure from the claimant a release to the Atchison Company from liability on account of such claim.

SECTION 10. If traffic over or upon any Section of the Joint Line or any business thereon shall at any time be interrupted or delayed for any cause other than the willful act of such Grantor or of the Atchison Company, then and in such case neither of the parties shall have any claim against the other for loss or damage of any kind caused by or resulting from such interruption or delay.

## ARTICLE VII.

The Atchison Company agrees that, unless compelled by law to do so, it will not carry on its trains, engines or cars upon the Joint Line any passengers or other persons, freight or other property, except freight and passengers carried in one continuous passage upon the same train the entire distance between Phoenix, Arizona, and said point of connection at Deming with the railroad of the Atchison Company.

In case at any time during the term hereof the Atchison Company shall carry on any of its trains, engines or cars, any passengers or other persons, freight or other property other than freight and passengers carried in one continuous passage upon the same
1625 train the entire distance between Phoenix and said point of connection at Deming, the Atchison Company shall, on or before the 15th day of the following calendar month, render to the Grantors a statement in writing specifying the number of passengers or other persons, and the freight or other property so carried and the place upon the Joint Line where received and the place where discharged from such engines, trains or cars, and shall at the same time pay to each Grantor seventy (70) percent of its then existing local tariff rates for similar transportation upon its Section. If such business be the carrying of mail, the Atchison Company shall pay to the respective Grantors seventy (70) percent of all revenue received from the carrying of such mail upon the portion of the Joint Line upon which it shall have been carried by the Atchison Company, and, if such business be the carrying of express matter, it shall pay to the respective Grantors seventy (70) percent of the then existing local tariff rates of the Company at the time doing express business upon the Joint Line for similar transportation of such express matter. However, the foregoing provision and the receipt by the respective Grantors of compensation for any such business originating at or destined to points upon the Joint Line shall not deprive the Grantors

or any of them of any rights they may have against the Atchison Company by reason of any such transportation in violation of the terms of this agreement.

Nothing in this Article contained shall be construed as prohibiting the Atchison Company from receiving or discharging at points upon the Joint Line its own employes, and property to be employed
1626 or used solely in the operation of its trains, engines or cars upon the Joint Line, or from setting out and thereafter picking up freight cars to regulate tonnage of trains or to effect repairs, but such transportation of employes and property shall be permitted to the Atchison Company, and it shall not be required to make any payment to the Grantors therefor under this Article VII.

ARTICLE VIII.

In case any disagreement shall arise between the Atchison Company and the Grantors, or any of them, as to any matter arising under this agreement, then, upon the request of either the Atchison Company, or such Grantors or Grantor with whom such disagreement shall have arisen, the matter in difference shall be submitted to three arbitrators, one of whom shall be appointed by the Atchison Company, one by such Grantors or Grantor, and the third by the two so appointed. The decision of such arbitrators or any two of them, given after a hearing of which the parties to such agreement shall have been duly notified, and at which they shall have been given an opportunity to be heard, shall be final and binding upon the parties as to the matter or matters submitted for arbitration; and each of said parties agrees that forthwith, upon the rendering of such decision or award, it will perform and comply with the requirements thereof.

ARTICLE IX.

This agreement shall enure in favor of and shall be binding
1627 upon the successors, assigns and lessees of each Grantor for the time being in possession of and operating such Grantor's Section of the Joint Line; but the Atchison Company shall not have power to assign, transfer or sublet this agreement or any rights thereunder.

In witness whereof, each of the parties hereto has caused this instrument to be executed in four uniform originals by its President or Vice-president and its corporate seal to be hereunto affixed and attested by its Secretary or Assistant Secretary the day and year first above written.

SOUTHERN PACIFIC RAILROAD COMPANY.

By

*President.*

Attest:

*Secretary.*

THE PHOENIX AND EASTERN RAILWAY COMPANY,
By
*President.*

Attest:

*Secretary.*

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY,
By
*President.*

Attest:

*Secretary.*

SOUTHERN PACIFIC COMPANY,
By
*President.*

Attest:

*Secretary.*

1628 Complainant's Exhibit 106 is as follows:

COMPLAINANT'S EXHIBIT 106.

AGREEMENT

between

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY,

ARIZONA AND CALIFORNIA RAILWAY COMPANY,

SANTA FE, PRESCOTT AND PHOENIX RAILWAY COMPANY,

SOUTHERN PACIFIC COMPANY,

Granting to

SOUTHERN PACIFIC COMPANY

Trackage Rights between Phoenix and Mojave.

An agreement, made this 1st day of , by and between The Atchison, Topeka and Santa Fe Railway Company (hereinafter called the "Atchison Company"), a corporation of the State of Kansas, party of the first part;

Arizona and California Railway Company (hereinafter called the "Arizona Company"), a corporation of the Territory of Arizona, party of the second part;

Santa Fe, Prescott and Phoenix Railway Company (hereinafter called the "Prescott Company"), a corporation of the Territory of Arizona, party of the third part: and

Southern Pacific Company (hereinafter called the "Southern Company"), a corporation of the State of Kentucky, party of the fourth part.

1629 Whereas:

The portion of the main line of the Atchison Company commencing at a point of connection with the tracks of the Southern Pacific Railroad Company (a corporation of the State of California and of the Territories of Arizona and New Mexico) at or near Mojave Junction Station, in the State of California, and extending in an easterly direction through the station of Bengal to the town of Needles, is held and operated by the Atchison Company under an indenture of lease and contract dated July 15, A. D. 1898, by and between the Southern Pacific Railroad Company, of the first part, the New Mexico and Arizona R. R. Co., of the second part, the the Sonora Railway Company Limited, of the third part, the Atchison Company, of the fourth part, and the Southern Company, of the fifth part, to which indenture of lease and contract reference is hereby made. The portion hereinafter more particularly described of said main line of the Atchison Company commencing at said point of connection at or near Mojave Junction Station and extending thence to a point of connection with the railroad of the Arizona Company at or near Bengal, in the State of California, a distance of about miles, is hereinafter called "Section A" of the Joint Line, hereinafter mentioned.

The Arizona Company owns a line of railway extending from a point of connection with said Section A of the Joint Line, at or near Bengal, to a point of connection with the line of railway of the Prescott Company at a point about five miles north of Wickenburg, in the Territory of Arizona, a distance of about 195 miles.

1630 Said line of railway of the Arizona Company, hereinafter more particularly described, is hereinafter called "Section B" of the Joint Line.

The Prescott Company owns and operates a line of railway, of which a portion, about miles in length, extends from said point of connection with said Section B of the Joint Line, about five miles north of Wickenburg, in a southerly direction, to a connection at a point located [here describe precise point of connection] in the City of Phoenix in the Territory of Arizona, with the line of railway of the Phoenix and Eastern Railway Company. The portion hereinafter more particularly described of the line of railway of the Prescott Company is hereinafter called "Section C" of the Joint Line.

The Atchison Company at the time of the execution of these presents has sold to the Southern Company all the shares of the capital stock and obligations of the said Phoenix and Eastern Railway Company.

Said Sections A, B and C together constitute a continuous line, about miles in length, for the passage of railway trains between

said point of connection at Mojave and said point of connection at Phoenix with the line of said Phoenix and Eastern Railway Company.

Each of said Sections, when hereinafter referred to, shall be deemed to include the turntables, passing tracks, sidings, stations, water and telegraph service and other facilities, additions, appurtenances and improvements now existing or hereafter acquired upon or along such section, except as hereinafter expressly provided; and said Sections A, B and C taken together, are herein called the "Joint Line."

The Southern Pacific Railroad Company owns a system of
1631 railways in the State of California and also a line of railway extending across the Eastern boundary of the State of California at or near Yuma, through the Territory of Arizona and the Territory of New Mexico, in an Easterly direction, to a connection with the railway of the Atchison Company at Deming, and thence to the Rio Grande River near El Paso, Texas.

The Southern Company holds, as lessee, and operates the lines of railway owned by said Southern Pacific Railroad Company, except said portion of its line leased to the Atchison Company.

All the shares of the capital stock of the Phoenix and Eastern Railway Company were heretofore sold by the Atchison Company to the Southern Company.

A contract, dated the seventh day of December, 1906, has been executed between the Atchison Company, of the first part, and the Southern Company, of the second part, in and by which contract the Southern Company, among other things, has agreed upon certain specified conditions to cause a line of railway to be completed from a point of connection with the line of the said Southern Pacific Railroad Company between Lordsburg, in the Territory of New Mexico, and Bowie, in the Territory of Arizona, and thence by the most practicable route to a point of connection with the Phoenix and Eastern Railway Company, in Arizona, and to cause said Phoenix and Eastern Railway Company to be connected by some existing line or by a newly constructed line with the present line of the Southern Pacific Railroad Company at some point south or west of Phoenix, such newly constructed line to be suitable for use as part of a low-grade trans-continental line, as more particularly set forth in said
1632 contract; and the Southern Company in and by said contract has further agreed to cause the several companies owning such line of railroad from a point of connection with Section C of the Joint Line to a point of connection with the main line of the Atchison Company at Deming, in the Territory of New Mexico, to grant and lease to the Atchison Company the right to use the same for the continuous through passage of its trains, engines and cars, for the term of fifteen years, as more fully set forth in said contract, to which reference is hereby made with the same effect as if such contract were herein set forth at length.

The Southern Company desires to acquire the right to use said Sections A, B and C, constituting the Joint Line herein mentioned, for the continuous passage of its trains, engines and cars from said point of connection at Mojave, in the State of California, to said point of connection with the railway of the Phoenix and Eastern Railway Company at Phoenix.

The Atchison Company owns a large majority of the shares of capital stock of the Arizona Company and of the Prescott Company, respectively.

The Atchison Company, the Arizona Company and the Prescott Company, collectively, are hereinafter called the "Grantors."

The term "Grantor," when used in this agreement, shall be deemed to mean the Grantor or the successors, lessees and assigns of the Grantor for the time being in possession of and operating such Grantor's Section of the Joint Line.

Now, therefore, it is mutually agreed by and between the parties hereto as follows, viz:

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ARTICLE I.

The Grantors grant and lease to the Southern Company the right during the continuance of the term hereinafter mentioned and upon the terms and conditions and subject to the limitations hereinafter expressed, to use, equally with the Grantors, the Joint Line hereinafter more particularly described, an aggregate distance of about miles, for the operation of the trains, engines and cars of the Southern Company from said point of connection with the railroad of the Southern Pacific Railroad Company at or near Mojave, in the State of California, to said point of connection with the railroad of the Phoenix and Eastern Railway Company at Phoenix, in the Territory of Arizona. Sections A, B and C of the Joint Line are described as follows:

SECTION A.

SECTION B.

SECTION C.

Including the turntables, passing tracks, sidings, stations, water and telegraph service and other facilities, additions, appurtenances and improvements now existing or hereafter acquired upon or along said Joint Line suitable for the operation of such trains, engines and cars of the Southern Company.

Such right of use is granted to the Southern Company for the sole purpose of enabling the Southern Company to operate over the Joint Line its through trains, engines and cars from said point of connection at Mojave to said point of connection at Phoenix,

1634 and to transport in such trains and cars passengers and freight in one continuous passage the entire distance between said points of connection; and the Southern Company shall not have the right to transport over any part of the Joint Line any passengers, freight or other property received upon or to be discharged from such trains or cars at any point upon the Joint Line.

It is understood and agreed that the grant and lease of the Joint Line shall be deemed and construed as a several grant by each of the grantors of the section of the Joint Line operated by it as owner or lessee, viz: Section A by the Atchison Company, as lessee under said indenture dated July 15, 1898, Section B by the Arizona Company, as owner, and Section C by the Prescott Company, as owner. It is further understood and agreed that each covenant and agreement herein contained shall be deemed and construed as a several covenant and agreement by each grantor with respect to its section of the Joint Line.

The term during which the right to use the Joint Line is hereby granted as aforesaid shall commence on the day of the date hereof, and shall continue fifteen years from and after that date, unless sooner terminated as hereinafter provided.

ARTICLE II.

SECTION 1. For the purposes of this agreement the present value of the several sections of the Joint Line shall be deemed to be as follows:

Section A, $

Section B, $

Section C, $

1635 SECTION 2. The Southern Company hereby covenants and agrees that it will pay, at the times and in the manner hereinafter provided, during the said term of fifteen years, as rental for the use of the Joint Line, the following sums, viz:

(A) To each Grantor, for each of the fifteen consecutive years, constituting the term a sum equal to a share proportionate to car mileage as hereinafter provided, of interest for such year at the rate of four and one-half per cent, per annum on the present value of such Grantor's Section of the Joint Line, and upon the cost of any additions or betterments that shall have been added to such section of the Joint Line, as provided in Section 3 of Article III. hereof. The share so payable by the Southern Company under this clause (A) in respect of interest on the value of each Section of the Joint Line for each year shall be a sum bearing the same ratio to the whole of such interest as the number of miles traveled by the cars of the Southern Company on such Section shall bear to the total number of miles traveled by all cars thereon during such year; it being understood that each engine shall be rated as three cars and that neither the switching of cars within actual yard limits, nor the movement of work trains engaged in work upon the Joint Line shall be counted.

Provided, nevertheless, that

(a) If such car mileage of the Southern Company during any one of the five consecutive years from and after the expiration of five years after the date hereof should be less than one-fourth of the total car mileage upon such Section during such year then the share
1636 so payable by the Southern Company under this clause (A) in respect of such year shall nevertheless be a sum equal to one-fourth of the whole of such interest for one year;

(b) If such car mileage of the Southern Company during any one of the five consecutive years from and after the expiration of ten years after the date hereof should be less than one-third of such total car mileage during such year, then the share so payable by the Southern Company under this clause (A) in respect of such year shall nevertheless be a sum equal to one-third of the whole of such interest for one year; and

(c) The Southern Company shall not be required under this clause (A) to pay for any one of the fifteen consecutive years of the term a sum in excess of one-half of the whole of such interest for that year.

Such payment by the Southern Company under this clause (A) shall be made as follows:

Within thirty days after rendition of a bill therefor upon the expiration of each calendar month during the first period of five years of the term, the Southern Company shall pay to each Grantor a sum equal to a share of interest for such month proportionate to such car mileage, upon the section of such Grantor during such month.

Within thirty days after rendition of a bill therefor upon the expiration of each calendar month during the second period of five years of the term, the Southern Company shall pay to each Grantor a sum equal to one-fourth of such interest for one month.

Within thirty days after rendition of a bill therefor upon
1637 the expiration of each calendar month during the third period of five years of the term, the Southern Company shall pay to each Grantor a sum equal to one-third of such interest for one month.

The foregoing payments shall be deemed merely payments on account of the sums to become due under this clause (A) for each entire year and shall be subject to readjustment as follows: Within thirty days after the expiration of each year of the term, each Grantor shall furnish to the Southern Company a statement showing the car mileage as aforesaid for such year upon the Section of such Grantor and the sum payable by the Southern Company to such Grantor for such year under this clause (A). If the aggregate monthly payments made by the Southern Company to any Grantor under the foregoing provisions shall exceed the sum payable by the Southern Company for such entire year, then such Grantor, within thirty days after the expiration of such year, shall repay the excess to the Southern Company; but if the aggregate monthly payments made by the Southern Company to any Grantor shall be less than the sum payable by the Southern Company for such entire year, then the Southern Company, within thirty days after the rendition of such statement for the entire year, shall pay to such Grantor the deficiency.

(B) To each Grantor, from time to time, a share, to be fixed according to car mileage as hereinafter provided, of all taxes, assessments and other governmental charges which, during such term shall

accrue upon or in respect of all or any part of such Grantor's Section of the Joint Line. Any taxes, assessments or governmental charges for any year, of which any part is included in said term shall
1638 be apportioned, and the Southern Company shall pay a part thereof proportionate to the part of such year included in the term. So long as any section or part of the Joint Line shall not be taxed or assessed separately, but shall be taxed or assessed together with or as part of any other railroad or property, it is understood and agreed that the taxes, assessments and other governmental charges accruing upon such Section or part of Section shall be deemed and taken to be such part of the taxes, assessments or governmental charges upon the entire railroad or property so taxed or assessed together or as an entirety, as shall bear to the whole of such taxes, assessments and charges thereon the same ratio as that which the mileage of such Section shall bear to the mileage of the whole of the railroad so taxed or assessed together or as an entirety.

The share so payable by the Southern Company under this clause (B) in respect of taxes, assessments and governmental charges upon each Section of the Joint Line shall be a sum bearing the same ratio to the whole of such taxes, assessments and governmental charges as the number of miles traveled by the cars of the Southern Company upon such Section shall bear to the number of miles traveled by all cars thereon during the period of the term in which such taxes, assessments or charges accrued, it being understood that each engine shall be rated as three cars, and that neither the switching of cars within actual yard limits, nor the movement of work trains engaged in work upon the Joint Line shall be counted.

*Provided*, nevertheless, that

(a) If such car mileage of the Southern Company during
1639 any such period included in the five years beginning at the expiration of five years after the date hereof and ending ten years after the date hereof, should be less than one-fourth of the total car mileage upon such Section during such period, then the share so payable by the Southern Company under this clause (B) in respect of such period shall, nevertheless, be a sum equal to one-fourth of such taxes, assessments or charges for such period;

(b) If such car mileage of the Southern Company during any such period included in the five years beginning at the expiration of ten years after the date hereof and ending with the term fifteen years after the date hereof, should be less than one-third of the total car mileage upon such Section during such period, then the share so payable by the Southern Company under this clause (B) in respect of such period shall, nevertheless, be a sum equal to one-third of such taxes, assessments and charges for such period; and

(c) If such car mileage of the Southern Company during any such period included in the term shall be one-half or more than one-half of the total car mileage upon such Section during such period, then the shares so payable by the Southern Company under this clause (B)

in respect of such period shall be one-half of such taxes, assessments and charges for such period.

Each sum payable under this subdivision (B) in respect of any taxes, assessments or governmental charges shall be payable by the Southern Company within thirty days after such tax, assessment or governmental charge shall have been paid and the Grantor or the Atchison Company shall have caused a written statement thereof to be furnished to the Southern Company.

(C) To each Grantor, each calendar month of said term, a share, to be fixed according to car mileage as hereinafter provided, of the cost and expense of maintaining, repairing and operating such Grantor's Section during such month, including also insurance premiums and expenses paid during said term for insuring any building or structure jointly used. Such cost and expense shall include all wages of trackmen, gatemen, towermen, signalmen, switch-
1640 men, watchmen, train dispatchers, telegraph operators and such other station and yard employes as shall have supervision and charge of or be required to perform service in respect to the maintenance or repair and operation of such Section or the movement of through trains thereon, and all other expenses connected with the use and operation of such Section as a through line, but general expenses of the Grantor and salaries of employes who are not employed upon or connected with the maintenance, repair or operation of such Section or in the movement of through trains thereon shall not be included.

The share so payable by the Southern Company under this clause (C) in respect of each Section of the Joint Line shall be a sum bearing the same ratio to the total cost and expense of maintaining, repairing and operating such Section during such calendar month, as the number of miles traveled by the cars of the Southern Company on such Section shall bear to the total number of miles traveled by all cars thereon during such month, it being understood that each engine shall be rated as three cars, and that neither the switching of cars within actual yard limits, nor the movement of work trains engaged in work upon the Joint Line shall be counted.

The cost and expense of maintaining, repairing and operating the Joint Line in respect of which the Southern Company shall contribute as aforesaid under this Article, shall, except when otherwise specially provided for herein, include freight charges upon all materials used for such maintenance, repair or operation at the rate of one-half a cent per ton per mile for the haul of such materials upon the railway lines operated by the Grantors or any of them, unless such charge shall exceed the published tariffs, in which case tariff
1641 rates shall apply. In fixing the amount of such cost and expense for each month, any item to be included therein which cannot be definitely determined for each month shall be estimated, and the estimated amount included in the monthly bills, subject to correction by the Grantors when subsequent bills are rendered; and expenses, like insurance, covering more than one month shall be

apportioned and the ratable estimated share applicable to each month shall be included in the bills rendered by the Grantors for such month, subject to correction when subsequent bills are rendered.

The sums payable by the Southern Company under this clause (C) shall be payable monthly within thirty days after a written bill therefor shall have been rendered to the Southern Company by the Atchison Company or by the Grantor to whom such sum shall be payable; but every such bill and every such payment shall be subject to correction for errors or omissions, and for the purpose of enabling the Southern Company to verify the correctness of such bills the Grantors shall give to the Southern Company, upon its request, reasonable information as to the charges and expenditures embraced in any such bill, and shall permit the Southern Company to examine the books, accounts and vouchers relating thereto, as provided in Section 4 of Article III. hereof.

## Article III.

Section 1. The supervision, management and operation of each Section of the Joint Line, the furnishing of water, and the move-
1642 ment of trains, engines and cars upon such Section, shall be under the exclusive direction and control of the Grantor of such Section; but all time-cards, rules, regulations or orders for the movement of engines, trains and cars upon such Section shall be reasonable, just and fair and without preference or discrimination in favor of either party. All passenger trains shall be given preference over other trains, and the trains of all parties shall be given equal despatch according to their class.

Section 2. Each Grantor at all times during the continuance of the term, at the written request of the General Manager of the Southern Company, for reasonable cause shown, shall remove from service upon the Joint Line any employe of any Grantor who may not be satisfactory to the Southern Company, and the Southern Company, on its part, upon the written request of the General Manager of any Grantor, for reasonable cause shown, shall remove from service on its engines, trains or cars operated on or over the Section of such Grantor, any employe who may not be satisfactory to such Grantor.

Section 3. Each Grantor shall be entitled, from time to time, to make such additions and betterments to the Section of such Grantor as in its judgment shall be necessary or desirable. The actual cost of such additions and betterments shall be added to the present value of such Section for the purpose of ascertaining the amount payable by the Southern Company as rental under clause (A) of Section 2 of Article II. hereof; but if the Southern Company shall deem any such addition or betterment to be unnecessary or undesirable, then,
upon its written request, the question as to the necessity or
1643 desirability of any such addition or betterment (except when the same shall be made in pursuance of any law or municipal ordinance or regulation) shall be submitted to arbitration in the man-

ner hereinafter provided, and the cost thereof shall not be added to such value if it shall be determined by such arbitration that such addition or betterment was not necessary or desirable.

In determining whether expenditures upon the Joint Line or any part thereof are for additions or betterments or for maintaining, repairing or operating the Joint Line, such expenditures as according to the then prevailing railroad usage are chargeable to cost of property or "capital account" shall be deemed expenditures for additions or betterments in respect of which the Southern Company shall be liable to pay the equivalent of interest under said clause (A) of Section 2 of Article II. hereof, and expenditures which according to such usage would be included in "operating expenses" shall be deemed expenses of maintaining, repairing and operating the Joint Line in respect of which the Southern Company shall contribute as provided in clause (C) of Section 2 of Article II hereof.

SECTION 4. So much of the books, accounts and vouchers of each Grantor as relate to the construction or acquisition of additions or betterments or to the maintenance, repair or operation of the Joint Line or any part thereof, shall at all reasonable times be open to inspection by the proper officers and agents of the Southern Company, who shall, if they so desire, be permitted to make copies of such part of such books, accounts and vouchers or extracts therefrom.

SECTION 5. Each Grantor reserves the right at all times to grant to other railway companies the right to use such Grantor's Section of the Joint Line or any part thereof in common with itself and the Southern Company and such other company or companies as may at the time have the right to use the same; provided that such admission of any other railway company to the right to use such Section or any part thereof shall not materially obstruct or interfere with the Southern Company in the fair and reasonable enjoyment of the rights herein granted or leased to it.

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SECTION 6. All engines, trains and cars operated by the Southern Company shall be regarded for all purposes of this agreement as the engines, trains and cars of the Southern Company. All engines, trains and cars operated by any Grantor, or the successors, assigns or lessees of any Grantor for the time being in possession or control of the Section of such Grantor, shall be regarded for all purposes of this agreement as the engines, trains and cars of such Grantor.

SECTION 7. The Grantors shall furnish all water required for the operation of engines and trains upon the Joint Line, and the cost and expense of furnishing such water, including a charge of one-half cent per ton of two thousand pounds for each mile that such water shall be hauled, shall be included in the cost and expense of maintaining and operating the Joint Line, in respect of which the Southern Company shall contribute a share, as provided in clause (C) of Section 2 of Article II. hereof.

SECTION 8. Each of the parties shall furnish its own fuel oil or coal for the operation of its engines upon the Joint Line. The Southern Company shall be entitled to establish, maintain

1645 and operate its own fuel oil tanks or coal bunkers at points upon the Joint Line to be designated by the respective Grantors for supplying its engines operated on the Joint Line with fuel oil or coal necessary for the operation thereof; but in case the Southern Company so establishes, maintains and operates its own fuel oil tanks or coal bunkers, it shall not be required to pay interest, taxes, rental or a share of the cost of maintaining or operating the fuel oil tanks or coal bunkers of the Grantors.

SECTION 9. A proportion of the cost and expense of maintaining and operating the telegraph lines upon the Joint Line, bearing the same ratio to the total cost and expense of maintaining and operating the telegraph lines upon the Joint Line as the number of wires used in joint service bears to the total number of wires strung on the telegraph poles, shall be included in the cost and expense of maintaining and operating the Joint Line, and the Southern Company shall be entitled to the use and benefit of such telegraph service in the operation of its trains, engines and cars upon the Joint Line.

SECTION 10. Each party shall be entitled to operate upon the Joint Line such helper-engines as shall be required for the operation of the trains of such party upon any portion of the Joint Line.

## ARTICLE IV.

SECTION 1. All rentals or other sums payable under any of the provisions of this agreement by the Southern Company to any of the Grantors shall be payable at the office of the Atchison 1646 Company, in the City of Los Angeles, California. In case any rental or other sum payable hereunder shall not be duly paid on or before the date when the same shall be payable, as herein provided, such sum shall bear interest at the rate of five per cent. per annum from the date when the same became payable until the same shall be duly paid, whether or not the party to whom such sum was payable shall exercise its right and privilege under Article V. hereof to terminate this agreement.

SECTION 2. The Arizona Company and the Prescott Company hereby severally and respectively authorize and direct the Southern Company to pay to the Atchison Company all rentals and other sums which under the terms of this agreement shall be payable to them or either of them, and agree that the receipt of the Atchison Company for any sum so paid to it by the Southern Company shall bind them respectively as a full acquittance and discharge in respect of the sum so paid; but every such authority and direction may be revoked by the Arizona Company or the Prescott Company by giving notice in writing of such revocation to the Southern Company or by executing an assignment or lease of its Section of the Joint Line, vesting in the assignee or lessee the right to receive such rentals or other sums and by causing notice in writing of the execution of such assignment or lease to be given to the Southern Company. The Atchison Company hereby agrees with the Arizona Company and

the Prescott Company to account to them respectively for any and all sums paid by the Southern Company hereunder for account of the Arizona Company and the Prescott Company, or either of them; but the Southern Company shall not be responsible for any
1647 failure of the Atchison Company so to account for any sum paid to it by the Southern Company.

SECTION 3. The Southern Company may serve upon the Atchison Company all notices and demands which under this agreement are required or authorized to be served upon the Grantors or any of them, and such service upon the Atchison Company shall in all respects bind the Grantors and each of them, with the same effect as if served upon each of the Grantors; and the Atchison Company shall have authority and power on behalf of the Grantors and each of them to serve upon the Southern Company all notices and demands which under this agreement are required or authorized to be served by the Grantors or any of them upon the Southern Company. Nevertheless, any Grantor may revoke such authority as to it by giving notice in writing of such revocation to Southern Company and thereafter such notices and demands shall be served upon and be served by such Grantor directly. All notices and demands herein authorized or required to be given to any party shall be given by serving the same upon the President or a Vice-President or General Manager of such party.

SECTION 4. If and so long as any one of the Grantors shall operate more than one of said Sections of the Joint Line then all such Sections so operated by one Grantor shall be treated together as one combined Section. Such combined Section shall be deemed to be of a value equal to the aggregate of the separate values of the several sections combined and the charges in respect of the rental, taxes and cost and expenses of repairing, maintaining and operating the combined section shall be fixed according to the car mileage upon
1648 such combined section taken together.

## ARTICLE V.

SECTION 1. If the Southern Company shall fail to perform or to comply with any of the covenants or conditions to be performed or complied with by it under this agreement and such failure shall continue for a period of thirty days after written demand for performance or compliance shall have been made upon the Southern Company by the Grantors, or either or any of them, coupled with notice in writing that the parties or party giving such notice elect to put an end to the term hereby granted on account of such failure of the Southern Company to perform or comply with such covenant or condition, then the term hereby created and all rights of the Southern Company shall forthwith cease and terminate, anything herein contained to the contrary notwithstanding; but no such termination shall deprive any of the parties hereto of the right to enforce any liability of any other of the parties hereto that shall have

accrued prior to such termination of the term. Provided, however, that if the Southern Company, within thirty days after the receipt of any statement rendered to it hereunder by any Grantor shall give notice in writing to such Grantor that it contests the correctness of any specified item or items in such statement and shall pay to such Grantor all sums due to it other than the item or items so specified and also shall pay on account of such specified item or items such part thereof as shall not be contested and further shall furnish such Grantor (if demanded by it) reasonable security for the payment of the item or items or parts of items contested, then so long as the Southern Company in good faith shall contest the correctness
1649 of such item or items or parts of items specified in such notice, the term hereunder and the rights of the Southern Company shall not be terminated under this Section 1 of Article V. by reason of the failure of the Southern Company to pay or allow in full such item or items so contested.

SECTION 2. If for any cause other than its own failure to perform or comply with the terms and conditions of this agreement the Southern Company should be deprived of or lose the right to operate its trains, engines or cars under this agreement upon any Section of the Joint Line, then and in that event the term hereby created shall forthwith cease and terminate as to the entire Joint Line, anything herein contained to the contrary notwithstanding.

SECTION 3. If the Southern Company should fail to perform and comply with any of the covenants or conditions of said contract, bearing date the tenth day of December, 1906, between the Atchison Company and the Southern Company, and such failure should continue for the period of sixty days after the Atchison Company shall have served upon the Southern Company written demand to perform or comply with such covenant or condition, then and in that event, at the election of the Atchison Company, to be expressed in a written notice of such election served by the Atchison Company upon the Southern Company, the term hereby created and all rights of the Southern Company hereunder shall forthwith cease and terminate, anything herein contained to the contrary notwithstanding.

SECTION 4. In case after the execution of the trackage contract referred to as Schedule C in the said contract dated the
1650 seventh day of December, 1906, the said trackage contract between the Southern Company and the Atchison Company, should be terminated by the Atchison Company, its successors or assigns, by reason of any default or failure of any of the parties to such trackage contract to perform or comply with the terms and conditions thereof, or in case the Atchison Company, its successors or assigns, for any cause other than its or their default or failure to perform and comply with the terms and conditions of said trackage contract, should be deprived of or lose the right to operate its or their trains, engines and cars upon the terms and conditions of said contract upon said line extending from a point of connection with Section C of the Joint Line, herein mentioned, to a point of connec-

tion with the main line of the Atchison Company at Deming then and in any such event, at the election of the Atchison Company, to be expressed in a written notice of such election to be given by the Atchison Company to the Southern Company, the term hereby created and all rights of the Southern Company to use the Joint Line shall forthwith cease and terminate, anything herein contained to the contrary notwithstanding.

## Article VI.

Section 1. The Grantors shall be bound to use only reasonable and customary care, skill and diligence in maintaining and repairing the roadway, tracks, structures and appliances of and pertaining to the Joint Line.

The Southern Company shall not, by reason of any defect in any such roadway, track, structure or appliances, or by
1651 reason of the failure or neglect of the Grantors to repair such defect, have or make against the Grantors any claim or demand for any loss, damage, or injury whatsoever arising from such defect, neglect or failure; but in case the Grantors shall fail to repair any such defect as aforesaid within a reasonable time after the Southern Company shall have given to the Grantors written notice specifying the defect and requesting that it be repaired, then the Southern Company shall have the right to make the necessary repairs at once, and the Grantors shall and will pay the cost thereof, which shall thereupon be apportioned between the parties as hereinbefore provided.

Section 2. Except enginemen and trainmen in revenue train service, all employes of the Grantors in any wise engaged in maintaining, repairing or operating the Joint Line shall, as between the parties hereto, be deemed joint employes of both parties; but while performing any service for or on behalf of said Grantors or the Southern Company upon such section shall be regarded and held for the time being the employes solely of the party for whom or in whose behalf such service is performed.

Section 3. The Southern Company hereby assumes all risks of all loss, damage or injury which shall in any manner occur in and upon any track, building or premises, the use whereof is herein granted, whether to property of the Southern Company or to property in its custody, or to its passengers or to its employes, or which third persons or the property of third persons shall suffer by reason of the movement of any engine, car or train of the Southern Company in all respects as if the Southern Company had then been in exclusive use and control of such track, building, or premises, excepting only
1652 such loss, damage or injury as shall be caused by the negligence of the employes solely of the Grantors; and, excepting only as aforesaid, the Southern Company hereby agrees to save the Grantors harmless from all such loss, damage and injury, from all liability and claim therefor and from all consequent costs and expenses.

SECTION 4. Each party hereto hereby agrees to save the other party harmless from all loss, damage and injury caused by the negligence of its own sole employes, from all liability and claim therefor, and from all consequent cost and expenses.

SECTION 5. The parties hereto expressly covenant and agree that in case of a collision between their respective engines, cars or trains while on any of the premises aforesaid, the party whose employes are alone in fault shall be solely responsible for, and shall settle and pay for, the entire loss and damage caused thereby, and shall so save the other party harmless therefrom; and that in case any such collision is caused by the fault of the employes of both parties or by the fault of any joint employe or employes, or in case the cause of the collision is so concealed that it cannot be determined whose employe or employes are at fault, each party shall bear and pay all the loss, damage and injury which its own property or property in its custody, or its employes or passengers may have suffered in consequence thereof.

SECTION 6. All liability for damages to persons or property accruing in connection with the maintenance or operation of the joint line
from any cause except as herein otherwise provided, shall be
1653 apportioned and paid by the parties in the same proportions
as the cost and expense of operating the section of the joint line upon which the accident or damage occurred during or for the month during which such accident or damage happened.

SECTION 7. In case any of the Southern Company's trains shall be wrecked while running on the joint line such wreck may be picked up and removed by the grantors, and the cost of such service shall, except as herein otherwise expressly provided, be borne and paid by the Southern Company.

SECTION 8. Each of the parties hereto who under the terms and provisions of this agreement is to be liable for or is to bear any liability, loss, damage, cost, charge or expense, or by reason of whose acts or omissions any penalty may be imposed upon any other party, shall and will indemnify and save harmless the other parties from and against such loss, damage, cost, charge, expense or penalties and from all liability therefor.

If a judgment shall be recovered against any of the parties hereto on account of any liability which either of the other parties under the provisions of this agreement should bear or satisfy in whole or in part, then such last-mentioned party shall on demand of the party against whom such judgment was recovered, promptly repay to it any moneys which it may have paid or have been required to pay, on account of such liability, together with the costs, fees and other expenses occurred in defending such suit, or a proportionate share of such costs, fees and other expenses if such liability is to be divided between them.

No party hereto shall be concluded by any judgment or de-
1654 cree at law or in equity against any other party hereto unless it had reasonable notice from such other party requiring it to

appear in the suit in which such judgment or decree was rendered and to make defence thereto for its own account, or jointly with the party against which such judgment or decree was rendered. If such notice shall have been given and the party receiving the same shall have failed to appear and make defence it shall be concluded by the judgment or decree in such suit.

SECTION 9. Each Grantor may make settlement of claims for deaths or injuries to persons and for loss of or damage to property to which such Grantor and the Southern Company are to be jointly liable hereunder, except that in case the Southern Company shall give notice in writing to any Grantor of objection to such settlement by the Grantor of any claim, or class of claims, then such Grantor shall not voluntarily pay or settle any such claim so objected to, at a cost in excess of $500 for each claim paid or settled, without first obtaining the written consent of the Southern Company. Upon making a voluntary settlement, as aforesaid, each Grantor shall procure from the claimant a release to the Southern Company from liability on account of such claim.

SECTION 10. If traffic over or upon any Section of the Joint Line or any business thereon shall at any time be interrupted or delayed for any cause other than the willful act of such Grantor or of the Southern Company, then and in such case neither of the parties shall have any claim against the other for loss or damage of any kind caused by or resulting from such interruption or delay.

## ARTICLE VII.

The Southern Company agrees that, unless compelled by
1655 law to do so, it will not carry on its trains, engines or cars upon the Joint Line any passengers or other persons, freight or other property, except freight and passengers carried in one continuous passage upon the same train the entire distance between Phoenix, Arizona, and said point of connection at Mojave with the railroad of the Southern Pacific Railroad Company.

In case at any time during the term hereof the Southern Company shall carry on any of its trains, engines or cars any passengers or other persons, freight or other property other than freight and passengers carried in one continuous passage upon the same train the entire distance between Phoenix and said point of connection at Mojave, the Southern Company shall, on or before the 15th day of the following calendar month, render to the Grantors a statement in writing specifying the number of passengers or other persons, and the freight or other property so carried and the place upon the Joint Line where received and the place where discharged from such engines, trains or cars, and shall at the same time pay to each Grantor seventy (70) per cent. of its then existing local tariff rates for similar transportation upon its Section. If such business be the carrying of mail, the Southern Company shall pay to the respective Grantors seventy (70) per cent. of all revenue received from the carrying of

such mail upon the portion of the Joint Line upon which it shall have been carried by the Southern Company, and, if such business be the carrying of express matter, it shall pay to the respective Grantors seventy (70) per cent. of the then existing local tariff rates of the Company at the time doing express business upon
1656 the Joint Line for similar transportation of such express matter. However, the foregoing provision and the receipt by the respective Grantors of compensation for any such business originating at or destined to points upon the Joint Line shall not deprive the Grantors or any of them of any rights they may have against the Southern Company by reason of any such transportation in violation of the terms of this agreement.

Nothing in this Article contained shall be construed as prohibiting the Southern Company from receiving or discharging at points upon the Joint Line its own employees, and property to be employed or used solely in the operation of its trains, engines or cars upon the Joint Line, or from setting out and thereafter picking up freight-cars to regulate tonnage of trains or to effect repairs, but such transportation of employees and property shall be permitted to the Southern Company, and it shall not be required to make any payment to the Grantors therefor under this Article VII.

## Article VIII.

In case any disagreement shall arise between the Southern Company and the Grantors, or any of them, as to any matter arising under this agreement, then, upon the request of either the Southern Company, or such Grantors or Grantor with whom such disagreement shall have arisen, the matter in difference shall be submitted to three arbitrators, one of whom shall be appointed by the Southern Company, one by such Grantors or Grantor, and the third by the two so appointed. The decision of such arbitrators or any two of
1657 them, given after a hearing of which the parties to such agreement shall have been duly notified, and at which they shall have been given an opportunity to be heard, shall be final and binding upon the parties as to the matter or matters submitted for arbitration; and each of said parties agrees that forthwith, upon the rendering of such decision or award, it will perform and comply with the requirements thereof.

## Article IX.

This agreement shall enure in favor of and shall be binding upon the successors, assigns and lessees of each Grantor for the time being in possession of and operating such Grantor's Section of the Joint Line; but the Southern Company shall not have power to assign, transfer or sublet this agreement or any rights thereunder.

In witness whereof, each of the parties hereto has caused this instrument to be executed in four uniform originals by its President or

Vice-President and its corporate seal to be hereunto affixed and attested by its Secretary or Assistant Secretary the day and year first above written.

ATCHISON, TOPEKA AND SANTA FE RAILROAD COMPANY,
By

*President.*

Attest:

*Secretary.*

ARIZONA AND CALIFORNIA RAILWAY COMPANY,
By

*President.*

Attest:

*Secretary.*

SANTA FE, PRESCOTT AND PHOENIX RAILWAY COMPANY,
By

*President.*

Attest:

*Secretary.*

SOUTHERN PACIFIC COMPANY,
By

*President.*

Attest:

*Secretary.*

1658 FRANK M. MURPHY,

being duly sworn as a witness on behalf of the Complainant, testified as follows:

Direct examination by Mr. SEVERANCE:

Map of Union Pacific and Southern Pacific systems, 1908, marked Complainant's Exhibit 107 (Murphy).

Mr. SEVERANCE. Complainant's Exhibit 107, being a map produced by defendants, may be used by agreement——

Mr. LOVETT. No, I don't want that to go in.

Mr. SEVERANCE. What do you want?

Mr. LOVETT. You may introduce the map and I will not make any objection to it, but I do not want to agree to it at this time. I do not object to it and I do not agree to it. I don't want to make any agree-

MAPS

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LARGE

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MAPS

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ment about it at this time. If you want me to testify, I will testify about it. I will not do anything beyond that.

Mr. SEVERANCE. Very well, I think you had better, Judge. I want to use this map. I will call you as a witness but you need not be sworn. Mr. Lovett, what is Complainant's Exhibit 107?

Mr. LOVETT. It is a copy of a map published by the Union Pacific and Southern Pacific Railroad companies in connection with their annual report for the year ending June 30, 1908. I do not know anything about its accuracy. That is all I know about the map.

Mr. SEVERANCE. And it purports to show the railroad lines that appear thereon, but you do not know whether they are
1659 absolutely correct or not?

Mr. LOVETT. It speaks for itself as to what it purports to show. It is distributed as part of the annual report of each of these companies.

Complainant's Exhibit 107 was introduced in evidence by Mr. Severance, and faces this page.

Mr. MURPHY was then examined as follows:

Q. Mr. Murphy, where do you live?

A. Prescott, Arizona.

Q. How long have you lived in Prescott, Arizona?

A. 30 years.

Q. What is your business?

A. I am interested in a number of enterprises in a small way, in railroading, mining, merchandizing, and a few other things.

Q. How many years have you been engaged in railroading?

A. I think it was about 1893, somewhere along there, that I was elected president of the Santa Fe, Prescott & Phoenix road.

Q. The Santa Fe, Prescott & Phoenix road runs from what point to what point?

A. Ash Fork on the line of the Santa Fe Pacific to Phoenix, Arizona.

Q. The Santa Fe Pacific is a part of the main transcontinental line of the Atchison, Topeka & Santa Fe, isn't it?

A. Not part of the main line; it is part of the Santa Fe system, but it is not in the main line, the through road.

Q. I do not mean your road. I say the Santa Fe Pacific.

A. Oh! Yes, sir.

Q. The main transcontinental line of the Atchison, Topeka & Santa Fe starts from Chicago, doesn't it?

A. So I understand, yes, sir.

Q. And goes through to what point?

A. Los Angeles and San Francisco, I believe.

1660 Q. And San Diego?

A. And San Diego.

Q. And the Santa Fe, Prescott & Phoenix is a line of road starting at Ash Fork, a station on the transcontinental line, running in a

southerly direction through Prescott to Phoenix; that is right, isn't it?

A. Yes.

Q. Who built that line?

A. Well, I was president of it during most of its construction.

Q. And you are still president of that line?

A. Yes, sir.

Q. What company owns the stock of the line?

A. The Atchison, Topeka & Santa Fe own it now.

Q. How many years have they owned it?

A. Since 1901, I think.

Q. Is it operated in connection with the trains of the Santa Fe?

A. Yes, sir, but as a separate company.

Q. As a separate organization?

A. Yes, sir.

Q. And you are still the president?

A. Yes, sir.

Q. But controlled by the Santa Fe through stock ownership?

A. Yes, sir.

Q. What is the length of that line?

A. About 190 miles since we have made some alterations; somewhere in the neighborhood of 195 or 196 miles.

Q. What lines of railroad other than the Santa Fe, Prescott & Phoenix reach Phoenix, Arizona?

A. The Southern Pacific, the Maricopa & Phoenix, I believe it is called.

Q. Is that a branch of the Southern Pacific?

A. That is a branch of the Southern Pacific.

Q. Owned by the Southern Pacific.

A. As I understand it.

1661 Q. That is not on the main line of the Southern Pacific, then?

A. No, sir.

Q. How far is it down to Maricopa, a station on the main line of the Southern Pacific?

A. I think 34 miles.

Q. Are through trains run from Phoenix to Los Angeles?

A. No, sir.

Q. Through sleepers?

A. No, sir, not that I know of, unless they just put on a sleeper.

Q. Is freight from the East and from the West handled by the Southern Pacific into Phoenix over this little line?

A. Yes, sir.

Q. Are there any other railroads in Phoenix with the exception of the road of which you are president, which you say is a branch of the Santa Fe and this branch of the Southern Pacific?

A. The Phoenix & Eastern runs in there now or runs out of there.

Q. Where does the Phoenix & Eastern run from and to what point does it reach?

A. It runs from Phoenix to a point on the Gila River, known as Dudleyville or Winkleman, a junction of the San Pedro River, where the San Pedro River enters into the Gila.

Q. Who caused the incorporation of the Phoenix and Eastern?

A. I did.

Q. How long ago?

A. 1901.

Q. When was the construction started upon that line?

A. Do you mean the surveys or when it was actually constructed?

Q. Yes, when were the first surveys made?

1662 A. Early in 1901 I had the first preliminary survey made.

Q. To what point?

A. From Phoenix to Benson; by the way of Tempe and Mesa and Florence and San Pedro River to Benson.

Q. Where is Benson? On what railroad or railroads is it situated?

A. Southern Pacific.

Q. What other railroad, if any?

A. The Sonora Railroad runs from Benson to Guaymas. I don't know as Sonora Railroad is the full title of that road.

Q. That is what it is called.

A. I think there is something more to it, but I am not familiar with it.

Q. Is that a Southern Pacific line to Guaymas?

A. Yes, sir, I believe so now.

Q. When was that purchased by the Southern Pacific?

A. Oh, I don't know exactly, but I should think somewhere about 1896; somewhere along there, as nearly as I can remember.

Q. What other road is there at Benson except the main line of the Southern Pacific and this road to Guaymas?

A. The El Paso & Southwestern terminates there.

Q. Between what points does that road run?

A. Benson to El Paso, and into New Mexico. I don't know just how much road they have, I am sure. They have a road also down into Mexico.

Q. Is that a Southern Pacific road?

A. I think not.

Q. Who are the controlling people in the El Paso and South-Western?

A. Phelps Dodge Mining interests, I think, Copper Queen interests.

Q. Where is the Copper Queen mine located?

A. At Bisbee.

Q. At Bisbee, Arizona?

A. Bisbee, Arizona.

1663 Q. Does the El Paso & Southwestern reach Bisbee?

A. Yes, sir.

Q. Is there any other road to Bisbee?

A. No, sir.

Q. Where are the Copper Queen smelters?

A. At Douglas.

Q. How far is that from Bisbee?

A. I should think 20 or 25 miles, something like that; I am not quite sure.

Q. What road is that on?

A. On the El Paso & Southwestern road.

Q. Are there other mines at Bisbee than the Copper Queen?

A. Yes, a good many.

Q. How large a town is Bisbee?

A. I think they claim about 17,000 people.

Q. That is a mining town?

A. Yes, sir.

Q. And are there other smelters at Douglas aside from the Copper Queen?

A. Yes, Calumet & Arizona.

Q. At El Paso what lines does the El Paso & Southwestern connect with?

A. Well, a number of roads running in there; the Santa Fe, and the Southern Pacific, and the Texas Pacific, and the Rock Island. I guess that is all the eastern roads.

Q. That is what I mean—the eastern roads.

A. Yes.

Q. Then, this road runs from Benson, Arizona, through Mexico?

A. To El Paso.

Q. To El Paso, Texas?

A. To El Paso, Texas, and up into New Mexico. They have their own lines up to their coal mines, you know.

Q. And at El Paso connects with the lines to the east, that you have mentioned?

A. Yes, sir.

Q. With what lines does it connect to the west from Benson?

A. The Southern Pacific.

1664 Q. Any other?

A. No, there is not any other.

Q. Now, you say you had the Phoenix & Eastern surveyed from Phoenix out by Winkleman and the San Pedro Valley to Benson?

A. Yes, sir.

Q. How much of that line was ever constructed?

A. About 96 miles.

Q. After you projected that line did you continue to control it or did you sell that out to someone else?

A. Well, I built that 96 miles finally in the interests of the Santa Fe.

Q. Of the Santa Fe?

A. Yes. First the company was incorporated and organized by myself independent of the Santa Fe, but the road was constructed in the interests of the Santa Fe—96 miles.

Q. And owned by them?

A. Yes, sir, through their stock interests in the Santa Fe, Prescott & Phoenix, and the contract arrangements that the Santa Fe, Prescott & Phoenix had with the Phoenix & Eastern.

Q. There was introduced in evidence here a few minutes ago an agreement, which was marked Complainant's Exhibit 104, between the Atchison, Topeka & Santa Fe Railway Company and the Southern Pacific, under which agreement it appears this Phoenix & Eastern was sold to the Southern Pacific.

A. Yes, sir.

Q. The Atchison owned it up to that time?

A. Yes, sir.

Q. That was dated December 7, 1906?

A. Yes, sir.

Q. Now, Mr. Murphy, in addition to building this 96 miles of road toward Benson, what was done toward acquiring rights of way, or other work of that character, down to Benson?

1665 A. I think we had the right of way secured for the entire distance to Benson.

Q. How did you get it?

A. Some of it was given to us and portions of it were purchased.

Q. What is the distance from the terminus of the line as constructed to Benson?

A. I think about 85 or 88 miles, something like that: I am not quite clear about that.

Q. What, if anything, did the Phoenix & Eastern do toward securing terminals in Benson?

A. We got the citizens there to buy some ground that gave us the right to get through providing we experienced difficulties in making satisfactory arrangements in crossing the Southern Pacific and in making our connections with the El Paso & Southwestern.

Q. Was any arrangement entered into between the Phoenix & Eastern and the El Paso & Southwestern with reference to business?

A. When I first incorporated the company I had an understanding with the El Paso & Southwestern. That was before the Santa Fe had anything to do with it.

Q. What kind of an understanding?

A. As to an exchange of traffic and a concession in favor of the Short Line that was on a mileage basis. I disremember the details of the understanding, but it was a favorable arrangement to encourage the construction of the road. They wanted the western outlet.

Q. Was that agreement in writing?

A. It was in the shape of a letter, or memorandum and correspondence.

Q. Do you know where that correspondence is?

1666 A. I think possibly I might find it. I don't know just where to look for it. It is probably among my papers in Arizona.

Q. You keep an office here in New York, don't you?

A. Yes; not a railroad office, though.

Mr. LOVETT. The defendants object to all the testimony of this witness about the understanding with the El Paso & Southwestern and himself respecting the interchange of traffic at Benson, because it

appears that whatever understanding existed is evidenced in writing, and the writing is the best evidence.

Q. Mr. Murphy, in addition to surveying your line, securing right of way into Benson and building the road that you did build, did you make any surveys for any other line?

A. Yes, sir.

Q. To what point?

A. To Lordsburg and practically to Deming.

Q. Where is Lordsburg? What territory or state?

A. It is in New Mexico. It is just over the line out of Arizona. It is on the Southern Pacific line, about 60 miles west of Deming.

Q. 60 miles from Deming?

A. Yes. About 60 miles from Deming; in open country there.

Q. That is an open country?

A. Yes, sir.

Q. Had you surveyed into Deming?

A. Well, only in the shape of a reconnaissance, because it was an open country, and our idea was that we would utilize Southern Pacific tracks there instead of running right alongside of them if we built to that point.

1667 Q. Lordsburg is how far from the present terminus of the Phoenix & Eastern?

A. About 180 or 185 miles.

Q. That would be, then, about 240 miles from Deming?

A. Yes, sir.

Mr. LOVETT. What is?

Mr. SEVERANCE. The present terminus.

Mr. LOVETT. Dudleyville?

Q. The terminus of the Phoenix & Eastern is what?

A. Winkelman, I believe it is called, or the town of Dudleyville. Where the San Pedro enters the Gila is called Dudleyville, and the town of the terminus of the railroad, I think, is called Winkelman.

Q. When did you commence construction of the Phoenix & Eastern—actual construction work?

A. The first grading was done, I think, in February, 1902.

Q. When was the line completed to its present terminus?

A. I think in 1904.

Q. Do you remember what time of the year?

A. Along in the fall.

Q. In the fall of 1904?

A. Yes, sir, as I remember it.

Q. What kind of country is there between Winkelman or Dudleyville (whichever you may call it) and Benson, to build a railroad through?

A. In the western territory we call it very easy country to build a railroad into.

Q. Did you have estimates made as to the cost of concluding that line down to Benson?

A. Yes, sir.

Q. How much would it cost a mile?

A. The kind of a road that we were going to build I think
1668 about $20,000 a mile.

Q. What kind of country did you have to build through in getting east to Deming?

A. Very rough country, very canyony country, a portion of it. A portion of it was very good, but there was some very heavy work.

Q. You have in there, haven't you, what is called the Gila canyon?

A. Yes, sir.

Q. How long is it?

A. I should think that heavy work covered in the neighborhood of 12 or 15 miles. I am not quite sure as to that from memory.

Q. Is there any road through the Gila canyon?

A. Railroad?

Q. Yes.

A. No, sir.

Q. I find in these contracts a reference to a line running west from the Santa Fe, Prescott & Phoenix.

A. Yes, sir.

Q. Where does that line start and to what point has it been constructed?

A. That leaves the main line of the Santa Fe, Prescott & Phoenix at a point about 6 miles north of the town of Wickenburg.

Q. Wickenburg is which way from Prescott?

A. South.

Q. And north of Phoenix?

A. And north of Phoenix.

Q. What has been done toward the construction of that line west from Wickenburg?

A. We completed about 110 miles of it, built our bridge across the Colorado River.

Q. How large a bridge is that?

A. It is quite a large bridge. I don't quite call to mind the exact length of it. It cost us, I know, $600,000 or $700,000. I don't remember just the dimensions of the bridge.

1669 Q. What is the prospective terminus of that road on the west?

A. Bengal, as surveyed.

Q. On what line of road is Bengal?

A. The Santa Fe.

Q. On the main line?

A. On the main line of the Santa Fe.

Q. Is that road now under construction?

A. No, sir, not at this moment. We are doing more or less work. We kind of slowed down during last year.

Q. On account of the hard times? [The witness laughs.]

Q. When did you finish your bridge?

A. We got across the bridge last June, I think.

Q. That is, 1908?

A. Yes.

Q. You haven't abandoned the construction of it?

A. Oh, not at all. I look to see the road completed at a reasonably early day.

Q. What is the nature of that road as to being low-grade or difficult of operation—steep grades, and all that?

A. Well, of course, that was one of the attractive features of it. There are really no grades on the line of more than $\frac{6}{10}$ of one per cent other than a few miles about half way between the point it leaves the Santa Fe, Prescott & Phoenix and the Colorado River, and there is a little double maximum there for a very short distance. We figure on having a $\frac{6}{10}$ of one per cent grade all the way through.

Q. How is the grade of the Phoenix & Eastern?

A. That is a water grade line. That would average not to exceed $\frac{6}{10}$ of one per cent.

Q. How about the proposed line from the present terminus of the Phoenix & Eastern through to Deming?

1670 A. To Deming would be about $\frac{6}{10}$ of one per cent.

Q. All the way from Phoenix to Deming?

A. Yes, all the way through.

Q. How is it from Phoenix to a point on the Santa Fe, Prescott & Phoenix, where this new line to the west leaves the——

A. There is a very little strip in there in which we would have to make some changes to bring it down to probably $\frac{3}{4}$ of one per cent, but that only covers a few miles. That whole line was laid out on the basis of getting a $\frac{6}{10}$ of one per cent line practically clear through to connection with the Santa Fe.

Q. Now, you stated that the Santa Fe is into Deming?

A. Yes, sir.

Q. Where does it go from Deming?

A. They have a line to El Paso, then up the Rio Grande River to Albuquerque and on east over the Glorieta Mountains, and so on; and now they have through Trinidad, and they now have their Belen cut-off that comes in some 30 miles south of Albuquerque, I believe. I am not quite sure about the distance in there.

Q. Mr. Murphy, the present main line of the Santa Fe road runs from Chicago to Kansas City, from there westerly through Kansas and southwestern Colorado, thence over the Raton Pass and the Glorieta Pass, on through Albuquerque, and so on through Arizona, and crosses the Colorado River at the Needles, doesn't it?

A. Yes, sir.

Q. Is there a good deal of mountain climbing on that road?

A. Yes, sir; two mountain divides to go over.

Q. You go over the Raton Pass, the Glorieta Pass, and then
1671 you also go over what is called the Continental Divide, don't you?

A. Yes, sir; that is west of Albuquerque.

Q. And then isn't there a lot of climbing down around Flagstaff?

A. Yes, there is a good deal of adverse grade in there.

Q. In looking at their folder I see that they show altitudes on the map.

A. Yes.

Q. How about this cut-off you speak of? That, you say, leaves the Santa Fe line running south from Albuquerque, about 30 miles south of there?

A. About 30 miles I should think it is. I would not be quite sure of the distance.

Q. At what place does it leave the line south of Albuquerque?

A. That cut takes off from the road that runs to Deming. The main line goes through Albuquerque, and the line to Deming runs from Albuquerque down the Rio Grande to El Paso, and to Deming, and about 30 miles south of there is where this Belen cut-off comes in from out in Kansas and crosses this Rio Grande road division, and picks up the Santa Fe again at a certain distance out in New Mexico; leaves out Albuquerque altogether.

Q. It goes west of Albuquerque?

A. Yes—south of Albuquerque.

Q. South of Albuquerque. By west, I mean toward California, on the main line?

A. Yes, where it connects up with the Santa Fe line. I don't know the distance exactly.

Q. What is the grade or the character of the line of this Belen cut-off? Is that a high-grade or a low-grade road?

A. That was constructed for a low-grade line, and is a low-grade line. I don't know the details of it, but I do not think they have anything on there to exceed one per cent, and I don't know as
1672 they have anything that is one per cent grade. The Santa Fe people can give you that information better than I can.

Q. How does that line compare with the line over the Raton Pass?

A. Oh, it is entirely different. It is a low-grade line. It was built for them to avoid those heavy mountain climbs.

Q. That line leaves the main line of the Santa Fe where, on the east?

A. Somewhere in Kansas: I don't remember the point.

Q. What is the fact as to this Santa Fe line from Chicago to Deming? Is that a low-grade line all the way?

A. Yes, sir; so considered now since they have got their Belen cut-off in.

Q. That is what I mean, since the Belen cut-off was built?

A. Yes, sir.

Mr. LOVETT. That is from Chicago to Deming?

WITNESS. Yes, sir.

Q. All the way from Chicago to Deming the Santa Fe does not have to climb over a mountain, does it?

A. No, sir; not what we call mountains.

Q. What is the distance from the Needles to Bengal, where it is proposed to connect up this line that is under consideration?

A. 90 miles, I think.

Q. 90 miles west of Needles?

A. 90 miles west of Parker, where it crosses the river.

Q. West of Parker?

A. Yes.

Q. How far is that from Needles?

A. I should imagine it is possibly a hundred miles or such a matter. From Needles they climb out of the river-bottom and go over a divide, which we avoid by going from Parker.

Q. That is what I want to get at. Then, Mr. Murphy, if this
1673 Phoenix & Eastern had been constructed on up to Deming, on the line that you surveyed, what would have been the character of the Santa Fe's line to California from Chicago by way of the Belen cut-off and Deming, from Phoenix, Parker, and Bengal?

A. They would have had a low-grade line all the way through with the exception of their little drop-off in California, down to San Bernardino, that they could not overcome.

Q. They strike the present through line east of that, don't they?

A. Yes, sir; some distance east of Barstow.

Q. But the Santa Fe line through that way, instead of climbing over mountains, as it does in the present route, would be low-grade line all the way to California?

A. Yes, sir.

Q. Was or was it not contemplated at the time you were constructing the Phoenix & Eastern that you would build up through the gap there to Deming?

A. Yes, sir, we did intend to do it.

Q. Now, what would be the distance from Chicago to California by that low-grade line as compared with the present main line of the Santa Fe? What would be the difference?

Mr. LOVETT. From Chicago to where?

Mr. SEVERANCE. To California, to the junction at Bengal. What would be the difference?

A. As compared with the new cut-off or their main line, I suppose anywhere from 125 to 150 miles longer, probably; something like that. I haven't the exact figures. I would have to look them up.

Q. The low grade line around by the Belen cut-off and Deming and around that way would be perhaps 125 to 150 miles longer
1674 than the present line?

A. Something like that, I should think.

Q. How would it compare with the present line, taking into account both the grades and the distance, as a line over which to move through traffic?

A. There is no comparison, in my judgment.

Q. What do you mean by that?

A. I mean that the low-grade lines we are talking about would be far superior.

Q. In spite of the distance?

A. Yes, it would be by far the best low grade line, in my judgment, to the Pacific coast.

Q. To the Pacific coast?

A. Yes, sir; in my judgment.

Q. And in that comparison do you include the Southern and the Union Pacific and the Great Northern and the Northern Pacific?

A. Yes, sir.

Q. Now, Mr. Murphy, after you got to work constructing that line toward the east from Phoenix, did you have any difficulty of any sort?

A. Yes, sir.

Q. Outside of the natural difficulties of constructing a railroad?

A. We had a good deal of difficulty.

Q. What was the nature of it?

A. Well, there was contention for the country.

Q. Contention with whom for the country?

A. I think we were interrupted or interfered with by an organization known as the Arizona Eastern Railroad Company.

Q. Who owned that?

A. I believe the Southern Pacific.

Q. How did that interrupt you or interfere with you? Just state in general how it was done.

A. Well, we built about 80 miles of road there uninterruptedly, and about the time we completed the survey through the can-
1675 yon to Deming it seems the Arizona Eastern was incorporated; and one day, very much to our surprise, we found a whole lot of graders had been shipped in across the country in some way, that were put up on the side of the mountain above us, and blasted rocks down on our work, taking possession of our right of way.

Q. What happened then?

A. We enjoined them, and then we had it rough-and-tumble from that time until——.

Q. What was the result of the injunction suit?

A. The grand wind-up was that our rights were sustained in the supreme court of the territory and we were left in quiet and peaceful possession of the road as far as Dudleyville. In the meantime other parties had appropriated the canyon above and did a lot of work up in there, and while we were occupying that position the understanding referred to in this agreement was reached and the road was turned over to the Southern Pacific.

Q. How long did that litigation last?

A. Oh, I should judge a good portion of a year.

Q. Why was that road turned over to the Southern Pacific, if you know?

A. That I don't know of my own knowledge. I don't know whether the Santa Fe got tired of fighting or not.

Mr. LOVETT. The defendants object (as the witness says he does not know of his own knowledge) to any guesses on the proposition.

Q. Where was that deal made by which this road that you were constructing through there was turned over to the Southern Pacific?

A. In New York, I believe.

1676 Q. Who made it?

A. The Santa Fe officials here.

Q. Who? Do you know what individuals?

A. I think probably their Executive Committee in connection with it. I imagine, Mr. Morawetz, at that time the chairman of the board, or the general counsel. I don't remember, but I suppose he——

Q. Now, weren't you on here in New York frequently during those negotiations?

A. Yes, sir.

Q. How much of your time do you spend in New York?

A. I spend now about pretty near half of my time here, coming and going. I am not here continuously half the time.

Q. During the progress of those negotiations weren't you consulted about them?

A. Not very much. Occasionally I got a little inkling of what was going on, but I was not a party to the negotiations at all.

Q. You, yourself, never had any conversation with any Southern Pacific people about it?

A. No, sir; no, not in connection with the contract arrangement at all.

Q. Well, in connection with the construction of that road did you ever have any conversation with any of the Southern Pacific people?

A. Oh, I presume likely I have had some time or other. Yes, I know I have, because I sent the chief engineer down—you mean here in New York?

Q. Yes.

A. No, I did not, unless I might happen to have met some of the officials or management, but not in any way pertaining to these negotiations.

Q. Now, the Southern Pacific had its own entrance into Phoenix before they bought this line, hadn't they?

A. Yes, sir.

1677 Q. They had that little short line of 30 miles?

A. Yes, sir.

Q. What advantage is there to the Southern Pacific in possessing that Phoenix & Eastern running out 80 miles or so east of Phoenix, outside of preventing its construction down to Benson or to Deming?

A. Well, there is a good deal of advantage. Of course they control very large, valuable territory, that is full of very important and growing traffic.

Q. That is what I wanted to bring out. The Santa Fe are presumably out for business in that country, aren't they?

A. Well, we are working pretty hard for it.

Q. What is the nature of the country through which the Prescott & Eastern runs?

A. As far as it goes?

Q. As far as it goes, yes; just take it as far as it goes.

A. Well, a person unacquainted with the country would not think it a very inviting country from a business or traffic standpoint or any other point.

Q. But you are acquainted with the country?

A. Yes.

Q. Now, what do you say about it?

A. I say beyond question it is one of the most important sections of Arizona.

Q. For what purposes?

A. Agriculturally speaking and for the minerals. I think they have what will eventually make their larger copper-producing mines in Arizona.

Q. What about those towns that you speak of, that it runs through?

A. Tempe is an agricultural town, about 9 miles from Phoenix, and Mesa is another one—a very growing point. It is from that point that the road leaves to go out to the Roosevelt dam.

1678 Q. When was the Roosevelt dam projected?

A. About three years ago. The first conception of the scheme was ten or twelve years ago, by outsiders, but I think the Government took hold of it three years ago, or something like that—three or four years ago.

Q. The Government had taken hold of that prior to December, 1906, hadn't it?

A. Oh, yes, sir; it was well along with the work.

Q. How far from Mesa is the Roosevelt dam?

A. About 60 miles. I think it is about 60 miles.

Q. And what stream is to be dammed up by the Roosevelt dam?

A. It is at the junction of Tonto Creek with the Salt River, I believe; about the juncture of Tonto Creek and Salt River, as I remember.

Q. The Salt River is the stream that flows through Phoenix, isn't it?

A. Yes, sir.

Q. How is the agriculture of that country? Is it by natural rainfall or irrigation?

A. Principally irrigation.

Q. In a general way what is the extent of the development that is proposed by the Roosevelt dam?

A. I think they expect to bring under the irrigating system there something like 250 or 300 thousand acres of land, including what they will serve by the electric power they are generating out in the valley.

Mr. LOVETT. I object to all the testimony of this witness about the purposes and policy of the Government and to all his guesses and speculation about the results of the Roosevelt dam, in Arizona and California.

1679 Mr. SEVERANCE. You ought to be glad that your lines will benefit from it.

Mr. LOVETT. Yes.

Q. In view of Judge Lovett's objection I will examine you a little more in detail about that matter. The Roosevelt dam is being constructed in a canyon just below the junction of these streams you mention, isn't it?

A. Yes, I believe so.

Q. You have been there?

A. Yes, sir, I have been there.

Q. So have I.

Mr. LOVETT. I object to the leading of the witness.

Q. Now, you spoke of the development of horsepower. How much horsepower is going to be developed there, for electric lighting, etc.?

A. I would not like to say that. I could not speak definitely about it.

Q. Can you tell generally about how much?

A. I think ten or fifteen hundred thousand horse power, to hear them talk about it, but then I don't know.

Mr. LOVETT. I object to that, because the witness says he does not know.

Q. Have you paid some attention to the question of the construction of the Roosevelt dam?

A. In a general way, yes, sir.

Q. Is that something that interests you in a business way?

A. Very much.

Q. Why?

A. It means the filling up of that country with a very large population.

Q. What kind of country is that? What can be raised in this valley that it is proposed to irrigate?

A. Everything that you can raise in a semi-tropical country. They grow oranges in Salt River Valley, and they are supposed to be superior, I think, to any that are grown anywhere in the country; and from that they go into everything.

Q. What other kinds of fruit?

A. Olives, figs, dates.

Q. And pears?

A. Oh, yes, pears and peaches.

Q. What about alfalfa?

A. It is very desirable country for stock raising purposes and stock growing. Alfalfa is a great product in the valley, four or five crops a year. I am not much of a farmer.

1680 Q. Do you know where the diversion dam is being built along the Salt River below the Roosevelt dam?

A. Yes, sir.

Q. How far below the Roosevelt dam is that?

A. Oh, that must be about fifty miles, I should judge.

Q. What kind of a channel do they use to carry the water from where it is stored behind the Roosevelt dam down to the diversion dam?

A. They let it into the river, with the exception of what they take out for their power, as I understand it.

Q. They use the Salt River valley down to the diversion dam?

A. Yes, sir.

Q. How far is the diversion dam from Phoenix?

A. It is about eighteen miles: I don't know but twenty miles; I don't know.

Q. Is that diversion dam completed?

A. Yes, practically; I think it is completed, yes, and used.

Q. How is water distributed in an irrigation project of that kind?

A. Well, through their main and lateral canals.

Q. And those canals leave the river behind the diversion dam?

A. Yes, sir.

Q. And how much land did you say was going to be put under water by that scheme?

A. By power and all, I think between two hundred thousand and three hundred thousand acres.

Q. You say partly by power. What do you mean by that?

A. Why, they generate power and they carry it out into the valleys where they cannot reach it with their irrigating ditches, and pump the water. The water is sufficiently near the surface for them to reach it by getting cheap power.

Q. And they are putting in a big electric plant at the dam, 1681 aren't they?

A. Yes, sir.

Q. To generate power?

A. Yes, sir.

Q. Now, is this land that is to be reclaimed in this way by the Roosevelt dam tributary to this Phoenix & Eastern road?

A. A good portion of it; quite a good deal of it.

Q. Aside from the agricultural productions tributary to that line, what other traffic is there, or would there have been for it if it had been carried through to Benson?

A. Principally mineral—that is, the traffic that follows the development of a mining country, is created by it. There is a good deal of money—when we started to build the road there was a very large amount of money started in there, and a very large amount of development.

Q. Development in what way?

A. Opening up of their mines, prospecting, and getting ready for large operations.

Q. Along your projected line?

A. Yes, sir. There is a good deal of it going on now.

Q. Well, was that done along the line that you built, or beyond?

A. Well, some of it along the line that we built.

Q. Any beyond?

A. Yes; there is some in advance of the road, where the road is built.

Q. What is the shortest route into southern Arizona from Los Angeles at present?

A. Over the Southern Pacific.

Q. What is the great wholesaling town for that region?

A. Phoenix.

Q. I don't mean locally, but on the business that comes from some larger place.

A. Well, Los Angeles, largely.

1682 Q. Los Angeles.

A. Arizona does a great deal of business with the East, with Chicago, New York, Kansas City and St. Louis.

Q. How will the new line, the Santa Fe, when you get it completed up to Bengal, compare in length into Phoenix with the Southern Pacific?

A. There will be very little difference in the length of the line. It would afford the most direct route.

Q. The most direct route?

A. I think so, yes, sir.

Q. How would the distance into Benson, and thence to Bisbee and Douglas, and these places, by the Santa Fe line, if it had been continued down to Benson, compare with the Southern Pacific?

A. Well, it would have been considerably longer.

Q. How would it have been as to grades?

A. Well, barring one point in and about Benson, I would think probably the Southern Pacific might have the better grade. But, take that situation into account and it is possible to get a more uniform, better alignment and better grade that way into El Paso than the present line that the Southern Pacific is using, but it would be longer.

Q. That is, the Santa Fe going on in connection with the Phelps-Dodge road?

A. In connection with the El Paso and Southwestern, yes, sir.

Q. A better line?

A. Yes; considerably longer of course to get back up into the Santa Fe's territory. I do not think the Santa Fe would ever use that as a through line, around that way. I do not think the Santa Fe ever would.

Mr. LOVETT. Where is that? A through line where? Where was that through line?

1683 Mr. SEVERANCE. The line by Parker and then running on down through to Benson.

Mr. LOVETT. The line by where?

Mr. SEVERANCE. Where it crosses the Colorado at Parker and Bengal, then down by Phoenix and the line through Benson on to El Paso.

Q. Through line to where?

A. Through line to the East.

Q. That is, they would not run down and take their line back to El Paso?

A. At El Paso, and come back up north to the Belen cut-off.

Q. I see.

A. They would use the Deming line.

Q. If your line had been continued?

A. Oh, yes.

Q. Now, Mr. Murphy, you have been railroading how many years?

A. Well, in a small way since about 1890.

Q. And you are still the president of the Ash Fork line?

A. Yes, sir.

Q. What is your opinion, as a railroad man, as to whether that Phoenix and Eastern was a valuable line for the Santa Fe to have retained.

Mr. LOVETT. I object, because it has not been shown that he is competent as a railroad expert to testify as to an expert opinion.

Q. Go ahead and answer.

A. Well, I think it one of the most important connections the Santa Fe could possibly have. I have always claimed it, and believe I am right.

Q. Were you ever told by any Santa Fe officials—if so, by whom—the reason why that line was sold to the Southern Pacific?

1684 Mr. LOVETT. The defendants object to that as hearsay, and not showing that the Santa Fe official making the statement had any authority to speak for the company.

A. Why, I could not very well particularize. I understood, and it was claimed, that it was penetrating Southern Pacific territory, and that it was something that they had better give up—something to that effect. I do not know whether I am right about it or not.

Mr. LOVETT. I object to that answer because it does not even specify who said that or how he heard it.

Q. Judge Lovett objects that you have not stated who said that to you, in effect. Can you state who in substance stated that, among the Santa Fe officials?

Mr. LOVETT. I make the same objection as before.

Q. I will just add something to my question. In your answer, Mr. Murphy, you said that you had been led to understand, by some of the Santa Fe officials, that it was claimed that it was penetrating the territory of the Southern Pacific. What do you mean? Claimed by the Southern Pacific that they were penetrating their territory?

A. Yes, sir.

Mr. LOVETT. I object to the question and answer as hearsay.

Q. And who among the Santa Fe officials made that statement, if you remember?

A. To answer that I would have to associate with it, if I did at all, the fact that there were a good many features entering into the thing, and that that was probably one of them.

Q. What were the others?

1685 A. Well, the general relationship between the companies; and my impressions in regard to that matter were formed largely from talk I had with Mr. Morawetz.

Q. He was then chairman of the board?

A. Yes, sir.

Q. Or of the Executive Committee, I mean?

A. Yes, sir.

Mr. LOVETT. I object to what his impressions were and to all conclusions of the witness.

Q. Mr. Murphy, was that the substance of what Mr. Morawetz said to you—without repeating his words?

Mr. LOVETT. I object to that upon the same ground. It calls for the opinion of the witness.

A. In connection with the other elements that went into it, yes, sir.

Q. What other elements?

A. Well, there were some unsettled questions in Northern California that I think are referred to in this agreement, were there not? Quite a number of matters that entered into this final adjustment of this business in the turning over of the road to the Southern Pacific.

Q. In Northern California, you mean the amalgamation of the Santa Fe and the Southern Pacific lines up there, do you not?

A. I think that that refers to it—that agreement. I think the agreement covers that. That would be the best evidence that I could—I would have to go there for my information.

Mr. LOVETT. I object to the answers of the witness to the last two preceding questions, because he is not purporting to state what anybody said to him, but his own inferences and conclusions from an unstated source.

1686 Q. Mr. Murphy, you were speaking a moment ago with reference to certain California lines. You mean the line by Parker to California, from Prescott; is that what you mean?

A. No, sir; I meant the roads up in Northern California.

Q. I don't see that referred to in the agreement.

A. I don't know as it is.

Q. What you mean is, they were under consideration at the same time?

A. I supposed they were. I am not very familiar with those documents; in fact I don't know that I ever read them.

Q. I think I see what you mean. There is a statement here in Article 1 of complainant's exhibit 104, referring to the sale of this company to the Southern Pacific: "Such sale shall be completed simultaneously with the execution of a certain trust agreement between the Southern Pacific, the Atchison Company and the Farmers' Loan & Trust Company, a corporation, of the State of New York," which refers to the Northern California matter.

A. These were all features, I think, that entered into that.

Q. Now, the Rock Island at present run trains through to California, do they?

A. I think so.

Q. How do they get into California, over what line?

A. Over the Southern Pacific, I think.

Q. From what point?

A. From Chicago, I believe.

Q. I know; but where do they strike the Southern Pacific?

A. At El Paso, as I understand it.

Q. Does the Texas & Pacific get to California now?

A. I don't think they run any through trains to California.

Q. But they go to El Paso?

A. I believe so.

1687 Q. If the Santa Fe had retained the Phoenix and Eastern and built the little link of 80 miles down to Benson, these lines from El Paso would have had another route through to California by trackage arrangements, wouldn't they?

A. If they cared to make it, yes, sir.

Mr. LOVETT. From where? From Benson? How would they get to Benson?

Mr. SEVERANCE. Get to Benson by the El Paso and Southwestern.

Mr. LOVETT. I understood your question to be if the Atchison had kept the Phoenix and Eastern and then built it to Benson——

Mr. SEVERANCE. That is right.

Mr. LOVETT.——that it could have gotten these trains. How could it get them to Benson?

Mr. SEVERANCE. By the El Paso & Southwestern——

Mr. LOVETT. Oh, yes.

Mr. SEVERANCE. ——for which he says they had a traffic arrangement made with them.

Q. Judge Lovett did not seem to quite understand what I was getting at there. As I understand, the Rock Island by going over the El Paso & Southwestern to Benson——

A. No, they go——

Q. I understand. I am speaking about what could be done if you retained that and built your little 80 miles of low grade line to Benson, the present terminus of the Phoenix & Eastern; that would have made an outlet for the Rock Island independent of the Southern Pacific over the El Paso and Southwestern to Benson, over the Santa Fe through to the coast?

1688 A. Yes, sir.

Q. The same with the M., K. & T.?

A. Yes, sir; anything that connected up with the El Paso and Southwestern at El Paso would have had that opportunity.

Q. I didn't mean the M., K. & T.; I meant the Texas & Pacific.

A. Yes.

Q. Mr. Murphy, under the present railroad situation, what access has Phoenix and that region in there to the Gulf ports?

A. Well, they go out over the Southern Pacific to Maricopa and then over the Southern Pacific to Galveston.

Q. Have they any other access to Gulf ports?

A. No, sir, not unless they come up over the Santa Fe and work down through.

Q. Unless they go up to the main line of the Santa Fe and then come back over the——

A. Yes, sir.

Q. ——Santa Fe, Prescott & Phoenix?

A. Yes, sir.

Q. That is a very roundabout route, isn't it?

A. Yes, sir.

Q. What access could they have had to Gulf ports independent of the Southern Pacific, if the Santa Fe had retained that line, the Phoenix & Eastern, and built the connection down to Benson?

A. They would have had connection at El Paso with all of those eastern roads, aside from their own connections.

Cross-examination by Mr. LOVETT:

Q. You didn't mean, did you, Mr. Murphy, that the Rock Island system runs its own trains through to California? You mean that they run a train to El Paso and there it is turned over to the Southern Pacific?

A. Yes, I imagine that is the way it is done. It is called
1689 the Rock Island train, I suppose. I wasn't pretending to answer that technically.

Q. And you don't pretend to say that they have any running rights over the Southern Pacific?

A. Oh, no.

Q. Where does the Rock Island to El Paso last cross the Atchison, or any Atchison line?

A. I don't think it has any connection. I don't think it crosses. I am not quite sure.

Q. Doesn't it north of El Paso, in New Mexico?

A. Oh, I think it does, yes. There is a point in there. I am not familiar with the Santa Fe line west of El Paso. I would not pretend to speak authoritatively about it.

Q. You say you are not familiar with the Santa Fe line west of El Paso?

A. East of El Paso.

Q. You do know, don't you, that the Rock Island, in reaching El Paso, crosses the Santa Fe line north of El Paso 100 or 200 miles?

A. I think it does.

Q. Well, if the Rock Island wanted to run its trains over the Santa Fe rather than the Southern Pacific it could do it from that junction, couldn't it?

A. Yes, sir, if they wanted to climb over the mountains—over the Santa Fe's present road grade.

Q. They would have the short line that way, wouldn't they?

A. I think very likely they would.

Q. Mr. Murphy, I will ask you to mark on complainant's exhibit No. 107 what you said would have been a low-grade line between Chicago and California if the Atchison system had extended by construction to Benson—that is, had extended the Phoenix & Eastern to Benson and from Benson to Deming.

Mr. SEVERANCE. He didn't state it was from Benson to
1690 Deming. I object to that statement as not a correct statement of the witness' testimony. He said they projected one line down to Benson and another line on east.

Q. I will ask you to mark on that map what you described as the low-grade line between Chicago and California, as against the present line of the Atchison, whatever may have been its route. Mark it in red ink and put crosses on the red ink line, that is unconstructed. You needn't mark any constructed line.

A. I have already marked part of it.

Q. I want you to mark in red ink the unconstructed portions, and then describe the other afterwards.

A. You will have to give me a map that shows the Santa Fe road here if you want me to mark what you want, or else you will have to show me where it is and then I will connect it up for you.

Q. I don't know just what——

A. Well, if you haven't got it there it is pretty hard for me to determine. Can you pick out the Santa Fe lines here in New Mexico?

Mr. SEVERANCE. I cannot on that map, no.

WITNESS. Neither can I. Here is Belen, right there. It goes to here, and then they have got no more railroad. Now, I am not sufficiently well acquainted with that territory to lay it out.

Q. Can't you lay it out approximately in New Mexico?

A. Well, not further than it shows on the Belen cut-off here. I can get you up that far. Now, if you will give me a map that shows the Santa Fe line east of there I will put that connection in.

Q. Mr. Murphy, in your direct examination you testified that if the Atchison had retained the Phoenix & Eastern and had
1691 constructed certain unconstructed lines, that it would have had a low-grade line from Chicago to where?

A. From Chicago to——

Q. To California?

A. To California—not taking into account their getting down off of the mountain east of San Bernardino.

Q. They would have had a good low-grade line from Chicago to say Bengal, California?

A. Yes, sir.

Q. That would have been about 125 miles longer?

A. Well, 125 to 150, as near as I could call it to mind.

Q. Will you describe, commencing at Chicago, the route of that low-grade line, or what would have been a low-grade line, going from Chicago to the first point where any construction was to be done, by the principal cities?

A. I could only refer you to the Santa Fe railroad, that is all. I could not give you any better description than that. They would utilize the Santa Fe railroad.

Q. Leaving Chicago, where would you go by the Santa Fe? To Kansas City first?

A. Yes, sir.

Q. Thence the next principal junction point?

A. Why, to the point where they leave their main line to take this new Belen cut-off.

Q. Where is that?

A. I think about Hutchinson: I am not quite sure.

Q. About Hutchinson, Kansas?

A. Yes. I am not quite sure about that.

Q. Then they would construct from about Hutchinson, Kansas, to where?

A. Oh, no; it is already constructed.

Q. From Hutchinson it is already constructed clear to where?

1692 A. It is constructed clear to Belen.

Q. Clear to Belen?

A. Yes, sir, now—or wherever they leave their main line in Kansas. I am not sure that it is Hutchinson. The maps would show that.

Q. When was the Belen cut-off completed?

A. Only recently. I was over it in a special train in June.

Q. Now, to describe that line, don't you know where the easterly terminus of the Belen cut-off is?

A. No, I do not.

Q. Do you know the length of the Belen cut-off?

A. Not exactly, no; not definitely. I think I could get those figures, though, very readily for you.

Q. Can't you approximate the length of the Belen cut-off?

A. Well, I suppose I ought to be able to, but I can't.

Q. From the Belen cut-off where is the next point of constructed road?

A. The next that is constructed or unconstructed?

Q. Constructed.

A. Why, it is constructed to Deming.

Q. And from Deming?

A. From Deming it is unconstructed now. Since the Southern Pacific has acquired the Phoenix & Eastern, why, of course, it is unconstructed clear to Phoenix; but before the Southern Pacific acquired the Phoenix & Eastern there was a gap in there of about 240 miles.

Q. Don't you know as a matter of fact, Mr. Murphy, that the Santa Fe Company never contemplated the use of that line that way as a transcontinental line?

A. I know quite the contrary.

Q. You do, eh?

A. Unless they misrepresented the facts to me.

Q. Who?

A. The Santa Fe officials. I don't know why they would

1693 let me spend several millions of their money toward building a railroad unless they intended to use it.

Q. For their transcontinental business?

A. Yes, sir.

Q. You considered, then, that you were building the Phoenix & Eastern and this other line as a part of the transcontinental line?

A. Yes, sir, after they got started with it. I first started the building of the railroad to Benson, on my own account, irrespective of the Santa Fe, and then the Santa Fe took it over, and they concluded to build a low grade transcontinental line. The low grade features of it east of El Paso, or east from Deming, I have accepted in a general way from the Santa Fe's engineers.

Q. Do you know the length of that line from Belen to Deming?

A. Belen to Deming? Not exactly. Approximately.

Q. What is it approximately?

A. I would rather prefer to refer to the maps. You have got a map there that has a scale on it and shows the distances there, and you can see exactly. I cannot carry in mind those distances.

Q. You wouldn't like to undertake to state those distances?

A. Well, no, I wouldn't. You have got the positive evidence of it there. It is better than anything I could say.

Q. I thought you knew and that you might state it in a few words without the necessity of calculating it on the map.

A. I would if I did know exactly.

Q. How far is it by the lines that you located from Deming to the Eastern terminus of the Phoenix & Eastern?

A. About 240 miles.

Q. You say that was a low grade line?

A. Yes, sir. Practically a water grade line all the way.

1694 Q. No rough work between the present terminus at—what is the name of that place?

Mr. SEVERANCE. Dudleyville, or Winkelman?

Q. No rough work between Dudleyville and——

A. A great deal. Very heavy work. Very rough work.

Q. But it was practical to get low grades in there, was it?

A. Yes, sir, could get low grades easier than you could get high grades.

Q. Of what other line does this Belen cut-off form a part?

A. The Santa Fe.

Q. Is it used for that transcontinental business?

A. They are beginning to use it, I believe.

Q. Where does it go after it reaches Belen? Which way does it go in moving west?

A. I think it picks up with the main line at a point somewhere near Rio Puerco; I don't know just how many miles west of Belen. It picks up with the main line there.

Q. By the main line you mean the line by way of Albuquerque?

A. No, west of Albuquerque; Santa Fe Pacific; leaves Albuquerque out.

Q. Why was the Belen cut-off constructed, do you know, Mr. Murphy?

A. I understood that it was to avoid the Trinidad mountains at Raton and the Glorieta Divide.

Q. It was constructed in the interest of the present main line, Santa Fe main line, to California, was it not?

A. I think so; but at the time that that was being constructed, and at the same time it was being considered, we were considering this other line too and building it.

1695 Q. But don't you know that the Belen cut-off—the construction of that—was not prompted at all by the line you mentioned?

A. I don't think it was, particularly. I think that that was one feature that made the low-grade line that I am talking about especially attractive, since they were going to go to the expense to put in that other line.

Q. Wasn't it intended to extend the Belen cut-off eastwardly to the connection with the line running up through Texas?

A. I am not familiar with that feature of the Santa Fe's plans.

Q. The Pecos Valley line?

A. I say I am not familiar with that feature of the Santa Fe's plans, but that was my understanding in a general way.

Q. That is, it was your understanding that it was constructed with a view to extending it across to the Pecos Valley line?

A. Why, that Pecos Valley is called the Panhandle line, is it?

Q. It runs through what is called the Panhandle of Texas.

A. I think it is that line. They evidently intended to have their connection through there.

Q. The object of that was to avoid the high grades—that is, of Colorado and the Glorieta Pass?

A. Yes, sir.

Q. By extending that Belen cut-off and connecting with the Pecos valley line of the Atchison system?

A. I think so, yes, sir.

Q. And it occurred to you that the Belen cut-off might be used in connection with the other low grade line down by way of Deming?

A. Yes, sir; it not only occurred to me, but it was a matter we discussed a good deal with the Santa Fe officials.

Q. Which Santa Fe officials?

A. All of them—Mr. Ripley and Mr. Morawetz and several other directors.

1696 Q. You were suggesting it to them, were you?

A. Yes, sir, if necessary.

Q. Do you know whether they ever seriously considered it?

A. Well, I think they did to the extent of letting me spend, as I say, three or four millions of dollars of their money in that direction.

Q. Your idea is that the extension of the Phoenix & Eastern would have been wasteful without the use of the Belen cut-off as a transcontinental line?

A. No, sir; quite the contrary. I think it would have been extremely valuable.

Q. Wouldn't they let you spend that money for them without reference to the Belen cut-off?

A. No; because they thought that we would get the benefit of the low-grade line that that was going to afford them.

Q. Aren't you a little inconsistent in saying that they must have intended that you should use the Belen cut-off, otherwise they wouldn't let you spend the money in building the Phoenix & Eastern?

A. No, not at all. It would not have been attractive to them to have gone down into that country there. They were always confronted, as they represented to me, with the fact that they were being charged with trespassing on Southern Pacific's territory in going down there; but in building the low-grade transcontinental line they were protecting their own interests and enhancing the value of their own property.

Q. Will you be good enough to say which you wish us to understand—that they were building the Phoenix & Eastern for the local business, or were building it because of the Belen cut-off and that it would have been a waste of their money to build the
1697 Phoenix & Eastern unless it was intended to use it in connection with the Belen cut-off?

A. It would not have been a waste of their money to have built it for either purpose. I think it would have been to their advantage to have built it exclusively for the low-grade line service of their transcontinental business, if they hadn't the local business; and I believe that there will be sufficient business developed along that line to justify its construction, without any transcontinental business.

Q. You think it would have been a good proposition for both purposes?

A. Yes sir, I do; I don't think there is any doubt about it.

Q. Are you familiar with the contracts under which the Phoenix & Eastern was sold, Mr. Murphy?

A. Yes, sir—well, in a way. I don't know that I am in detail.

Q. Do you know that the Atchison reserved trackage rights over it?

A. Yes, sir.

Q. And that the Southern Pacific agreed to give it trackage right over the Southern Pacific from Benson, or Lordsburg, or some point in that locality, to Deming?

A. Yes, sir.

Mr. SEVERANCE. Do you mean Benson? You said Benson. You mean Deming.

Q. I mean from the present terminus of the Phoenix & Eastern to a connection with the Southern Pacific Railroad——

A. Yes, sir.

Q. ——at Benson or Lordsburg, or somewhere in the locality of Lordsburg.

A. Yes, sir.

Q. Thence over the Southern Pacific.

Mr. SEVERANCE. You don't mean Benson?

WITNESS. Deming; to Deming.

1698 Mr. SEVERANCE. Benson is down south, the other connection.

Q. I meant Bowie, instead of Benson—from Bowie or Lordsburg.

A. Yes, sir, I think that did refer to the connection in there instead of the other.

Q. And that the agreements embraced contracts by which the Atchison is entitled to trackage from Phoenix over the Phoenix & Eastern?

A. Yes, sir.

Q. And any extension of the Phoenix & Eastern to a connection with the Southern Pacific Railroad at or in the vicinity of Lordsburg?

A. Yes, sir.

Q. And thence over the Southern Pacific Railroad to Deming?

A. Yes, sir.

Q. And that the Southern Pacific, on the other hand, is entitled to trackage over the Atchison lines from Mojave, by way of Bengal and the new line that is under construction from Bengal to Wickenburg?

A. Yes.

Q. About what is the length of the line under construction from Bengal to Wickenburg by the Atchison system?

A. About 200 miles.

Q. About what is the distance via the Atchison from Mojave to Bengal?

A. I would have to refer to the maps.

Q. You cannot give those figures?

A. No, I cannot give you that distance.

Q. Isn't it true that if the Southern Pacific should use trackage over the Atchison under the agreements in evidence here, from Mojave to Phoenix and from Phoenix over the Phoenix & Eastern extension to a connection with the Southern Pacific Railroad
1699 at or in the vicinity of Lordsburg, that the Southern Pacific line from Mojave to El Paso would be very much shortened, and that very much better grades could be had than on the existing line?

A. I don't think there is any doubt about it.

Q. About what would the difference be in distance? Two or three hundred miles?

A. No, sir. I don't think as much as that. Are you talking now about San Francisco or are you talking about Los Angeles?

Q. I am talking about the Mojave junction.

A. Oh, the junction at Mojave. No. I don't think it would be that much. I do not suppose it would be over 75 miles; something like that. The map there would show that clearer than anything I could give you.

Q. You would have to approximate it. These agreements for trackage, made in connection with the sale of the Phoenix & Eastern stock, reserve the right of the Atchison system for a through line, and probably as good a through line as you would have built by way of Phoenix to Deming, do they not?

A. I think they do.

Q. And also provide for a through short line for the Southern Pacific from Mojave to El Paso?

A. I think they do—if it is ever built.

Q. The Atchison has the right, under the terms of the agreement, to acquire the line extending from Phoenix to the connection with the Southern Pacific Railroad east of Phoenix, has it not?

A. Yes, sir. I think so.

Q. When was the construction of the Phoenix & Eastern commenced?

A. Early in 1902, I think, actual grading was commenced.

Q. And how rapidly was it constructed?

1700 A. Well, I think they completed it along in 1904.

Q. That is, so much as was constructed was completed——

A. Yes, 96 miles. We had a good deal of heavy work getting into different points, and we were obstructed by washouts. Before we got our main bridges in we had a good deal of trouble.

Q. And how much remains to be completed did you say from Phoenix—from the present eastern terminus to the connection with where you cross the Southern Pacific?

A. The Santa Fe at Deming?

Q. No; where you cross the Southern Pacific.

A. Where we cross the Southern Pacific at Bowie, or where?

Q. Where it would intersect the Southern Pacific at Bowie or Lordsburg.

A. Well, it would intersect the Southern Pacific, as your line is operated now, to Globe, very materially. You have a line running up from Bowie to Globe. That is only a very short distance through the canyon there to connect with your Bowie line, comparatively speaking.

Q. That is, the Southern Pacific interests own a line extending northwesterly from Bowie?

A. Yes, sir.

Q. That is, you come within a very few miles of the eastern terminus?

A. I should say probably 30 or 40 miles through there. I don't know as it is quite that much.

Q. From the——

A. From the terminus of the Phoenix & Eastern road.

Q. To a connection with the Globe line?

A. Yes, sir.

Q. Well, suppose it were extended on to Lordsburg, how much would be constructed to carry the present eastern terminus to a connection with the Southern Pacific railway?

A. About 185 miles from its present terminus, I think, from

1701 Winkelman to Lordsburg.

Q. And about how far east of Lordsburg is Deming, do you happen to remember?

A. I think about 60 miles. I am rather more familiar with that territory in there than I am with the territory east of that.

Q. You testified about some obstruction encountered in the Gila canyon?

A. Yes, sir.

Q. There was a good deal of obstructing done by both parties to that controversy, wasn't there?

A. Yes; but then we built about 80 odd miles of heavy railroad before we first encountered any difficulties in the way of obstruction; and the other parties hadn't built any.

Q. They had located right of way, hadn't they?

A. No.

Q. Had not located right of way?

A. No, not until—the first we knew about their locating right of way, or anything else, was that they appeared on the scene with a lot of men interrupting us. That is the first we knew anything about it.

Q. You are something of a railroad man. It is not unusual for railroads to——

A. It was very unusual; very.

Q. That was unusual?

A. It was very unusual. We all thought so.

Q. For railroads to obstruct each other in their efforts to occupy strategic positions?

A. Well, I don't know as that is unusual; but I don't think they often do it in quite as highhanded a way as that appeared to me.

Q. You haven't heard what they say about you in that connection, have you Mr. Murphy?

A. Yes, sir, I have heard a good deal said about it.

Q. Did you commence the construction of that line in be-
1702 half of the Atchison, or on your own account?

A. No, sir; my first plans were individual.

Q. When did you sell to the Atchison?

A. Oh, I simply turned over, I think—if you would like the story I can give it to you right from start to finish.

Q. I probably would like all of it——

A. Then I would be very glad to give it to you.

Q. ——but the only question I ask now is when you sold to the Atchison.

A. Well, I sold it to them twice.

Q. Well, when did you sell it first?

A. For some reason or other they gave it back to me after they had gotten started. They seemed to be afraid that it was going to get them into trouble with somebody and they gave it back to me, and I started in——

Q. When was this?

A. That was early in 1902.

Q. You say the construction commenced in 1902?

A. Yes.

Q. And you sold it to them in 1902?

A. Well, there wasn't very much to sell. It was just the plan, more particularly, and the surveys and the right-of-way and the concessions that I had been able to get.

Q. So they bought from you in 1902?

A. Yes, sir.

Q. Then when did they give it back to you?

A. Oh, I think only a very short time, a few weeks, after the first understanding.

Q. And when did they buy the second time?

A. A very few weeks after they turned it over to me, when they found out we were going to build the railroad irrespective of them.

At least I tried to make them understand it, and I was awfully in earnest about it.

1703 Q. So, within the course of a few weeks, the Atchison bought it from you, gave it back to you, and then bought it a second time?

A. Yes, sir, and then sold it to you.

Q. How long afterward?

A. After we had built 80 or 90 miles– about 96 miles.

Q. Did you build the other line—what is the name of it?

A. Santa Fe, Prescott & Phoenix.

Q. Did you build that?

A. Yes, sir.

Q. When did you commence the construction of that line, Mr. Murphy?

A. About 1890.

Q. About 1890?

A. Yes, sir; I think somewhere along there.

Q. From where?

A. From Ash Fork.

Q. Where is Ash Fork? On the main line of the Santa Fe?

A. Yes, sir.

Q. And when was that completed through to Phoenix?

A. About 1895; in the spring of 1895.

Q. About what is the length of that line?

A. About 200 miles—196 miles.

Q. What previous experience did you have in the railroad business, Mr. Murphy?

A. Never had any.

Q. Your only experience in railroad construction and operation was with those two lines?

A. Oh, yes. I have been doing a little of something since. I built several branches for the Santa Fe. But I do not pretend to know very much about railroading.

Q. You do not pretend to know very much about railroading?

A. No, not very much about it.

1704 Q. Well, in your opinion, Mr. Morawetz and Mr. Ripley and the directors of the Atchison made a very great mistake in throwing away this low grade line from Chicago to California, didn't they?

A. Yes, sir. And I am not saying that as putting my judgment against Mr. Ripley's as a railroad man, either; but I am saying it because I know more about the country and the business of the country than Mr. Ripley did.

Q. You put it on that ground, do you?

A. Yes, sir.

Q. That you think you know more about the Arizona situation?

A. Yes, sir, very much.

Q. Do you think you know more about operating a transcontinental line and appreciating the value of a low grade line than Mr. Ripley?

A. No, sir.

Q. If you meant in answer to direct questions to say that Mr. Morawetz told you that one of the reasons why the Phoenix & Eastern stock was sold to the Southern Pacific was that the Southern Pacific, or anybody for the Southern Pacific, claimed that it was Southern Pacific territory—or whatever you said—will you please state when Mr. Morawetz told you that, and where?

A. It was in New York; and it was at some time when we were discussing the difficulties that we were having down there in Arizona when the Southern Pacific people were trying to prevent us from building that road.

Q. But the sale wasn't made until some time after you were left in peaceable possession of this canyon?

A. Well, the actual sale wasn't made, but the general understanding was had long before.

Q. When was it?

A. Not so very long before. It was under process of consummation: at least that was my understanding.

Q. Understanding from whom?

1705 A. Well, from Mr. Morawetz, if you please.

Q. Where was that? In New York?

A. Yes, sir.

Q. Can you say about when?

A. Well, not to give exact dates, no. I think you took the road over in 1907. I think your contract was closed somewhere along in May, 1907, and I think covering a period of several months prior to the papers being signed up it was generally understood that some kind of an agreement had been arrived at.

Q. A period of several months. About how many?

A. Oh, two or three months, may be; may be more. I wasn't in a position to know of all the——

Q. How long had you then been in peaceable possession of the canyon?

A. We have never been in peaceable possession of the canyon; never got into the canyon.

Q. Well, of the line that you were contending for.

A. Well, we were not even then in peaceable possession. Our interests were in jeopardy then.

Q. I thought you testified, in answer to direct interrogatories, that as a result of that litigation the Supreme Court of the territory recognized your right and you were left in peaceable possession?

A. I did, and I will explain that.

Q. When did that happen?

A. I will explain what I have reference to. We had some very heavy floods, and some of our embankments were washed away, and the Eastern Arizona had some grading men working up in the canyon, doing a small amount of work, and before we could get down there they moved down and jumped onto some ground we had to move our track on to, so that we were not in a position to locate our

1706 line where we should have located it, and we would have incurred a great deal of expense in putting it back where it was; so we entered into a little temporary arrangement with the Southern Pacific people who had gotten onto that piece of ground that we needed, and we were using their tracks: but the litigation that was in court, as I understand it, had already been settled. But that question remained there—that little bit of a gap that we had to use over their piece of track we were using.

Q. When did that happen, that you began to use that little piece of track?

A. Oh, that was in the spring of, I think, 1906. I don't know but that it was 1907—the winter of 1907.

Q. Wasn't it earlier than that?

A. Well, I would have to refer to the notes, or the records somewhere, to see it. It is very easily ascertained.

Q. I think you said the line was completed to its present terminus in 1904?

A. Yes. I didn't mean 1907. Well, it was completed—yes, it might have been 1907. It might have been, before you took it over, the latter part of 1906, in the winter.

Q. The contract was given December, 1906.

A. This was a washout, that is all. It had nothing to do with the completion of the line.

Q. When did hostilities on the ground and on the field cease?

A. Well, when we got our road completed to Winkelman.

Q. I want to fix the date that you mention as the date when you secured peaceable possession.

A. Well, I think it was in 1906 that the Land Office finally rejected your maps and accepted ours.

Q. The thing was in litigation, then, from 1904 to 1906?

1707 A. I think so, yes, sir.

Q. How far is the Southern Pacific Railroad from the Roosevelt dam about which you testified?

A. The main line?

Q. Yes.

A. The nearest point is about 60 miles, I guess. Their branch that runs up to Mesa I think is the nearest point that they have reached.

Q. Which way is the flow there from the Roosevelt dam: what is the general direction?

A. Well, in a southwesterly direction.

Q. Towards the Southern Pacific?

A. Yes, sir.

Q. Does the Phoenix & Eastern run south or north of the Roosevelt dam?

A. South.

Q. How far down does that irrigable section extend?

A. Oh, that land is susceptible of irrigation practically for 50 or 60 miles, clear to the City of Florence and past the City of Florence on the Gila. There is a very slight—well, you wouldn't notice when

you crossed the divide between the Gila and the Salt; you would in fact think you were going over level country.

Q. How far is Florence from the Southern Pacific?

A. I think about 25 miles, something like that; I don't know but more; 30, may be. I am not quite sure about that.

Q. North?

A. North, yes, sir.

Q. What is the nearest branch of the Southern Pacific to Florence?

A. The main line.

Q. There is no branch nearer Florence?

A. No. Well, now you have the Phoenix & Eastern: it goes right practically through it, or crosses on the opposite side of the river.

Q. Well, the Maricopa & Phoenix?

A. That doesn't go anywhere near Florence.

1708 Q. Lies west of Florence, does it?

A. Yes, sir; about 50 miles, something like that; 40 or 50 miles.

Q. You stated in your direct-examination that the right-of-way of the Phoenix & Eastern had been obtained to what point?

A. Practically from Phoenix to Benson.

Q. From Phoenix to Benson?

A. Practically, yes, sir.

Q. You mean the right-of-way over the government land?

A. And private land as well.

Q. So that while you incorporated the company and started the construction, practically all the work was done after the Atchison acquired the stock; is that true?

A. Yes, sir.

An adjournment was then taken until Monday, January 11, 1909, at 10:30 o'clock A. M.

1709 ROOM 508, CUSTOM HOUSE, NEW YORK CITY,
*Monday, January 11, 1909, 10:30 A. M.*

The hearing was resumed before the Special Examiner, Hon. Sylvester G. Williams, at the above time and place.

Present: On behalf of the Complainant: Mr. C. A. Severance. On behalf of the Defendants: Mr. R. S. Lovett, Mr. Walter D. Hines and Mr. John C. Spooner.

## FRANK M. MURPHY,

recalled, and his cross-examination resumed, as follows:

By Mr. LOVETT:

Q. Mr. Murphy, have you since recess refreshed your memory so as to be able now to name the junction, the easterly junction, of the Belen cut-off with the Atchison line?

A. I think it is Newton.

Q. It is what?

A. Newton, Kansas, I think.

Q. Isn't it Texico, just on the border of New Mexico?

A. I don't know whether you mean the Santa Fe main line; the Santa Fe main line does not run to Texico.

Q. The easterly junction of the Belen cut-off?

A. I think very likely. I think very likely it is. If I might refer to this map. I think it is, yes, sir.

Q. At Texico?

A. Yes, sir.

Q. And just on the border of New Mexico and Texas?

A. I think so, yes, sir.

Q. What passes on the Atchison transcontinental line are avoided by using the Belen cut-off?

A. What passes?

1710 Q. Yes, what mountain passes?

A. Why, they avoid the Trinidad Mountains, the Glorieta Divide.

Q. That is, they avoid the Raton pass?

A. Yes, very largely.

Q. Don't they avoid it altogether?

A. I am not familiar exactly with that survey, but I think immediately south of there, at that point somewhere, they have rather heavier grades than the other parts of that particular line.

Mr. SEVERANCE. I don't think he understands the question.

WITNESS. I don't think they avoid that elevation altogether. I am not quite sure. I am not quite clear about that territory in there.

Q. I don't think you understand the question: the question was whether, by using the Belen cut-off, and the line with which it connects at Texico, the Atchison does not avoid, altogether, in its transcontinental line, the Raton pass and the Glorieta pass?

A. Yes, they don't use it at all.

Mr. LOVETT. I have no further questions.

Re-direct examination by Mr. SEVERANCE:

Map of Atchison, Topeka & Santa Fe Railway system, 1908, marked Complainant's Exhibit 108 (Murphy).

Mr. SEVERANCE. Mr. Hines, this Exhibit 108 is the Santa Fe map that you furnished me, is it not, from the annual report?

Mr. HINES. It is a map from the annual report for the year ending June 30, 1908.

Mr. SEVERANCE. And it is supposed to show the lines of the Santa Fe?

Mr. HINES. Well, it shows what it purports to show.

1711 Of course, I can't vouch for it.

Mr. SEVERANCE. You mean for its absolute accuracy, I understand, but in a general way it shows the points between which the lines of the Santa Fe run.

Mr. HINES. Yes, that indicates that it shows the Atchison, Topeka & Santa Fe Railway system.

Mr. SEVERANCE. I will offer in evidence Complainant's Exhibit 108 (Murphy).

Complainant's Exhibit 108 faces this page.

Q. Mr. Murphy, I will ask you to take a pen and mark on this map the proposed line that you mentioned—the proposed line from Dudleyville to Deming.

A. Approximately, I suppose?

Q. Yes, as near as you can.

A. I don't remember whether we go on the south side of the Gila at this point here or at the north point.

Q. Well, mark it in a general way. I ask the witness to put crosses over this red ink line that he has just drawn.

A. If this line had gone direct to Deming, it probably might not have gone quite directly to Lordsburg.

Q. Now, is the black line, showing a line of railroad from Phoenix to Dudleyville, the line built by the Phoenix & Eastern that you testified about?

A. Yes, sir.

Q. Now, illustrate, so that it will go in the record, giving the termini of the various portions, where this low-grade transcontinental line that you have testified concerning would have run if the Santa Fe had kept the Phoenix & Eastern and had built the ex-
1712 tension to Deming. Where would it start on the east, that is, where would it join the present main line on the east?

A. I think at Newton, though I am not so familiar with the geography of that country in Kansas as I am with the country west. I am not really familiar with it at all.

Q. At Newton, Kansas, you mean, do you?

A. Yes.

Q. Then, coming toward the southwest, near the south line of Kansas, where would that line come?

A. It would come here to Texico.

Q. Texico, New Mexico?

A. According to this map, and that would be my best guide.

Q. From thence, where?

A. To Belen.

Q. It crosses Oklahoma and the northern end of Texas, doesn't it, connecting there——

A. Yes.

Q. —— to Texas?

A. Yes.

Q. Thence westerly to Belen?

A. Yes.

Q. Thence where?

A. Thence down the Rio Grande River to Rincon, and from there to Deming.

Q. Then over the line you have marked, and the Phoenix & Eastern, to Phoenix?

MAPS

TOO

LARGE

FOR

FILMING

A. Yes. They have a branch line here to New Mexico, you observe.

Q. Now, from Phoenix, where would it run?

A. Well, it would take up with the Santa Fe, Prescott & Phoenix at Phoenix and run to a point about six miles north of Wickenburg, and thence almost due west to a crossing of the Colorado River at Parker, and thence to a point on the Santa Fe line at Bengal.

Q. On the present main line?

A. On the present main line at Bengal.

1713 Is that line from Wickenburg to Bengal the one that is now under construction, that you testified about?

A. Yes. We are not doing anything towards constructing the line west of the Colorado River just now.

Q. You have built that far?

A. We have built that far, and finished our bridge.

Q. Now, have you, since you were on the stand the other day, investigated as to the comparative length of this line and the present main line of the Santa Fe?

A. Yes.

Q. What is the difference?

A. I find, as near as I can work it out from the Guide, about 150 miles in difference.

Mr. LOVETT. Between what points?

WITNESS. Between Chicago and Los Angeles, using this line here [indicating].

Q. And that new line, the proposed new line, is 150 miles longer, is it?

A. Yes, practically.

Q. Do you remember the mileage, the total mileage?

A. Well, I have a memorandum taken in reference to that. As near as I can get at it from the schedule.

Mr. LOVETT. I think he had not better testify from the memorandum.

Mr. SEVERANCE. You have no objection if he has looked it up?

Mr. LOVETT. If he has got it from one of those folders. You might ask him where he got it from.

Q. Where did the figures come from, Mr. Murphy?

1714 A. From the Official Guide—the Railway Guide—as near as I could get at it. I didn't remember those distances, didn't know them.

Q. Well, what are the figures?

A. What figures do you want now, sir?

Q. I want the figures of the present main line of the Santa Fe from Chicago to Los Angeles.

A. As I made them up it was 2,267 miles by the way of Ash-Fork, practically.

Q. That is, the present main line?

A. Yes.

Q. And how long would this line be that you have sketched out on the map, Exhibit 108?

A. 2,417 miles.

Q. That is exactly 150 miles longer.

A. That is the way it figures out.

Mr. MORAWETZ. 160.

WITNESS. I am not pretending that these are absolutely correct distances. There might be a few miles either one way or the other.

Q. It has been suggested that it is 160 miles instead of 150; you wouldn't doubt that might be so?

A. No, not at all.

Q. Now, Mr. Murphy, at the time the Phoenix & Eastern was sold to the Southern Pacific, did the Southern Pacific have any line of road running along parallel with the Phoenix & Eastern out of Phoenix?

A. Out of Phoenix?

Q. Yes.

A. Yes, sir.

Q. How far?

A. Well, it had a line, their Maricopa line, running to Tempe, and then they had a little spur-line up to Mesa.

Q. How far is Mesa from Phoenix?

A. I think 17 miles.

1715 Q. Tempe is the crossing of the Salt River, isn't it, south of Phoenix?

A. Yes, at the crossing.

Q. Did the Southern Pacific, the Maricopa line, you say, cross the river there and go through Tempe?

A. Yes.

Q. Where is the next town of any consequence after leaving Mesa?

A. Florence.

Q. What was the kind of railroad the Santa Fe built when constructing the Phoenix & Eastern? Was it a light road for local use, or was it a standard road?

A. Well, all the latter construction was for heavy engines.

Q. What do you mean by the latter construction?

A. Well, the last work we did; the bridges we put across the Gila, our main bridges that we put in, were put in as Santa Fe standard, to carry their heavy engines.

Q. How about the line from Wickenburg west—how was that constructed?

A. We used a lighter rail than we would for through transcontinental business, but the bridge is constructed for the handling of the heaviest engines, for through transcontinental business.

Q. How heavy rails did you use?

A. Well, we used second-hand rails, relaying rails, 62 lbs., I think, or 65.

Q. Now, Mr. Murphy, I neglected to ask you on Friday with reference to the Gila Valley Railroad Company; what was that?

A. Gila Valley Railroad Company? I don't know. I don't know any Gila Valley; there is the Gila Valley, Globe & Northern that is owned by the Southern Pacific.

Q. No, I am speaking about the line incorporated by you, according to memoranda I have, called the Gila Valley Railroad Company, from Winkelman to Lordsburg; do you know anything
1716 about that?

A. The Gila River Railroad?

Q. The Gila River Railroad. Then I have the wrong name. The Gila River Railroad Company, was it?

A. Yes. What about it?

Q. I asked you if you remember of incorporating another company to continue the line from Winkelman to Lordsburg.

A. Yes, sir.

Q. What was that called?

A. I think it was the Gila Valley. The Gila River, I think; I am not sure.

Q. Do you remember when that was incorporated?

A. It was sometime in 1893. I couldn't give dates.

Q. You don't remember the dates?

A. Not exactly.

Q. Now, you spoke the other day of having some correspondence with officials of the El Paso and Southwestern concerning a traffic agreement between that company and your proposed line to Benson?

A. Yes, sir.

Q. Judge Lovett objected to your testifying about that because the correspondence was not produced. With whom was that correspondence?

A. I had some correspondence with Professor James Douglas, and other correspondence with Mr. Hutchinson, the second vice-president of that company.

Q. Where does Mr. Douglas live?

A. I think here in New York.

Q. Where does Mr. Hutchinson live?

A. I don't know where he lives now.

Q. Does the El Paso and Southwestern connect with any Mexican Railroad at El Paso?

A. The Mexican Central comes in there.

Q. Where does the Mexican Central run?

A. To the City of Mexico, I believe.

Q. If the Santa Fe had extended its line through to Dem-
1717 ing, through the Gila canyon, how far would it have had to build to get into the mining district around Globe?

A. Oh, 25 miles, probably. I don't know exactly, but probably not more than that.

Q. What kind of a mining district is it around Globe?

A. Very prosperous mining country, mining district; one of the largest we have in the territory.

Q. What kind of mines?

A. Copper mines, principally.

Q. Do you know whether any mining developments and expenditures of money were made between Dudleyville and Benson upon the faith of that road being extended down there?

A. Well, I don't know in particular. I know there was considerable activity started in through there as a result of the anticipated road. I had a great deal of correspondence with mine operators and owners of mines at the time I was building.

Q. Are there any mines in there?

A. Yes, sir.

Q. What is their outlet at present?

A. Well, either by wagon to Dudleyville or by wagon to Benson.

Q. Are there any mines between Dudleyville and Phoenix on the Phoenix & Eastern?

A. A great many.

Q. What kind of mines?

A. Gold, silver, copper and lead; principally copper there; the principal mines are copper.

Q. Where are the ores from those mines smelted?

A. Well, I don't know as there is very much going out of there right now.

Q. Where have they been when they were in operation?

A. Well, before they closed the Humboldt smelter, before we sold the road to the Southern Pacific, they came to us on the
1718 Santa Fe, Prescott & Phoenix and went up to Prescott, and went out to the Humboldt smelter, and were smelted there.

Q. Where is the Humboldt smelter?

A. It is on a branch of the Santa Fe, Prescott & Phoenix road, north of Prescott.

Q. What smelters are there, if you know, along the line of the El Paso & Southwestern?

A. Well, the principal smelters are the smelters of the Copper Queen Company at Douglas, and then the Calumet & Arizona have their smelting plant there also.

Q. Are there any smelters at El Paso?

A. Yes, some very large smelters there; the American Smelting & Refining Company.

Q. How did you get the right of way that you testified you secured from Dudleyville to Benson?

A. We purchased considerable, and we had a good deal of it given to us.

Q. By whom?

A. By the residents and owners along the line.

Q. Did you have any other aid given you along the line of the Phoenix & Eastern except this right of way between Dudleyville & Benson?

A. Yes, we had some right of way given us, more or less, all the way from Phoenix.

Q. How about along through Mesa and Tempe?

A. Well, we had right of way given us there. We bought some and some was given to us.

Q. The Southern Pacific already had a line to Mesa?

A. Yes, sir.

Q. Who gave you the right of way for this competing line?
A. The citizens, owners of land.
Q. Was that right of way used in building the road?
A. Yes.
Q. Still used by the Southern Pacific?
A. Yes, sir.
Q. You testified, both on direct and cross-examination, with reference to litigation between the Phoenix & Eastern and
1719 the Southern Pacific line, terminating in your being left in peace, as you put it?
A. Yes, sir.
Q. In possession of your road. How long after you were left in peaceable possession of your road was it that the Southern Pacific took over the line?
A. Well, our final maps were not accepted in Washington till 1906. We completed our road to Winkelman, as near as I remember, in 1904. I think it was in the spring of 1907 that the line was turned over to the Southern Pacific.
Q. Your maps were finally accepted, you say, in 1906?
A. Our final maps were accepted.
Q. That was at the conclusion of the litigation in the Land Office?
A. Yes, sir.
Mr. SEVERANCE. That is all.

Recross-examination by Mr. LOVETT:

Q. You were asked about a line of the Southern Pacific, or controlled by the Southern Pacific, extending from Maricopa to Phoenix?
A. Yes, sir.
Q. Or paralleling the Phoenix & Eastern. Please state about the distance where these lines paralleled.
A. About nine miles.
Q. About nine miles?
A. Yes.
Q. Out of Phoenix?
A. Out of Phoenix, yes, sir; and then a branch line that went up to Mesa added about as much more.
Q. Added about as much more paralleling, you mean?
A. Yes, paralleling this new Phoenix & Eastern road.
Q. The branch line to Mesa does not parallel the Phoenix & Eastern, does it?
1720 A. Yes, they use the same line out of Phoenix to Tempe, and then their line to Mesa branches off from Tempe and goes up to Mesa, practically right alongside of the Phoenix & Eastern line.
Q. What is the general direction of Maricopa from Phoenix?
A. Southeast practically: it is a little east of south.
Q. A little east of south?
A. Yes, as near as I remember it.

Q. What is the general direction followed by the Phoenix & Eastern?

A. Well, practically east, almost.

Q. Is not the general course of the Southern Pacific line from Maricopa to Phoenix practically at right angles with the general course of the Phoenix & Eastern?

A. After you leave Tempe.

Q. Tempe is about how far——

A. About nine miles.

Q. The Gila River Railroad Company, about which you were asked, never constructed any railroad, did it?

A. No, sir.

Q. That was incorporated by you?

A. Yes, sir.

Q. About 1893?

A. Yes, sir.

Mr. LOVETT. That is all.

By Mr. HINES:

Q. Mr. Murphy, you have referred to the difference in mileage between the existing line and the line that would have existed if the Phoenix & Eastern had not been sold to the Southern Pacific, and if a line had been constructed in the interest of the Santa Fe from Dudleyville to Deming?

A. Yes, sir.

Q. Now, if that line which you suggest had been constructed, the route from Chicago to the Pacific coast would have been over the existing lines of the Santa Fe as far as Belen?

A. I think so, yes, sir.

1721 Q. Just the same?

A. Yes, sir.

Q. And if you sent a train from Chicago to the Pacific coast by way of the line which the Santa Fe now has, and a train by way of the line which the Santa Fe would have had, if the line had been established between Phoenix and Deming, as you suggest, those two trains would go over the same tracks between Chicago and Belen?

A. I think so, yes, sir.

Q. Then the divergence would be at Belen?

A. Yes, sir, unless you saw fit to make some changes out there at the other end, which you might possibly have done to good advantage.

Q. Well, I am speaking of your theory of the difference in mileage?

A. Yes.

Q. Then your proposition is that between Belen in New Mexico and Bengal in the southeastern part of California, there would have been a difference in mileage in favor of the existing line as against the line you suggest, of 150 or probably 160 miles?

A. I should judge so. There is a difference in there somewhere.

Q. Now, you have referred to the shipment of copper ores from points on the Phoenix & Eastern to the smelter at Humboldt on the Santa Fe, Prescott & Phoenix?

A. Yes, sir.

Q. During what period were those shipments made?

A. Up until we turned the road over to the Southern Pacific.

Q. In the spring of 1907?

A. Yes, sir.

Q. And for what period back of that date?

A. Oh, they just started to ship. They had been shipping quite a little quantity of ore there, running over a period of eight
1722 or nine months, probably. They just commenced to operate.

Q. Eight or nine months?

A. I should judge so.

Q. How many carloads were shipped in that period?

A. I would have to look at the records. I couldn't tell; quite a good many, though.

Q. Well, can you approximate that?

A. No, I could not. I wouldn't undertake to. There were a good many carloads, and there were a good many more carloads that wanted to come up there that couldn't come owing to the change of the ownership, because the rates were changed.

Q. Would you be willing to say that the average during those eight or nine months was as much as ten carloads a month?

A. Oh, I don't know of the eight or nine months; I wouldn't undertake to give the exact figures. I could get you the exact figures, the exact tonnage—would be very glad to.

Mr. HINES. Mr. Severance, would you object to Mr. Murphy supplementing his statement by the exact figures of the tonnage?

Mr. SEVERANCE. No, certainly not.

WITNESS. I would be very glad to.

Mr. HINES. That is all.

By Mr. SEVERANCE:

Q. Mr. Murphy, in answer to Mr. Hines just now you said a good deal more copper ore would have gone up there except for the change in rates. What do you mean by that?

A. Well, at the time we turned over the road they were operating in there, they were operating those mines, and they localized the proposition, and naturally were disposed to take the
1723 ores from there to El Paso instead of letting them come up into Santa Fe territory, and the rates were changed. We were not in a position to give a through rate from that territory such as we had been giving before the road was taken over by the Southern Pacific.

Q. Now, that word "localized" is a technical railroad expression, I suppose. Do you mean this, that before the road was taken over you had a certain rate to the smelter on the Santa Fe line up by Prescott?

A. Yes, sir.

Q. And that after the Phoenix & Eastern was taken over, that rate was taken out?

A. Yes, sir.

Q. And it was necessary to pay the two locals?

A. Yes, practically.

Q. That is, the local into Phoenix over the Southern Pacific, and the local from there up over the Santa Fe?

A. Yes.

Q. What did you say about carrying the stuff around to El Paso?

A. Well, it was naturally more to the advantage of the main line, the Southern Pacific, that owned the line to El Paso, to get the long haul on the traffic.

Q. So that the Santa Fe sacrificed whatever there was in that traffic?

A. In order that the importance of my judgment about that country in there may be understood, I feel that any testimony that I may give, based upon the existing conditions in there, does not in any sense portray the situation from a railroad standpoint.

Q. Explain what you mean by that, Mr. Murphy.

A. Well, I mean that we were building a piece of road and
1724 the people were laying their plans for the development of that section of the country, and were making their calculations upon the direct outlet, and there was a good deal of hesitation, and a large part of the work was preliminary, and they were holding in reserve a lot of important development and work, and waiting for the better opportunity that was going to be afforded when they got their outlet.

Q. Outlet which way?

A. Outlet to the east and to the south.

Q. Well, via Benson and Deming?

A. Yes, sir.

Q. What kind of development work was held up until those outlets, or either of them, were finished?

A. Why, the erection of smelting plants, and the operation of smelting plants, and the large expenditure in the way of development.

Q. Development of mines?

A. Yes, sir. If I were in a position to produce my correspondence I could show you a very large amount of it—the mine owners appealing to me for transportation facilities, and wanting to know when they were going to get it, and they were ready to do thus and so when I could give them positive assurances; and of course I had to commence hedging and cutting out when I found that I was not going to be able to go ahead with the road; consequently everybody became more or less discouraged or disappointed, and that section of country in there is not developed at all as it would have been had I been able to go ahead with the construction of that road, and I don't think that it is fair to pass upon it as a railroad enterprise

based upon the record that it made up to the time that we turned it over.

1725 Q. So that you mean that the record of those shipments that Mr. Hines asked you to produce, would not be an index as to what the line was worth?

A. No, sir; not at all.

Q. Do you know how soon the Salt River Valley, which is to be irrigated by the Roosevelt Dam, will be put under water?

A. Well, a very large part of it is under water now.

Q. From that development?

A. Yes, sir. Well, it has been under water. They have had a couple of hundred thousand acres or more under water for a good many years, but it was not safely so. It is now practically beyond the point of danger. Their permanent supply would seem to be secure now, by the construction that has already taken place.

Mr. SEVERANCE. That is all.

By Mr. LOVETT:

Q. I believe you testified that prior to the sale of the stock of the Phoenix & Eastern to the Southern Pacific, through rates were in force between the smelter on the Phoenix & Eastern via Atchison—not from the smelter, from the mines, and the Phoenix & Eastern?

A. Yes, sir.

Q. By the Atchison to the smelters at where? At Hutchinson?

A. No, at Humboldt in northern Arizona; smelters that were on a branch of our Santa Fe, Prescott & Phoenix line.

Q. About what was the distance?

A. About 250 miles, something like that.

Q. And after the sale to the Southern Pacific those rates were cancelled?

A. Yes, sir.

1726 Q. During the same period the Santa Fe had in no rates with the Southern Pacific from those lines to the smelters at El Paso or Douglas, had it?

A. No, it had no occasion to have it in.

Q. Why?

A. Because they are giving them better rates up to the Humboldt smelter than they could get by taking it around the other way.

Q. Well, that is the point; the fact is that the Atchison would not put in through rates with the Southern Pacific from this local enterprise on its line to El Paso, would it?

A. I am very sure that it would not do it. I don't think that the Santa Fe is any better than the Southern Pacific in that particular.

Q. In other words, the condition was simply reversed?

A. Yes, sir.

Q. When the Southern Pacific got control they established through rates from the point of origin to the smelters at El Paso and Douglas?

A. Exactly, sir, but they were not as favorable as they were before.
Q. You mean not as low?
A. No.
Q. What was the difference?
A. Oh, I would have to refer to the record. That is my recollection, that they were not as low, because they complained to us about it very severely.
Q. You are really not positive, are you, that there was any increase in the rates from those points of origin to the smelters at Douglas?
A. There was a very decided increase in the point to Humboldt as compared with that, and where these people had a market, because they didn't ship—they were shipping to Humboldt, and they didn't continue to ship to El Paso.

1727 Q. There was an increase from the point of origin to Humboldt?

A. Yes.
Q. But you can not say whether the rates from the points of origin to Douglas or El Paso were any higher, can you?
A. Well, it was my understanding that the net result to them was very materially against them; at any rate, they didn't ship.
Q. I am not speaking about the net results. I am asking about the rates now.
A. That is what controls now—the shipments.
Q. Do you know about the rates?
A. No, I couldn't speak positively about the exact rates, sir.

By Mr. SEVERANCE:

Q. What do you mean by the net results, Mr. Murphy?
A. Why, the smelting charges and net returns that a man would get from shipping his ore. The ores that they are wanting to ship up to Humboldt, they were badly in need of; they wanted them. They were giving them exceptionally favorable rates for smelting, and smelting companies, under such conditions, will offer inducements; and a straight smelting charge to a smelting company that is not particularly in need of a certain character of ore, or kind of ore, why, they make an arbitrary charge that is not as favorable as under other conditions.
Q. Well, this was simply part of the traffic that the Santa Fe gave away when they sold the road to the Southern Pacific, was it?

Mr. LOVETT. What is that?

1728 Mr. SEVERANCE. Part of the traffic the Santa Fe gave away when they sold the road to the Southern Pacific.

A. They got good pay for the traffic that they gave up.
Q. How is that?
A. They got good pay for the traffic that existed at the time they gave it up.
Q. The Santa Fe did?
A. Yes, for what had been developed.
Q. That is, you mean that the business was not heavy at that time?

A. No, sir; it was all in a stage of development.
Mr. SEVERANCE. That is all.

By Mr. LOVETT:

Q. Just one other word. There was a very substantial change in the net results generally in the smelting business between 1906 and 1907 and 1908, wasn't there?
A. I think so.

1729 GEORGE M. HUGHES,

called as a witness on behalf of the Complainant, being duly sworn, testified as follows:

Direct examination by Mr. SEVERANCE:

Q. Mr. Hughes, where do you live?
A. Brooklyn.
Q. Where is your business?
A. 100 William Street.
Q. And what is your business?
A. Railroading.
Q. With what railroad company?
A. New Jersey, Indiana and Illinois.
Q. Where does that line run?
A. From South Bend, south to connection with the Wabash.
Q. What is your relation to that road?
A. President.
Q. And what other railroads have you been connected with?
A. The Erie, Milwaukee & St. Paul, the Southern of Georgia.
Q. When were you connected with the Erie?
A. From 1863 to 1884.
Q. And with the Milwaukee & St. Paul?
A. 1884 to 1894.
Q. In what capacity were you connected with the Milwaukee & St. Paul?
A. Contracting agent in New York.
Q. Were you acquainted with Mr. Hawley?
A. I was, slightly.
Q. Do you remember when he was the Southern Pacific agent here?
A. Yes, sir.
Q. Do you remember whether at that time there was any competition between the transcontinental lines for Pacific coast business?
A. Yes, sir, there was.
Q. What lines were active in that competition—I mean transcontinental lines west of the Missouri River?
1730 A. The Union Pacific; we worked more especially with them because we couldn't work with the Southern Pacific, because we went to Omaha at that time, on the Milwaukee road.

Q. And what other lines were competing with Mr. Hawley besides the Union Pacific?

A. Well, the Northern Pacific, I presume, and the Canadian Pacific later.

Q. The Santa Fe?

A. The Santa Fe, yes, but I think that was a little later, when they finished their line; I don't think they were much of a factor at that time.

Q. Mr. Hughes, you say that you, as representing the Milwaukee & St. Paul, worked with the Union Pacific?

A. Yes.

Q. Did your line go at that time to Kansas City, or only to Omaha?

A. Only to Omaha at that time—Omaha and St. Paul.

Q. By your line I mean the Milwaukee & St. Paul?

A. Yes, the Milwaukee & St. Paul.

Q. Not your present line. Was that competition active, or otherwise?

A. Active, sir, as far as I knew.

Q. Have you any other business except your connection with this road in Indiana now, Mr. Hughes?

A. Yes, sir.

Q. What is it?

A. Forwarder for the Singer Manufacturing Company.

Q. You mean the Singer Sewing Machine?

A. The Singer Manufacturing Company.

Q. What do they manufacture?

A. Sewing machines.

Q. What do you mean by forwarder, Mr. Hughes? What does that signify?

A. I route their freight.

Q. How long have you been routing their freights?

A. Since about 1900.

1731 Q. How do their transcontinental freights move at the present time?

A. At the present time by the American-Hawaiian line.

Q. That goes by Tehuantepec, Mexico?

A. Yes, sir, at present.

Q. Do you remember when that line was established?

A. I don't know. I think I commenced routing business about a year or more ago. They were not much of a line until they went across by Coatcacoalcos. I believe they call it Puerto, Mexico, now.

Q. How did their rates compare with the all-rail lines?

A. Very much lower.

Q. Now, previous to the time the American-Hawaiian line was established, what way did you ship your sewing machines?

A. Southern Pacific.

Q. The Morgan line steamers?

A. The Morgan line, yes, sir.

Cross-examination by Mr. LOVETT:

Q. The American-Hawaiian line is made up how, Mr. Hughes?
A. Steamers to Puerto, Mexico.
Q. That is, from New York?
A. That is from New York.
Q. To the port of Mexico?
A. Yes, sir, across the country to Salina Cruz, and then steamers from Salina Cruz to the coast again.
Q. To San Francisco?
A. To San Francisco, yes.
Q. And you ship by that line now?
A. Yes, sir.
Q. Do you happen to know the length of the rail line in that route?
A. No, I do not. I never had occasion to refer to it.
1732 Q. The steamers in that line go up to Portland, Oregon, also, do they not?
A. Yes, sir; Portland, and Seattle, I think, as well.
Q. To Portland and to Seattle?
A. Yes, sir.
Q. When you speak of shipping by the Southern Pacific route you mean the steamer line?
A. The Morgan line.
Q. To New Orleans and Galveston and thence by what is known as the Sunset route?
A. Yes, sir.
Q. Did I understand you to say that you had ever shipped any by the Union Pacific to Pacific coast points?
A. Well, possibly one or two cars, and possibly one or two by the Santa Fe, but it was not the service we were after.
Q. You were after the rates?
A. No; not the rates. The rates were the same. The service.
Q. Oh, it was the service?
A. It may look strange, but there was more damage by all-rail shipments than there was where they were transferred.
Q. By steamer to rail?
A. Yes.
Q. So your shipments by the all-rail route to the Pacific coast were practically nominal, I presume?
A. Very few; in fact the last three or four years I don't think any.
Q. But you were solicited both by the Southern Pacific and Union Pacific?
A. Oh, yes.
Q. Has there been any change in that? Has the solicitation continued as active?
A. Well, no.
Q. Ever since you——
A. Yes; the Union Pacific comes in and wants to know if
1733 there is any change, and wants to know if they can get any

business. Well, I say, Not at present, anyhow, under the rates. We prefer the Southern Pacific on account of the carload shipments; they seem to be handled better.

Q. What railroad did you say you were connected with now, Mr. Hughes?

A. The New Jersey, Indiana & Illinois.

Q. Between what points does that operate?

A. Between South Bend, Indiana, and a connection with the Wabash at Pine, Indiana.

Q. About what length is the line?

A. 12 miles.

Q. 12 miles?

A. A long name, but a short mileage.

Q. Are any shipments moved from that plant to the Pacific coast?

A. From the Singer plant to the Pacific coast?

Q. Yes.

A. No, sir.

Q. You supply your Pacific Coast trade from your New Jersey plant?

A. The Singer people ship all their Pacific coast trade from Elizabethport.

Q. Do you understand that when shipments move to California points by the Union Pacific, that they also go, as a part of the Union Pacific route, over the Central Pacific from Ogden to the Pacific coast?

A. Do I understand they do?

Q. Yes.

A. Yes, sir; that is my understanding.

Q. When you spoke of competition between the Southern Pacific and the Union Pacific, you meant competition of the Sunset Route, on the one hand, and competition made up of the all-rail lines, including the Union Pacific from Omaha to Ogden and the Southern Pacific from Ogden to the Pacific coast?

A. Yes, sir.

Redirect examination by Mr. SEVERANCE:

Q. That is the business for which the Union Pacific organ-
1734 ization, on the one hand, was soliciting as against the Sunset Route on the other?

A. Yes.

Q. And where you spoke, in answer to Judge Lovett, of traffic moving over the Central Pacific on to the Pacific Coast, you meant to California points?

A. Yes.

Q. Not the north coast?

A. Oh, no, sir.

Recross-examination by Mr. LOVETT:

Q. The Chicago, Milwaukee & St. Paul solicited that business, too, didn't they?

A. Certainly.

Q. And the Chicago & Northwestern?

A. The Northwestern, the Burlington.

Q. And the New York Central lines?

A. Yes; in fact, all the roads or all the lines out of here and Chicago would naturally solicit for their different organizations.

By Mr. SEVERANCE:

Q. They worked to help the Union Pacific to get it as against the Sunset?

A. Yes, sir; we did, because the Sunset was no use to us at that time.

By Mr. LOVETT:

Q. Don't they work in order to get it themselves?

A. Why, certainly.

1735 W. J. L. BANHAM,

being duly sworn on behalf of the Complainant, testified as follows:

Direct examination by Mr. SEVERANCE:

Q. Mr. Banham, what is your business?

A. I am in the elevator business.

Q. What elevator company?

A. Otis Elevator Company.

Q. How long have you been with them?

A. About four years.

Q. And what is your position with that company?

A. Traffic manager.

Q. As traffic manager what do you do, what are your duties?

A. It is my business to take care of their output from various plants, to give routing directions as to freight, look after freight claims, and such matters.

Q. Previous to going with the Otis Elevator Company what was your business?

A. I was with the International Steam Pump Company.

Q. What is the business of the International Steam Pump Company—manufacturing pumps?

A. Pumps, yes, sir.

Q. What was your position with the International Pump Company?

A. I was in charge of shipping; later as the assistant traffic manager.

Q. How many years were you with them?

A. Between five and six years.

Q. Now take the case of the Elevator Company. How do their shipments move to the Pacific Coast? Take the California terminals.

A. They would move all rail. It just depends on what line we used, that we shipped from. They would move from Omaha or Kansas City.

1736 Q. What transcontinental line do they go from Missouri River points? What line do they take, as a rule, to California terminals?

A. It would be about even; they would ship about half on the Santa Fe and half on the Union Pacific.

Q. What is the important question that determines the movement of commodities when rates are the same?

A. Take a point where there are two or three or more lines reaching into a particular town, the time of delivery and the location of the freight yard or the delivery point of the contracts for the various buildings in that city. Time is a factor with us more than anything else. The most direct route is always the best one.

Q. That is to say, the excellence of the service in reaching a particular terminus?

A. Yes, providing that their delivery point is as convenient as we would want it. For instance, the line that would make the best time might be four or five miles away from our contract. The question would then come up as to whether we could wait two or three days and ship by a slower route so as to get delivery closer to the building. That, of course, is figured out on our various contracts from time to time.

Q. When you give shipments to a particular line, what, if anything, do the soliciting agents do with reference to those shipments—the men that come and try to get you to give the shipments?

A. In the first place, they find out, through various means that they have, that there are certain contracts given out to certain companies. If in the West, they will come with information from their Western agent; and if in the East, with information from their Eastern agent.

Q. And then what do they suggest, as a rule, as induce-
1737 ments to secure shipments, when rates are the same?

A. They suggest as gently as they can that we ship via the line that they represent.

Q. What service do they perform for the shipper?

A. Personal solicitation, that is about all. They might remind us at times that there are certain unpaid freight claims due the Company and that they might pay them.

Q. They work in that way to get the business?

A. Yes.

Q. When you were with the International Pump Company, how did the traffic move to the Pacific Coast?

A. I have no direct knowledge of that. The position I held there did not cover the routing of freight.

Q. So you don't know how it did move?
A. No, not as a general proposition.
Q. How is that?
A. No, I don't, generally speaking.
Q. I misunderstood you; I thought you did know how it was routed. You say you route your stuff to California terminals over the Union Pacific or Southern Pacific. Do you send anything by the Sunset route?
A. No. We find it is the best policy to load the class of machinery that we ship on the car and have it take the direct route. The question of transfer comes up. Take electrical apparatus, if it is transferred even once or twice, it does not add to it much. The percentage of breakage would be enormous. We prefer the direct route. There is nothing to be gained by shipping by the Sunset route. We do not want the sea voyage. The sea air is not of any benefit to electrical apparatus.

Q. Is your business solicited at present by way of New Or-
1738 leans, all-rail, by the Southern Pacific people?
A. Yes.
Q. Do you use that line at times?
A. No. We have used it several times when there have been blockades out West, when they could get it through by way of New Orleans, but as a general proposition we do not do that.
Q. That is exceptional, is it?
A. Oh, yes. We probably had three or four cars the last few years.
Q. Where do you ship from?
A. Various points—Boston, Springfield, Yonkers, Philadelphia, Rochester, Buffalo, Detroit, Chicago, Moline. We have many more plants, but we would hardly call them shipping points; they take care of local business more than anything else. Those I have mentioned are the main shipping points.
Q. Is all this routing in your charge, from all those places?
A. Well, it is under my general direction, yes.
Q. Now when you speak of shipments to the Coast, distributed as you have stated, does that apply to all the plants?
A. We do not ship to the Pacific Coast from all the plants.
Q. You send all your business to the Coast from certain specific plants, considered from the plants generally?
A. Yes.
Q. From where do you ship to the Coast?
A. The main points would be Yonkers, Chicago and Buffalo. We do have other points from which we ship to the Coast, but their tonnage is very light.
Q. To the Northern Pacific Coast country how do you ship?
A. Great Northern and Northern Pacific.

Q. And do you use the Union Pacific to Portland?
1739 Why, yes; the business is divided between the two lines there. When I see the conditions in Portland (so far as the

actual conditions are concerned) are in favor of one or the other line, that would be the line we would use.

Q. Your company is one of the largest, is it not, Mr. Banham?

A. Well, it is of the elevator companies.

Q. That is what I mean.

A. Oh, yes.

Q. Do you ship to the Orient?

A. No.

Q. You do not have any business there?

A. We probably have had one or two shipments, but very few of them.

Q. But of very little consequence?

A. They have not gone into sky-scrapers over there yet.

Cross-examination by Mr. LOVETT:

Q. You do not ship to Portland by way of the Southern Pacific, do you?

A. No, sir.

Q. Such business as you send to Portland goes there by the Northern Pacific or the Union Pacific and its connections?

A. Yes, sir.

Q. You stated that the most of your shipments to the Pacific coast originate at New York, or Yonkers, or Buffalo, or Chicago.

A. Yes, sir.

Q. And that west of Chicago, as a rule, they divide it as between the Atchison and the line made up of the Southern Pacific, Union Pacific and connections east?

A. Yes.

Q. All of your shipments that go by way of the Union Pacific go over the Central, don't they; that is, the Southern Pacific
1740 line from Ogden to California?

A. Yes, sir.

Q. Are your shipments from this territory solicited both by the Southern Pacific and the Union Pacific?

A. Yes, sir.

Q. That has been so right along, hasn't it?

A. Oh, yes.

Q. All of these companies owning any part of any of these transcontinental lines, like the New York Central lines, the Chicago & Northwestern, the Chicago, Milwaukee & St. Paul, the Burlington—such lines solicit your business, don't they?

A. Yes, sir, very actively.

Q. Even though they own portions of the line?

A. Yes. Frequently a representative of the Union Pacific Company will come into my office, and will be followed immediately by a Southern Pacific representative.

Q. In the territory about Chicago, that is, for shipments from your plants in Illinois (Chicago), isn't it true that representatives of the

Southern Pacific solicit that business by way of Union Pacific and Ogden?

A. From Chicago?

Q. Yes, and that territory. In other words, doesn't the Southern Pacific representative work for that business by way of the Ogden route?

A. That is, from Chicago?

Q. And Moline and other points.

A. Yes, that is the way it would go. It would travel by the Union Pacific—Southern Pacific.

Q. From Buffalo and such points, do not the Southern Pacific representatives try to get it to go via the Union Pacific and Ogden, if they cannot get it by the Sunset route?

A. Oh, yes. They prefer to get it by the Sunset route, but we have always shipped it direct West without coming East on it—or South, rather. I might say that the commodity we are ship-
1741 ping from Buffalo is rails, which have to be loaded on one car and go through without transfer.

Redirect examination by Mr. SEVERANCE:

Q. When you speak of the Union Pacific solicitor coming in, being followed at times by the Southern Pacific solicitor, the Southern Pacific man tries to get you to route your stuff by New Orleans, doesn't he?

A. He tries to solicit it that way and tries to get it that way, but we are very firmly against shipping it that way.

Q. Judge Lovett asked you if at Chicago the Southern Pacific agent did not solicit traffic by Ogden. You are aware of the fact, are you not, that the Southern Pacific-Union Pacific have the same agent in Chicago?

A. Yes, I believe so.

Q. So if the Union Pacific was soliciting by Ogden, the Southern Pacific agent would have to be doing it, because he is the same man.

A. The same man, yes.

By Mr. LOVETT:

Q. Before the Union Pacific and the Southern Pacific had a joint agent there, didn't the agent of the Southern Pacific in that territory solicit by way of Ogden?

A. Well, I don't remember that. That was a little before my time. I don't remember just what date they consolidated those two offices.

Q. 1901 or 1902?

A. That would be before my time as an active traffic manager.

Q. I understood you to say that the New York Central and all of the trunk lines out of here actively solicit you for your
1742 business to the Pacific Coast; do they not?

A. Yes, such lines as can handle it. Of course, we have not a plant in New York.

Q. I mean from this locality.

A. Yes; any trunk line that covers any territory that we ship to, they all come around and solicit right along.

1743 CHARLTON A. SWOPE,

being duly sworn as a witness on behalf of the Complainant, testified as follows:

Direct-examination by Mr. SEVERANCE:

Q. Mr. Swope, where do you live?

A. New York City.

Q. What is your business?

A. I am the eastern freight agent of the Louisville & Nashville Railroad.

Q. How long have you had that position?

A. Five years.

Q. Previous to that time what was your position?

A. Previous to that time I was the traveling freight agent of the same road, located at New York City, for five years.

Q. Previous to that time what was your position?

A. Previous to that time I was located in the general offices at Louisville in a clerical capacity, for about thirteen years.

Q. Mr. Swope, you are an officer of the Traffic Club here in New York, aren't you?

A. Incidentally; I am secretary of the Traffic Club; it is not a salaried position.

Q. Do you remember the traffic situation in New York a few years prior to 1901?

A. I do.

Q. When Mr. Hawley was the agent of the Southern Pacific here?

A. Yes, sir.

Q. What competition, if any, was there between the Southern Pacific and other lines for transcontinental business?

A. I came to New York in 1898, and between that time and 1901 there was competition to transcontinental points between those two lines—between all the lines.

1744 Q. Was there competition between the Union Pacific, the Southern Pacific, the Santa Fe, the Northern Pacific, and the Great Northern?

A. Yes.

Q. Were you acquainted with the Union Pacific representative here?

A. Yes, sir.

Q. Who was he?

A. Mr. R. Tenbroeck was the general eastern agent at that time.

Q. And who was the agent of the Southern Pacific?

A. Mr. Edwin Hawley was in charge at that time.

Q. And he was succeeded by whom, later?

A. Mr. L. J. Spence.

Q. You know Mr. Spence, do you?

A. Yes, sir, very well.

Q. Now, as representing the Louisville & Nashville, what did you have to do with transcontinental traffic, and with whom did you work?

A. I solicited the business the same as I did other business. Our interest in transcontinental business from this territory has never been of the same importance as business to other territory on my line. For that reason I never paid as much attention to that as to other business. But we did solicit business for transcontinental points in connection with the all-rail route via New Orleans.

Q. Do you here in New York solicit the business that originates out in the middle part of the country?

A. My territory is east of the Buffalo-Pittsburg line. I have jurisdiction of all territory east of Buffalo-Pittsburg. From the Middle West—I presume you mean Cincinnati and Louisville and that territory?

Q. Yes.

A. I solicit from that territory in some cases, but not fre-
1745 quently; that is, if business was moving from that territory, which was controlled in New York or in the territory east of Buffalo-Pittsburg, and it was reported to me, then we endeavored to secure it.

Q. Via New Orleans?

A. Yes, via New Orleans, or in some cases via Memphis. We have a junction point via Memphis, Tennessee.

Q. Then how would it move from Memphis—El Paso?

A. El Paso route, yes.

Q. But your interests were entirely with the Sunset route of the Southern Pacific as against the Union Pacific Ogden route?

A. Yes.

Cross-examination by Mr. LOVETT:

Q. You still continue to do that, don't you, Mr. Swope?

A. Yes, sir.

Q. There has been no change in your work in that respect?

A. No, sir, no change.

Q. The volume of business moving from this territory and territory east of the Buffalo-Pittsburg line to the Pacific coast all-rail via New Orleans is very small, isn't it?

A. Very small, yes.

Q. As a matter of fact, practically every railroad line in the country solicits transcontinental business and all other kinds of freight business, does it not?

A. All the important lines that can handle it, yes.

Q. How many lines do you believe there are extending from the Atlantic, beginning say at the northeastern boundary and extending down to the Mexico boundary, over which trans-
1746 continental traffic actually moves? Do you suppose there are 50 or 100?

A. Well, counting each line as a connection in the chain, I should say there were fully that many. 50 or 100 is a good wide limit, but I should say there are certainly that many.

Q. As an illustration, I suppose the New York Central from here to Buffalo might of itself be a party to 15 or 20 such lines, might it not?

A. Yes.

Q. And so with nearly every other railroad, including the little intermediate lines?

A. Yes; a good many of them have several junctions, you know, several routes.

Q. Mr. Severance suggested even the little line about which Mr. Hughes testified.

A. Well, I wouldn't be able to testify about that.

Q. Whatever transcontinental business moves over the Union Pacific, that is to say, business reaching the Pacific coast south of Portland, over the Union Pacific, would go over the Southern Pacific from Ogden to the Pacific coast, wouldn't it?

A. That is my understanding, yes.

Q. And the Union Pacific line extends from the Missouri River to Ogden? That is your understanding, isn't it?

A. Yes.

Q. And that is one of the intermediate carriers that engages in this transcontinental business?

A. Yes.

Q. What is true of the numerous lines extending from the Atlantic to the Pacific is also largely true of the lines extending from the east and north and northwest to New Orleans and the Gulf
1747 points, isn't it? That is to say, aren't there a good many lines over which the traffic moves from New York and New England over your line to New Orleans?

A. Yes, there are a great many. Not quite so many I should say.

Q. Not quite so many?

A. In a case of that kind the trunk lines are more largely interested in the Ogden route on account of their slightly greater haul that they get that way. For instance, they would haul the business to Chicago or to St. Louis; whereas, in working via the New Orleans route they would only haul it to Cincinnati or to Louisville, turning it over to our line as part of the connecting line to New Orleans.

Q. Unless they happened to have a line running farther south than Cincinnati or New Orleans?

A. Well, I was speaking of the trunk lines and their affiliations as we know them here in Central Traffic Association territory.

Q. Your line is one of a few lines having New Orleans terminals running east of the Mississippi River?

A. Yes.

Q. And then it has a great many connections into the east and north?

A. Yes.

Q. Chicago and territory?

A. That is true.

Q. And so with the Southern Pacific and the Atchison. Being the only two lines that reach the Pacific Ocean south of Portland, as their lines extend east they have a great many connections that would engage in this transcontinental business?

A. I should say so.

Q. The Union Pacific and Southern Pacific solicitors in this territory continue to solicit business quite actively?

1748 A. Quite actively, yes.

Q. I believe you say that Mr. Hawley was succeeded by Mr. L. J. Spence, acting for the Southern Pacific Sunset route?

A. Yes, sir.

Q. And Mr. Tenbroeck continued, as agent, to act for the Union Pacific until he retired, a few months ago, on account of age, didn't he?

A. Yes, sir, succeeded by Mr. DeFriest.

Q. Mr. Tenbroeck continued as agent of the Union Pacific from a time antedating your coming to New York until some time in 1908, didn't he?

A. Yes, sir.

Redirect examination by Mr. SEVERANCE:

Q. Mr. Swope, there are a great many lines east of the Missouri River gateway, are there not, leading up to that gateway?

A. Yes, sir.

Q. And very few lines west of that gateway?

A. Comparatively few, yes.

Q. Now take Council Bluffs, the eastern terminus of the Union Pacific. How many lines are there leading up there and handing over business to the Union Pacific?

A. There are comparatively few; that is, few compared with the number there east of the Mississippi River.

Q. That is, there are many lines east of the Mississippi gateway; less lines from there to the Missouri River gateway, and still less transcontinental lines from the Missouri River to the coast?

A. Yes.

Q. I won't stop to have you recite all those, because they

1749 are all shown on the map. Now going down to the south, to the New Orleans gateway: how many lines are there to the coast from the New Orleans gateway?

A. There is only one line that has a terminal line. There are other lines there that are a connection of the Southern Pacific.

Q. And what are they?

A. There is the Texas Pacific through New Orleans——

Q. They go to El Paso, don't they?

A. Yes, to El Paso.

Mr. LOVETT. And many other leading points.

Mr. SEVERANCE. Yes, but that is the westernmost connection, isn't it?

Mr. LOVETT. Also connects with the Missouri Pacific, you know.

Q. El Paso is the western terminus of the Texas Pacific, isn't it?

A. Yes, I think so.

Q. And what other lines are there out of there that connect with the Southern Pacific?

A. That is all on trans-continental business—those two lines.

Q. So these many lines in the east that are picking up business and handling it along and getting it toward the west, finally converge into these few lines that do the business west of the Missouri River and the Mississippi?

A. That is right, I believe.

Mr. LOVETT. And they finally converge into a point where they have got only the Southern Pacific and the Atchison left, don't they?

1750 WITNESS. That seems to represent the case exactly.

Q. That is not true as to Portland, is it?

Mr. LOVETT. I asked my question with reference to the south of Portland.

Mr. SEVERANCE. You didn't say that.

A. No, they have more outlets to Portland, the two other strong lines—the Southern Pacific and the Great Northern.

Q. What about the Union Pacific?

A. Oh, yes, the Union Pacific goes to Portland.

Q. It reaches Portland over its own rails, doesn't it?

A. Yes.

Q. That is some subsidiary line—the O. R. & N.?

A. I understood the question to be Southern California and San Francisco.

Q. At the present time the traffic can reach Southern California from Salt Lake City over what is known as the Clark road too, can't it?

A. Yes, the San Pedro route: it runs to Los Angeles.

Q. But that does not run to San Francisco?

A. No, I believe not.

Q. And the Santa Fe and the Southern Pacific each runs to San Francisco?

A. Yes.

1751 J. ALLEN GREGORY,

being duly sworn on behalf of the Complainant, testified as follows:

Direct examination by Mr. SEVERANCE:

Q. Mr. Gregory, where do you live?
A. New York.
Q. How long have you lived here?
A. One year December 2nd last.
Q. Before that, where did you live?
A. Richmond, Virginia.
Q. What is your business?
A. Traffic manager of the Central Foundry Company and its subsidiaries.
Q. Previous to your connection with the Central Foundry Company what was your business?
A. Railroad.
Q. For how long?
A. Since 1899.
Q. Where are your foundries located?
A. Alabama, Tennessee, Indiana, New Jersey, New York, and Pennsylvania.
Q. At what town in Alabama?
A. Bessemer and Anniston.
Q. Have you got a foundry at a place called Holt?
A. Yes. A pig iron place there—Central Coal & Iron Company.
Q. Whereabouts in Maryland?
A. Dundalk, near Baltimore.
Q. Whereabouts in New York?
A. Medina.
Q. Where is that?
A. On the New York Central, east of Buffalo.
Q. And in New Jersey?
A. Newark.
Q. Tennessee?
A. South Pittsburg.
Q. Indiana?
A. Vincennes.
Q. Pennsylvania?
A. Lansdale.
Q. Where is that?
A. That is on the Philadelphia & Reading.
Q. Does your firm have transcontinental business?
A. Yes, on pipe.
Q. From what plants do you ship to the coast?

1752 A. Well, it depends. At present we are shipping from Alabama, Anniston mostly, and South Pittsburg, Tennessee, and Vincennes, Indiana.

Q. Over what lines does your traffic move to the coast?

A. What do you mean by the coast?

Q. To California points.

A. Over the Southern Pacific, and Santa Fe, and Union Pacific.

Q. From what points?

A. Over the Southern Pacific from Anniston and South Pittsburg; mostly from Anniston.

Q. South Pittsburg, did you say?

A. Very seldom; it would be an exceptional move.

Q. Then over the Union Pacific?

A. Union Pacific, Vincennes and South Pittsburg, and sometimes from Anniston.

Q. And over the Santa Fe from where?

A. From all of them.

Q. Can traffic move from the points you have named—in fact, I think you said it did move from Anniston, South Pittsburg, and Vincennes at times over these different routes.

A. That is right, yes, sir.

Q. Are the rates the same from all of them?

A. Yes, sir. Not from all plants, no.

Q. No, I mean from those that you have spoken of?

A. Yes, they are now, but they were not at one time.

Q. I mean, are the rates the same say from Vincennes? Can traffic move by Omaha or Southern Pacific line?

A. You mean as far as the railroad is concerned? Yes, sir, the rates are the same.

Q. That is what I mean. Now, who solicits your transcontinental business—the representatives of what road?

A. Why, actively the Union Pacific and the Santa Fe and
1753 its connections.

Q. How do your shipments go to the North Pacific Coast?

A. Over the Great Northern, the Union Pacific and the Northern Pacific.

Q. Who solicits your business for that part of the country?

A. All three companies.

Q. All three of them?

A. Yes, sir.

Cross-examination, by Mr. LOVETT:

Q. I believe you stated that your shipments to California points from Anniston usually go by the Southern Pacific.

A. They usually do, yes, sir.

Q. Do you mean the Southern Pacific west of El Paso?

A. No, sir; New Orleans.
Q. New Orleans.
A. Yes, sir.
Q. Don't they generally go by way of the Frisco-Rock Island line to El Paso?
A. Not from Anniston, in connection, no, sir.
Q. From what points do you use that route?
A. South Pittsburg, Tennessee.
Q. That goes over the Rock Island-Frisco?
A. Why, no; sometimes over the Rock Island; as a rule, over the Iron Mountain route and the Missouri Pacific to El Paso.
Q. To El Paso, and thence over the Southern Pacific?
A. Yes, sir.
Q. And from Anniston you say that goes by way of New Orleans?
A. Generally speaking, yes, sir.
Q. Over what line usually out of Anniston?
A. The Louisville & Nashville.
1754 Q. The Southern Pacific has no line of its own into Alabama, or Birmingham?
A. No, sir.
Q. The Southern Pacific has no line of its own into Anniston?
A. No.
Q. What rail lines extend from Anniston to New Orleans?
A. Directly, as far as we are concerned, the L. & N. Railroad.
Q. About how far is it by that line?
A. I don't know the distance; about 3-days' run so far as the freight traffic is concerned.
Q. Does any of that business go out by the way of the Atchison from Anniston?
A. Sometimes, yes, sir, through the Memphis gateway—Frisco to Kansas City.
Q. Frisco to Kansas City?
A. Yes, sir.
Q. And thence over the Atchison?
A. Yes, sir.
Q. Does any go from Anniston via the Union Pacific?
A. Why, an exceptional car through Kansas City, Union Pacific and the Southern Pacific into San Francisco.
Q. Generally speaking, then, Mr. Gregory, the business for California points, which originates at these various plants of yours, may move by the Southern Pacific and its connections at New Orleans or El Paso, or the Atchison and its connections at Kansas City, or east of Kansas City or Chicago.
A. Not Chicago.
Q. You do not ship any by Chicago?
A. No.

Q. And via the other lines, Union Pacific and lines connecting with the Southern Pacific at Ogden?

A. Yes.

Q. Whatever moves over the Union Pacific for California points goes out over the Southern Pacific from Ogden, doesn't
1755 it? That is part of the route?

A. Why, I don't specify the junction, but to my understanding it goes that way.

Q. You have never shipped any via the Southern Pacific to Portland, Oregon, have you?

A. No, sir.

1756 AFTERNOON SESSION.

Present: On behalf of the complainant, Mr. Severance; on behalf of defendants, Mr. Lovett, Mr. Spooner, Mr. Cravath.

## JACOB SCHIFF,

being duly sworn as a witness on behalf of the Complainant, testified as follows:

Direct examination by Mr. SEVERANCE:

Q. Where do you live, Mr. Schiff?

A. New York.

Q. And what is your business?

A. I am a banker.

Q. With what firm of bankers are you connected?

A. Kuhn, Loeb & Company.

Q. You are a partner in that firm, are you not?

A. I am.

Q. And Mr. Otto H. Kahn is one of your partners?

A. He is.

Q. That firm has been in existence a good many years, has it not?

A. About forty years.

Q. Mr. Schiff, do you recall the time that the Union Pacific Railroad or Railway Company was re-organized?

A. I do.

Pamphlet marked Complainant's Exhibit 109 (Schiff).

Q. I show you Complainant's Exhibit 109. Is that the plan of re-organization of the Union Pacific?

A. I should assume it is.

Mr. SEVERANCE. I offer in evidence Complainant's Exhibit 109 (Schiff):

1757 Complainant's Exhibit 109 (Schiff) is as follows:

COMPLAINANT'S EXHIBIT 109. (Schiff.)

PLAN AND AGREEMENT FOR THE

REORGANIZATION

of

THE UNION PACIFIC RAILWAY COMPANY,
Including its Kansas Pacific Lines.

Dated October 15, 1895.

LOUIS FITZGERALD,
JACOB H. SCHIFF,
T. JEFFERSON COOLIDGE, JR.,
CHAUNCEY M. DEPEW,
MARVIN HUGHITT,
OLIVER AMES, 2ND,
} Committee.

WINSLOW S. PIERCE,
*Counsel.*

KUHN, LOEB & CO.,
*Bankers.*

ALVIN W. KRECH,
*Secretary.*

DEPOSITARIES:

The Mercantile Trust Co. of New York.
Old Colony Trust Co., of Boston.
Bank of Montreal, of London.
Amsterdamsche Bank, of Amsterdam.
Deutsch Vereinsbank, of Frankfort-on-Main.

1758 *To the security holders of the Union Pacific main lines proper, inclusive of the Kansas Pacific line:*

The system of the Union Pacific Railway Co. having become dismembered, and the holders of the securities of the branch lines having already taken steps for their own protection, it has become evident that the holders of the various kinds of bonds secured upon the main stem of the Union Pacific Railway Co., including the Kansas Pacific line, must combine in order to protect themselves.

The main difficulty in effecting a prompt reorganization of the Union Pacific Railway Co. proper, is in the impracticability thus far experienced of reaching a settlement with the United States Government, which holds a second lien upon the Union Division from Omaha to a point 5 miles west of Ogden, 1,038 miles, and on the

Kansas Division from Kansas City (exclusive of the Kansas City, Missouri, terminals) west of the 394th Mile Post in Kansas; but which has no lien upon that part of the Kansas Pacific line between the 394th Mile Post and Denver, 245 miles, nor on the Leavenworth Branch, Leavenworth to Lawrence Junction, 32 miles, nor on the Cheyenne Division, Denver to Cheyenne, 104 miles. Congress having thus far been unwilling to pass any legislation authorizing a settlement, it becomes imperatively necessary on the part of the holders of the First Mortgage Bonds, of which part have already matured, and all of which will mature within the next few years, to combine for an enforcement of their prior lien. Eminent counsel have advised that
the lien of the First Mortgage Bonds may be effectively fore-
1759 closed; and while it is very desirable to make a settlement
with the United States Government, and to continue efforts in this direction, further delay on the part of the First Mortgage Bondholders in protecting themselves by securing their legal rights would be likely to become dangerous and to result in loss.

The undersigned have been asked by large interests to formulate and proceed with a reorganization, which shall at once secure to the holders of the First Mortgage and other bonds requiring consideration in reorganization a full return in new securities of the successor Company with fixed charges based upon the lowest results from the operation of the main line, and the Kansas Pacific and Denver Pacific lines which have been obtained during the times of the greatest depression. A Plan is submitted herewith to the consideration of the security holders, which, it is believed, fully carries this purpose into effect, and at the same time secures to First Mortgage Bondholders the payment of the matured and maturing interest until it shall become practicable to carry out the reorganization. Should this end, contrary to expectation, not be attained, the bonds which holders are requested to deposit without delay will be returned without expense.

Prompt action on the part of bondholders in uniting being imperative, the time during which deposits can be made has been limited to December 31st, 1895, after which date no bonds will be admitted, unless otherwise determined, except upon the payment of a penalty of five per cent.

Stockholders must likewise deposit their share certificates,
1760 properly endorsed, prior to December 31st, 1895, but will not be
required to pay any part of the assessment of $15 a share until the same is called for hereafter by the Committee after the Plan shall have been declared operative. Upon stock deposited after December 31st, 1895, the assessment will be at the rate of $20 a share, unless otherwise determined, $5 of which shall be payable at the time of deposit, as a penalty.

In case the reorganization is abandoned, without having been declared operative, holders of receipts will receive back the shares to which they are entitled, without expense to them, on surrender of their receipts, properly endorsed, at the Depositaries which issued them.

Deposits may be made at any of the Depositaries on and after November 1, 1895, from which date matured coupons on First Mortgage Bonds will be cashed as provided in the Plan.

The Committee may at any time after December 31, 1895, alter the penalties above specified or decline to receive further deposits of bonds or stock.

The Mercantile Trust Company of New York has been designated as the Central Depositary both for the bonds and the stock (with auxiliary Depositaries as set forth in the Plan), and will issue engraved Certificates of Deposit, for the listing of which application will be made to the New York Stock Exchange at the proper time. Temporary receipts will be issued in exchange for securities deposited until the engraved Certificates shall be ready.

Protective Committees already organized in the interests of
1761 the holders of either of the classes of bonds embraced in the Plan are invited to confer and co-operate with this Committee in respect to such interests.

New York, October 15, 1895.

LOUIS FITZGERALD,
JACOB H. SCHIFF,
T. JEFFERSON COOLIDGE, Jr.,
CHAUNCEY M. DEPEW,
MARVIN HUGHITT,
OLIVER AMES, 2nd,
*Committee.*

REORGANIZATION

of the

UNION PACIFIC RAILWAY COMPANY.

STATEMENT.

MILEAGE:

The main lines of the Union Pacific Railway Company are as follows:

| | | |
|---|---|---|
| Union Division—Council Bluffs to a point 5 miles west of Ogden | 1,048.01 | miles |
| Kansas Division—Kansas City to Denver | 643.55 | " |
| Leavenworth Branch—Lawrence to Leavenworth | 31.93 | " |
| Cheyenne Division—Denver to Cheyenne | 104.10 | " |
| Total main line mileage | 1,827.59 | " |

LANDS:

The outstanding land and town lot contracts on December 31st, 1894, were as follows:

| | |
|---|---|
| Union Division | $2,727,480.27 |
| Kansas Pacific and Denver Pacific divisions | 3,435,271.28 |
| Total | $6,162,751.55 |

1762 It is believed that a considerable amount of these contracts will, as a result of the recent industrial depression, be cancelled, in which event the figures in the following table should be correspondingly increased.

The acreage and estimated value of unsold Land Grant lands, excluding those under contract, on December 31st, 1894, were as follows:

| Division. | Acres. | Estimated value. |
|---|---|---|
| Union | 3,345,000 | $3,157,000 |
| Kansas Pacific and Denver Pacific | 3,179,000 | 1,201,500 |
| Total | 6,524,000 | $13,358,500 |

FUNDED DEBT (Oct. 1, 1895):

| | | | |
|---|---|---|---|
| Union Division— | | | |
| Union Pacific | First Mortgage 6s | $27,229,000, due | Jan 1, 1896–1899 |
| " | Land Grant 7s | 7,000, " | April 1, 1889 |
| " | Sinking Fund 8s | 3,730,000, " | Sept. 1, 1899 |
| " | Omaha Bridge 8s | 508,000, " | April 1, 1896 |
| " | Omaha Bridge Renewals 5s | 1,056,000, " | Oct. 1, 1915 |
| Union Pacific (Not embraced in Reorganization) | Collateral Trust 6s | 3,626,000, " | July 1, 1908 |
| | Collateral Trust 5s | 4,677,000, " | Dec. 1, 1907 |
| | Collateral Trust 4½s | 2,030,000, " | Nov. 1, 1918 |
| | Equipment Trust 5s | 1,149,000, " | 1896 to 1900 |
| | Collateral Trust Notes 6s | 8,610,000, " | Aug. 1, 1894 |
| | | $52,622,000 | |

1763 Kansas Pacific and Cheyenne divisions and Leavenworth branch—

| | | |
|---|---|---|
| Eastern Division 6s | $2,240,000, due | Aug. 1, 1895 |
| Middle Division 6s | 4,063,000, " | June 1, 1896 |
| Denver Extension 6s | 5,887,000, " | May 1, 1899 |
| Kansas Pacific Consolidated 6s | 11,724,000, " | May 1, 1919 |
| Kansas Pacific Income 7s | 263,700, " | July 1, 1916 |
| " " " subordinated 7s | 4,011,650, " | July 1, 1916 |
| Kansas Division and Collateral 5s | 5,000,000, " | May 1, 1921 |
| Denver Pacific First Mortgage 7s | 975,000, " | May 1, 1899 |
| Leavenworth Branch First Mtge. 7s | 600,000, " | Jan. 1, 1896 |
| | $34,764,350 | |

Indebtedness to the Government—[a]

| | | |
|---|---|---|
| For principal | $33,539,512, due | Nov. 1, 1895 to Jan. 1, 1899 |
| For interest (approximately, after deducting estimated value of the Sinking Fund) | 19,500,000 | |
| | $53,039,512 | |
| Total funded debt | | $140,425,862 |

CAPITAL STOCK:

| | |
|---|---|
| The capital stock of The Union Pacific Railway Company outstanding is | $60,868,500 |

[a] NOTE.—The lien of the Government for the security of this debt is a second lien subordinate to the lien of the First Mortgage bonds on the Union Division, and of the Eastern and Middle Division bonds on 394 miles of the Kansas Division. The proportions of the Principal of the debt ($33,539,512) applicable to the Union and Kansas Divisions, respectively, are as follows:

| | |
|---|---|
| Union Division debt to the Government | $27,236,512 |
| Kansas Division " " " " | 6,303,000 |

1764 FIXED CHARGES:

The interest on the debt to the United States (Principal $33,539,512) has been an accumulating obligation, diminished only by application of withheld compensation for Government service and by Sinking Fund receipts. The accumulated interest, now aggregating, after all deductions, more than $19,000,000, will mature, it is claimed, with the maturity of the principal of the debt which now impends.

In the following table, which states the fixed charges of the Union Pacific Railway Company (proper) for each of the five years from 1890 to 1894, inclusive, the following liabilities are not included:

1. The excess of interest on the debt to the Government over the percentage of net earnings applicable to it under the Thurman and other Acts.[a]
2. Interest on bonds held in main line mortgage Trusts under conversion provisions.
3. The obligations under guaranties, determined by the deficit in the operations of auxiliary lines to meet interest or provide the traffic receipts guaranteed by the Union Pacific Railway Company.

*Fixed charges or deductions from net earnings.*

| | Interest on bonds. | Sinking funds. | Government requirements. | Total charges. |
|---|---|---|---|---|
| 1890 | $4,613,097.85 | $705,458.75 | $1,041,153.43 | $6,359,710.03 |
| 1891 | 4,782,230.29 | 708,332.50 | 1,278,488.82 | 6,769,051.61 |
| 1892 | 5,371,587.40 | 705,172.50 | 1,338,044.37 | 7,414,804.27 |
| 1833 | 4,902,594.03 | 666,182.50 | 1,203,303.73 | 6,772,080.26 |
| 1894 | 4,767,613.81 | 677,685.00 | 1,249,061.46 | 6,694,360.27 |
| Average charges as above for five years | | | | $6,802,001.28 |

1765 EARNINGS:

The following table shows the gross and net earnings resulting from the operation of the Union Pacific Main Lines (exclusive of the Company's income from other sources) for each of the 10 years from 1885 to 1894, inclusive:

| Year. | Gross earnings. | Net earnings, taxes deducted. |
|---|---|---|
| 1885 | $17,455,031.51 | $8,404,676.31 |
| 1886 | 17,806,132.59 | 7,522,707.02 |
| 1887 | 19,546,088.62 | 9,111,886.85 |
| 1888 | 19,898,816.93 | 8,119,468.16 |
| 1890 | 19,775,555.84 | 8,286,679.63 |
| 1891 | 20,438,208.36 | 7,274,759.06 |
| 1892 | 19,687,738.48 | 7,846,451.70 |
| 1833 | 20,361,401.66 | 8,550,268.22 |
| 1894 | 17,376,792.11 | 6,204,716.81 |
| | 14,739,436.76 | 4,315,077.25 |
| Average net earnings for ten years | | $7,563,669.10 |

[a] NOTE.—The annual interest charge accumulating on this debt is $2,012,370.72 less the deductions above explained.

GENERAL CONSIDERATIONS:

1. The mortgage debt for which provision is made in the following Plan for Reorganization is exclusive of main-line bonds held in Trusts or Sinking Funds under Mortgages included in the proposed reorganization—the issues being reduced. to that extent, for reorganization purposes.

The bonds thus available under new plan without the necessity for provision in new securities are as follows:

| | |
|---|---|
| Omaha Bridge Renewal 5% Bonds (held by the Receivers) | $322,000 |
| Eastern Division bonds (held in Denver Extension Sinking Fund) | 304,000 |
| Middle Division bonds (held in Denver Extension Sinking Fund) | 385,000 |
| 1766 Denver Extension bonds (held in Denver Extension Sinking Fund) | 1,781,000 |
| Kansas Pacific Consols (held in Kansas Pacific Further Security Trust and by the Receivers) | 120,000 |
| Kansas Pacific Income 7s, unsubordinated (held in Kansas Pacific Consolidated Mortgage Trust) | 252,300 |
| Kansas Pacific Income 7s, subordinated (held in Kansas Pacific Consolidated Mortgage Trust) | 3,988,550 |
| Denver Pacific First Mortgage 7s (held in Kansas Pacific Consolidated Mortgage Trust) | 971,000 |
| Leavenworth Branch First Mortgage 7s (held in Kansas Pacific Consolidated Mortgage Trust) | 585,000 |

2. Nor does the reorganization include provision for the Collateral Trust obligations of The Union Pacific Railway Company. The securities embraced in these Trusts are largely those of companies which have already, by orders of court made in the original general receivership cause or in independent foreclosure proceedings, lost in part or in whole their character as portions of what has been distinctively known as the Union Pacific System. Independent reorganizations of many of these properties are pending. The purposes which brought into existence guaranties of the obligations of many of these auxiliary companies have been accomplished by construction and otherwise, and considerations will not exist under reorganization for continued relations with these properties upon the basis of an assumption of any of their fixed charges. Geographical conditions and considerations of mutual advantage point to a continued operation of such of these auxiliary properties as have had a demonstrated value, in harmony with that of the reorganized Com-
1767 pany, and relief from the burden of these guaranties will, it is believed, be an advantage obtained without detriment to the earning capacity of the property.

3. The total charges for the prosperous year of 1892 (including interest on fixed bonds, mortgage sinking funds, Government deductions and requirements, and other charges made up in large part of guaranty obligations), aggregated the sum of $7,881,475.44; or a sum greater by $881,475.44 than an amount necessary to pay the annual interest on the maximum Mortgage Debt and full dividend on the maximum issue of Preferred Stock contemplated in the following plan of reorganization:

The *maximum* interest and dividend requirements under the Plan applied to the average annual net earnings of the past 10 years shows these results:

NET EARNINGS.

| | |
|---|---|
| Average Net Earnings of Union Pacific Railway (proper) for 10 years, 1885 to 1894, inclusive | $7,563,669 |

INTEREST AND DIVIDENDS.

| | |
|---|---|
| Annual Interest on the maximum issue of $100,000,000 Four Per Cent. Bonds under following plan | $4,000,000 |
| Annual Four Per Cent. Dividend on the maximum issue of $75,000,000 Preferred Stock | 3,000,000 |
| Interest and Dividends on Preferred Stock | $7,000,000 |
| Average Surplus over Interest and Full Dividends on Preferred Stock | 563,669 |

NOTE.—*The lowest net earnings realized by the Union Pacific Railway were those of the year 1894, when they were $4,315,077.25, or $315,077.25 in excess of interest on the maximum amount of bonds as proposed in the following Plan:*

1768

PLAN.

It is proposed, through such foreclosure proceedings as the Committee shall cause to be instituted or shall adopt, or through such other means as the Committee shall determine, that a new company shall succeed to (or that the present company reorganized upon the basis of indebtedness fixed in this plan shall retain) the main lines and lands covered by the mortgages included in the plan.

The New Company shall issue the following:

NEW SECURITIES.

| | |
|---|---|
| First Mortgage Railway and Land Grant Fifty Year Four Per Cent. Gold Bonds | $100,000,000 |
| Four per cent preferred stock | 75,000,000 |
| Common Stock | 61,000,000 |

NEW BONDS.

The new bonds shall be dated January 1, 1897, and shall bear interest from that date payable on the first days of each January and July thereafter until maturity. They shall be secured by a First Mortgage lien upon all the main line mileage of The Union Pacific Railway Company, upon the equipment acquired by the new company and upon the unsold lands and the land contracts embraced in the trusts of the Union Pacific Land Grant and Sinking Fund Mortgages, the Denver Extension First Mortgage, the Kansas Pacific Consolidated First Mortgage and the Denver Pacific First Mortgage, and

upon such branch lines of railway as the Committee shall avail of through the ownership of branch line bonds in the trust of the Kansas Pacific Consolidated First Mortgage.

NEW PREFERRED STOCK.

The new preferred stock shall be entitled to Four per cent non-cumulative dividends, payable out of the net or surplus earnings of the Reorganized Company before the payment of any dividend on the Common Stock.

The following will be the

1769 *Distribution of New Company's securities.*

| | New 4% 50-year gold bonds. | | New preferred stock. | | New common stock. | |
|---|---|---|---|---|---|---|
| | % | Amount. | % | Amount. | % | Amount. |
| For Union Division debt: | | | | | | |
| 1. Union Pacific first mortgage 6's | 100 | $27,229,000 | 50 | $13,614,500 | | |
| *2. Land grant 7's | | | | | | |
| 3. Sinking fund 8's | 100 | 3,730,000 | 50 | 1,865,000 | | |
| 4. Omaha bridge 8's | 100 | 508,000 | 50 | 254,000 | | |
| 5. " " renewals 5's | 100 | 734,000 | 25 | 183,500 | | |
| For Kansas Division debt: | | | | | | |
| 1. Eastern division 6's | 100 | 1,936,000 | 50 | 968,000 | | |
| 2. Middle " 6's | 100 | 3,678,000 | 50 | 1,839,000 | | |
| 3. Denver Extension first 6's | 100 | 4,106,000 | 50 | 2,053,000 | | |
| 4. Consolid. first mge. 6's | 80 | 9,283,200 | 50 | 5,802,000 | | |
| †Consolid. first defaulted interest | | | 25 | 2,901,000 | | |
| 5. Income 7's (unsubordinated) | 80 | 8,880 | 50 | 5,550 | | |
| 6. Income 7's (subordinated) | 80 | 16,440 | 50 | 10,275 | | |
| 7. Leavenworth Branch 7's | 80 | 12,000 | 50 | 7,500 | | |
| 8. Denver Pacific first 7's | 80 | 3,200 | 50 | 2,000 | | |
| 9. Kansas Division and collateral mortgage 5's | | | 50 | 2,500,000 | | |
| For assessment on common stock | | | 100 | 9,130,275 | | |
| In exchange for common stock of Union Pacific Railway Company on which assessment is paid under the plan | | | | | | $60,868,500 |
| For compensation to reorganization syndicate and bankers | | | | 6,000,000 | | |
| Total defined issued for reorganization purposes | | $51,244,720 | | $47,135,600 | | $60,868,500 |
| 1770] Reserved to dispose of equipment obligations and for reorganization and corporate uses | | $13,000,000 | | $7,000,000 | | |
| Balance reserved for settlement of the debt to the United States and for extraordinary requirements | | 35,755,280 | | 20,864,400 | | $131,500 |

* The Union Trust Company of New York, Trustee under the Land Grant Mortgage, has funds in hand with which to pay the $7,000 outstanding bonds.

† Should a greater or less amount of interest than that here estimated be in default on these bonds at the date from which the new bonds bear interest, the provision in Preferred Stock will be varied accordingly so as to equal in amount such defaulted interest. Interest received by the Committee on deposited bonds of this class will be accounted for to the holders of corresponding Certificates of Deposit.

CASH PROVISIONS FOR FIRST MORTGAGE BONDS.

Through arrangements made with the Syndicate hereafter mentioned, the following cash provisions are made in respect to defaulted and future interest on present outstanding First Mortgage bonds of the Union Pacific and Kansas Pacific Railway Companies, as shown in detail below.

1771 First. The coupons now in default upon present First Mortgage bonds are to be purchased in cash for account of the Syndicate at the time of the deposit with the Committee of the bonds to which they pertain.

Second. Coupons maturing on deposited First Mortgage bonds in the interval between the deposit thereof under the plan and the date from which bonds of the new company are to bear interest (January 1st, 1897), are to be purchased by the Syndicate from the Committee, which in turn shall apply the amounts so received, at the respective due dates of the coupons, to the payment of corresponding installments on its outstanding certificates applicable to such deposited bonds.

Third. At the time of the issue of the new Four Per Cent. bonds the difference between the interest at their rate and at the rate of the present First Mortgage bonds (i. e., the rate difference of 2%) shall be adjusted in cash covering the periods between January 1st, 1897, and the respective dates of the maturity of the present bonds. The proportion of the current semi-annual interest installments which shall have accrued on January 1st, 1897, on such of said bonds as do not bear January coupons shall be likewise provided for in cash at the time of the delivery of the new bonds.

The BONDS to which the foregoing cash provisions apply and the extent of the CASH REQUIREMENTS to meet these provisions, are thus shown:

1772 UNION PACIFIC FIRST 6s:
(Due in installments January 1, 1896, to January 1, 1899, inclusive.)

| | | |
|---|---|---|
| Defaulted coupons of January 1 and July 1, 1895 | | $1,633,740 |
| Interest maturing, during pendency of plan, to and including January 1, 1897 | | 2,450,610 |
| Adjustment of interest as between rates of old and new bonds—2 per cent. per annum, from Jan. 1, 1897, to maturity of old bonds: | | |
| On $1,920,000 bonds, due July 1, 1897 | $19,200 | |
| On $5,999,000 bonds, due January 1, 1898 | 119,980 | |
| On $8,837,000 bonds, due July 1, 1898 | 265,110 | |
| On $2,400,000 bonds, due January 1, 1899 | 96,000 | |
| | | 500,290 |

KANSAS PACIFIC, EASTERN DIVISION, FIRST 6's:
(Matured August 1st, 1895.)

| | |
|---|---|
| Defaulted coupons of August, 1894, and February and August, 1895 | 201,600 |
| Interest maturing during pendency of plan to January 1st, 1897 | 190,400 |

KANSAS PACIFIC, MIDDLE DIVISION, FIRST 6's:
(Due June 1st, 1896.)

| | |
|---|---|
| Defaulted coupons of June 1st and December 1st, 1894, and June 1st, 1895 | 365,670 |
| Interest maturing during pendency of plan to January 1st, 1897 | 385,985 |

KANSAS PACIFIC, DENVER EXTENSION, FIRST 6's:
(Due May 1st, 1899.)

| | |
|---|---|
| Defaulted coupons of May 1st and November 1st, 1894, and May 1st and November 1st, 1895 | 706,440 |
| Interest maturing during pendency of plan to January 1st, 1897 | 412,090 |
| 1773 Adjustment of interest as between rates of old and new bonds—two per cent. from January 1st, 1897, to maturity of old bonds | 274,727 |
| | $7,121,552 |

In all cases where the foregoing provisions apply to semi-annual interest installments not represented by coupons because of the prior maturity of the principal of the bonds, the Syndicate will take assignments of such interest installments from holders presenting their bonds for deposit, or from the Committee as to such bonds as shall have been deposited, and will hold and treat such assignments in the manner hereinafter provided with respect to coupons taken up by the Syndicate.

ASSESSMENT.

The common stock of the present company will be assessed at the rate of $15 per share.

Shareholders paying the assessment of $15 per share will receive the amount of the assessment (viz., $15 per share) in new preferred stock at par, and will also receive par of their present common stock in common stock of the new company.

Shareholders who do not pay their assessments as called will forfeit their rights. The stock assessment will be underwritten before the plan is declared operative.

The proceeds of the assessment shall be applicable to the cash requirements of this plan as herein provided, and to such requirements as shall be fixed and determined by the Committee, including such expenses and charges as it shall make or incur in the premises, and suitable compensation to the members of the Committee.

1774 The amount of this assessment shall be payable at such times and in such installments as the Committee shall determine after the plan has been declared operative, but not more than $5 per share shall be called in any consecutive thirty days.

REORGANIZATION SYNDICATE.

A reorganization syndicate has been organized under the management of Messrs. Kuhn, Loeb & Company, Bankers, to furnish the sum of Ten million dollars for the following purposes:

1. To purchase all the interest coupons on First Mortgage bonds now in default.

2. To purchase as they shall mature hereafter the interest coupons on First Mortgage bonds and, also the semi-annual assignments of interest accruing on bonds already matured during the pendency of the Plan and until it shall become operative.

3. To purchase, if it shall be found advisable for the promotion of the reorganization, any outstanding First Mortgage bonds and Omaha Bridge bonds, and to deposit the same under this plan; and, if it shall be found advisable, to purchase all or any defaulted or future maturing coupons or interest assignments on Omaha Bridge bonds.

Coupons and interest assignments purchased for account of the Syndicate shall be deposited in The Mercantile Trust Company of New York, which shall issue its certificates for the same to the Syn-

dicate, or such other course shall be taken in respect thereto
1775 as shall be determined by the Committee and the Bankers to effectively and conveniently carry out this feature of the plan, and as will secure to the Syndicate all rights of the bondholders in and to the coupons and interest claims so purchased and in and to the lien and right of enforcement of the lien thereof.

Such steps shall be taken in respect to all purchased coupons and interest assignments as will secure a valid claim for cumulative interest in favor of the Reorganization Syndicate.

The right is reserved on behalf of the Committee, with the assent of the Bankers, to call for an increase of the amount required to be advanced by the Syndicate to Fifteen million dollars.

The Syndicate is to advance a sum not exceeding $100,000 for expenses repayable with six per cent. interest after the plan shall have been declared operative.

All advances made by the Syndicate shall be re-payable to it in gold.

Six Million Dollars of preferred stock are to be turned over as compensation to the Syndicate, of which the Bankers are to retain One Million as their own compensation.

LIMITATIONS OF TIME.

FOR DECLARING PLAN OPERATIVE:

The time for declaring this plan operative is to be limited to December 31st, 1896, with the right on the part of the Committee to extend the time for six months—namely, to June 30th, 1897.
1776 Notice that the plan is operative shall be given by publication through each of the Depositaries hereinafter mentioned.

FOR DEPOSIT OF SECURITIES:

The time for the deposit of bonds receivable under this plan and of the shares of stock of the present company is limited to December 31st, 1895, after which date no bonds will be admitted except upon the payment of a penalty of five per cent. Upon shares of stock deposited after the time above limited (December 31st, 1895), the assessment will be at the rate of $20 a share. After the expiration of the limit of time the penalty of $5 a share will be payable at the time of deposit, and will not be refunded.

Deposits may be made on and after November 1st, 1895. The Committee reserves the right at any time to alter the penalties above specified or decline to receive further deposits of bonds or stock.

Should it in the opinion of the Committee appear desirable to make any substantial alterations in the foregoing plan, it shall make publication of such proposed alterations for at least twenty days, during which time the security holders, not approving of the proposed alterations, shall be permitted to surrender their certificates of deposit and withdraw their securities, upon refunding with six per

cent. interest the amounts advanced in purchase of the coupons and interest assignments on their respective bonds.

1777 SECURITIES RECEIVABLE ON DEPOSIT UNDER THIS PLAN.

The following securities will be received under this plan at either of the depositaries hereinafter mentioned:

BONDS.

1. Union Pacific Railroad Company's first mortgage bonds.
2. Union Pacific Railroad Company's sinking fund mortgage bonds.
3. Union Pacific Railroad Company's Omaha Bridge 8% mortgage bonds.
4. Union Pacific Railway Company's Omaha Bridge renewal bonds.
5. The Union Pacific Railway Company Kansas Division and collateral mortgage bonds.
6. (Kansas Pacific) Union Pacific, Eastern Division, first mortgage bonds.
7. (Kansas Pacific) Union Pacific, Middle Division, first mortgage bonds.
8. Kansas Pacific Railway Denver Extension first mortgage bonds.
9. Kansas Pacific Railway Consolidated first mortgage bonds.
10. Kansas Pacific Railway income bonds.
11. Leavenworth Branch bonds.
12. Denver Pacific Railway and Telegraph first mortgage bonds.

Also:

STOCK.

13. The certificates of stock of the Present Company.

1778 DEPOSITARIES.

The Mercantile Trust Co. of New York.
Old Colony Trust Co., of Boston.
Bank of Montreal, of London.
Amsterdamsche Bank, of Amsterdam.
Deutsche Vereinsbank, of Frankfort-on-Main.

Bonds and shares may be deposited by the holders thereof in either of the above-named Depositaries who shall issue their own negotiable certificates. After the plan has become operative, the Committee may order the transmission of securities deposited in any one of the Depositaries into the keeping of The Mercantile Trust Co. of New York, who shall constitute the central Depositary, and who shall, thereupon, issue its own engraved certificates for the previously issued certificates of the branch or auxiliary Depositaries.

Until the plan shall have been declared operative, depositors of bonds in either of the Depositaries may apply to have their bonds transferred to any other Depositary, upon payment of the expense thereof, and shall be entitled to the certificates of the last Depositary upon the surrender of the certificates previously issued to such depositors.

Holders of securities who shall have deposited the same in any one of the foreign auxiliary Depositaries shall, where such securities have had the foreign Government stamp attached, be entitled to receive the new securities likewise with the foreign Government stamp.

For further particulars and powers of the Committee Depositors are referred to the agreement of which this plan is a part.

1779 AGREEMENT.

An agreement made this 15th day of October, 1895, between Louis Fitzgerald, Jacob H. Schiff, T. Jefferson Coolidge, Jr., Chauncey M. Depew, Marvin Hughitt, and Oliver Ames, 2d, parties of the first part, and herein called the "Committee," and holders of such bonds and stock of The Union Pacific Railway Company as shall, conformably with the provisions of the annexed Plan and of this Agreement, be deposited as in said Plan and herein provided, parties of the second part, and herein called "Depositors."

Whereas, the parties of the first part have been and hereby are constituted a Committee for the reorganization of the affairs of The Union Pacific Railway Company proper, inclusive of its Kansas Pacific Lines, and have formulated the annexed Plan for such reorganization:

Now this agreement witnesseth:

That each and every person or party who shall have deposited with either of the Depositaries hereunder as hereinafter provided any bonds of the Union Pacific Railway Company receivable under this Agreement, or any stock of said Company, hereby promises and agrees to and with the Committee and every other party hereto, and they and the Committee respectively promise and agree as follows:

First. Printed copies of this Agreement, certified by a
1780 majority of the Committee and lodged respectively with the Depositaries, shall be held and taken as the original Agreement. The said Plan is, and shall be, taken to be a part of this Agreement, with the same effect as though each and every provision thereof had been embodied herein, and said Plan and this Agreement shall be read as parts of one and the same instrument, but it is understood, however, that no estimate, statement, explanation or suggestion in said Plan, or in the statement which precedes the same, or in this Agreement, or in any circular issued or to be issued by the Committee, is intended to or shall operate as a representation or warranty or as a condition of the deposit of securities hereunder, and no error or defect therein shall operate to release any depositing security holder, except with the consent of the Committee.

Depositors of securities shall receive receipts or certificates of deposit in form to be approved by the Committee, specifying the securities deposited and assessments, if any, paid thereon, and all rights of the depositors in respect of such deposits shall be such only as are evidenced by such receipts or certificates; and thereafter the holder of any such receipt or certificate, or of any receipt or certificate issued in lieu thereof or in exchange therefor, shall be subject to this agreement and entitled to have and exercise the rights of the original depositor under the receipt or certificate issued to him in respect of the securities therein mentioned.

The respective receipts or certificates of deposit, and the interest represented thereby, and all rights of the holders in respect of
1781 the deposited securities and assessments paid thereon, shall be transferable only subject to the terms and conditions of this agreement and in such manner as the Committee shall approve, and upon such transfer the transferees and holders of such receipts or certificates of deposit shall for all purposes be substituted in place of the prior holders, subject to this agreement. All such transferees, as well as the original holders of receipts or certificates of deposit, shall be embraced under the term "Depositors," whenever used herein. Each receipt or certificate of deposit may be treated by the Committee and by the Depositaries as a negotiable instrument, and the holder for the time being may be deemed to be the absolute owner thereof and of all rights of the original depositor of the bond or stock and assessments in respect of which the same was issued, and neither the Depositaries nor the Committee shall be affected by any notice to the contrary. By accepting any such receipt or certificate, every recipient or holder thereof shall thereby become party to this agreement with the same force and effect as though an actual subscriber hereto under seal.

Depositors must in all cases deposit with the certificates for their stock, or with their bonds or other securities, such transfers, assignments and powers of attorney as may be required by the Committee, in order to vest in said Committee or to enable it to transfer the complete and absolute title to such stock, bonds or other securities, and to coupons or interest installments on deposited bonds; and the depositors respectively agree at any time on demand of the Committee to execute any and all transfers, assignments or writings necessary for vesting complete ownership of the bonds, stocks or other
1782 securities deposited hereunder in said Committee or in its nominees, or for the purpose of enabling said Committee to carry out said plan of reorganization.

The Committee shall have power to fix or limit the time within which all or any class of security holders may deposit their securities and become parties to this agreement as herein provided, and may, in its discretion, and on such terms and conditions as it may see fit, either generally or in special instances extend or renew the time so fixed or limited.

Holders of securities not deposited in the manner herein provided within the times so fixed, limited, extended or renewed will not be entitled to deposit the same or become parties to this agreement or share in the benefits thereof and shall acquire no rights thereunder, except by express consent of the Committee and on such terms and conditions as the Committee may prescribe. Depositors of stock who shall fail to pay their assessments, or any installments thereof, within such time as shall be fixed or limited shall cease to be entitled to any benefit hereunder, or in the securities deposited or assessments paid, and shall absolutely forfeit, without right of redemption, their stock, together with any part of the assessments paid thereon, and the Com-

mittee may sell the same, or the new securities which may be issued in respect thereof, to any purchaser paying such amount as the Committee may determine, and the proceeds thereof may be used for any of the requirements of carrying out said plan, and as a reserve for the uses of the new company. The Committee may, however, in its discretion, on such terms as it shall see fit, waive by resolu-
1783 tion any such forfeiture or failure to pay the assessment within the times allowed.

Second. The Depositors hereunder hereby request the Committee to endeavor to carry into practical operation this agreement, including the foregoing plan of reorganization, in its entirety or in part, to such extent and in such manner and with such additions, exceptions and modifications as the Committee shall deem to be for the best interests of the Depositors. Each and every Depositor, for himself and not for any other Depositor, does hereby sell, assign, transfer and set over to the said parties of the first part as joint tenants, and not as tenants in common, and to the survivor and survivors of them and to their successors, as a Committee, each and every bond, share of stock, security or obligation or evidence thereof deposited hereunder, and every Depositor hereby agrees that the Committee shall be, and hereby is, vested with all the power and authority of owners of the stock, bonds, securities and obligations deposited hereunder, with full right to transfer the same into its own name, as a Committee, or into the name of any other person or persons whom the Committee may select; to vote thereon at any meeting of stockholders or bondholders or creditors; to use every such stock, bond, security or obligation as fully and to the same extent as the owner or holder thereof, including power to declare due the principal of any bond or other obligation deposited hereunder, and to revoke any such declaration whenever made; to call or attend, and either in person or by proxy to vote at, any and all meetings of stockholders or bondholders or creditors of any
1784 corporation, however convened; to terminate or to seek to dissolve or modify any trust or lease, in whole or in part; to apply for the determination of the validity thereof, or for the removal of any trustees or the substitution of other trustees, or to take any other steps in respect of any trust or lease or under any provision thereof; to purchase at such prices as it shall see fit, or to pay, compromise or settle with the holders of any coupons, notes or other obligations of the Union Pacific Railway Company, or of any or either of the original Companies consolidated therein, or of auxiliary Companies heretofore related thereto, or any Receivers' certificates or obligations issued or which may be issued or incurred by the Receivers thereof, and to apply for that purpose any moneys received from the assessments on the stock, or which may otherwise be received or raised by the Committee; to sell and transfer and to effectively assign any and all coupons on deposited bonds, and any rights, claims or demands for accrued or future interest on such bonds; to give all bonds of indemnity or other bonds, and to charge therewith the

securities deposited hereunder or any part thereof, if the Committee shall so deem necessary or expedient in carrying out the purposes hereof; to institute or cause to be instituted or to become parties to any legal proceedings which could be instituted by any Depositor or any corporation, or any officer of any corporation whose stock or bonds or other obligations (or any part thereof) are deposited hereunder, and to participate in, adopt or extend its aid and co-operation in and to any and all legal proceedings now existing; to apply for receivers, or the removal of receivers and the substitution of other receivers, or for the termination of any receivership
1785 and the delivery of any property to its owners; to enter into settlement of any litigation now or at any time existing or threatened, in whole or in part, with plenary power to enter into arrangements for decrees, or for facilitating or hastening the course of litigation, or in any way to promote the objects of the Plan and the purposes of the Committee; to do whatever, in the judgment of the Committee, may be necessary to promote or to procure such joint or separate sales of any property or franchises herein concerned, as the Committee may deem desirable, wherever the same may be situated; to adjourn the sale of any property or franchises, or of any portion or lot thereof at discretion; to bid, or to refrain from bidding, at any sale, either public or private, either in separate lots or as a whole, for any property or franchise or any part thereof, whether or not owned, controlled or covered by any deposited security, including or excluding any particular rolling stock, or other property, real or personal, and at, before, or after, any such sale, to arrange and agree for the resale of any portion of the property which the Committee may decide to sell rather than to retain; to hold any property or franchises purchased by the Committee either in its name or in the name of persons or corporations by it chosen for the purposes of this agreement, and to apply any security deposited hereunder in satisfaction of any bid or towards obtaining funds for the satisfaction thereof; it being understood that the term property and franchises includes any and all railroads, railroad and other transportation lines, leaseholds, stock or other interests in corporations, in which the Union Pacific Railway Company has any interest of any
1786 kind whatever, direct or indirect. The amount to be bid or paid by the Committee for any property or franchises shall be absolutely discretionary with it; and, in case of the sale to others of any property or franchise, the Committee may receive out of the proceeds of such sale or otherwise any dividend in any form accruing on any securities held by it.

The enumeration of specific powers hereby conferred shall not be construed to limit or to restrict general powers herein conferred or intended so to be; and it is hereby distinctly declared that it is intended to confer on the Committee, and each depositor hereunder hereby confers on the Committee, in respect of all securities deposited or to be deposited, and in all other respects, any and all powers necessary or expedient, or which the Committee may deem necessary or expedient

in or towards carrying out or promoting the purposes of this agreement in any respect, even though any such power be apparently of a character not now contemplated; and the Committee may exercise any and every such power as fully and effectively as if the same were herein distinctly specified, and as often as, for any cause or reason, it may deem expedient. And it is further understood and agreed that the methods to be adopted for or towards carrying out this agreement shall be entirely discretionary with the Committee.

Third. Any moneys paid under or with reference to said plan or this agreement shall be paid over by the Depositaries to the Committee, and shall be applicable for any of the purposes of the plan and agreement as may be most convenient, and as may from time to
1787 time be determined by the Committee, whose determination as to the propriety and purposes of any such application shall be final, and nothing in said plan shall be understood as limiting or requiring the application of specific moneys to specific purposes. No liability in respect or in favor of any bonds, stocks, obligations, securities or debts not called for and accepted on deposit hereunder, nor in favor of any lease or contract, is assumed hereunder, or by or for any new company (notwithstanding any mention thereof, or estimate in respect thereto, or reservation of securities to provide therefor, in said plan), nor is any trust in their favor created or impressed upon any deposit or payment hereunder, or upon any securities to be issued under the plan. Any obligation in the nature of floating debt or otherwise against the Union Pacific Railway Company or any property embraced in the plan, either as proposed or as carried out, or any securities held as collateral for any such obligations, may be acquired or extinguished or held by the Committee at such times, and in such manner and upon such terms as it may deem proper for the purposes of reorganization, but nothing contained in the plan or in this agreement is intended to constitute, nor shall it constitute, any liability or trust in favor or in respect of any such obligation.

The Committee shall have absolute and complete discretion and latitude in the use, disposition or distribution of all securities of the new Company, which are specified in the plan as reserved for purposes therein stated and which are in excess of the securities there embraced in the defined issues for reorganization purposes; and it may use, dispose of, distribute or apportion any of such re-
1788 served securities of the new Company in any manner and upon any terms which it may deem expedient or advisable to promote or accomplish the substantial objects and purposes of the plan and of this agreement. In case of any claim, lien or obligation not herein fully provided for, and affecting the Union Pacific Railway Company, or any property or franchise thereof, the Committee may from time to time make such compromise in respect thereto or provision therefor as it may deem suitable, using therefor any securities not expressly required for settlement with Depositors; but the total amount of new securities to be created, as set forth in the plan, shall not be increased.

Fourth. The Committee may from time to time make contracts or arrangements with any other Committee, person, syndicate, or corporation, for the purpose of carrying this agreement, or any of the provisions or purposes thereof, into effect. The Committee may employ counsel, agents, and all necessary assistance, and may incur and discharge any and all expenses by the Committee deemed reasonable for the purposes of this agreement. Its selection of the Depositaries named in the plan, and any selections which may be hereafter made by it of further or substituted Depositaries, are hereby authorized, ratified, and confirmed. The Committee may prescribe the form of all securities and of all instruments at any time to be issued or entered into under this agreement. It may create and provide for all necessary trusts, and may nominate and appoint trustees thereunder. It may, at public or private sale, or otherwise, dispose of any securities of the new company left in its hands because of any failure to make deposits hereunder. In so disposing of any
1789 such new securities thus left in its hands the Committee may use the same or the proceeds thereof for the purpose of carrying out the reorganization in such manner as it may deem expedient and advisable.

Fifth. The Committee may procure the organization of one or more new companies, or may adopt or use any existing or future companies, and may cause to be made such consolidations, leases, sales, or other arrangements, and may make, or cause to be made, such conveyances or transfers of any properties or securities acquired by the Committee and take such other steps as the Committee may deem proper for the purpose of creating the new securities provided for in the plan and carrying out all or any of the provisions thereof.

The Committee may negotiate and agree with any and all companies or persons for obtaining or granting running powers, terminal facilities, exchanges of property, or any other conveniences which it may deem necessary or desirable to obtain or to grant, and may make contracts therefor binding upon such new company; and generally may authorize, ratify, and make such purchases, contracts, stipulations, or arrangements as will in its opinion operate directly or indirectly to aid in the preservation, improvement, development, or protection of any property of the Union Pacific Railway Company, or to prevent or avoid opposition to, or interference with, the successful execution hereof.

The Committee may proceed under this agreement, or any part thereof, with or without foreclosure, and may exercise any power after foreclosure sale.

Any action contemplated in the plan or agreement to be
1790 performed on or after completion of reorganization may be taken by the Committee at any time when it shall deem the reorganization advanced sufficiently to justify such course, and the Committee may defer, as it may deem necessary, the performance of

any provision of the plan or agreement, or may refer such performance to the new Company.

Sixth. The bonds deposited under this agreement, and all Receivers' certificates, coupons and claims purchased or otherwise acquired under this agreement, shall remain in full force and effect for all purposes, and shall not be deemed satisfied, released or discharged by the delivery to the depositors of new securities in respect of their deposits, and no legal right or lien shall be deemed released or waived, but said bonds and other claims, and any deficiency judgment obtained in respect of any of said deposited bonds, and any judgment upon any of such claims, and all liens and equities, shall remain unimpaired, and may be enforced by the Committee or by the new Company or other assigns of the Committee until paid or satisfied in full or expressly released. Neither the Committee nor any bondholders or creditors of the Union Pacific Railway Company, by executing this agreement or by becoming parties thereto, release, surrender, or waive any lien, right, or claim in favor of any stockholders or other parties interested in such company, and all such liens, rights or claims shall vest unimpaired in the Committee, and in the new Company, as its assigns; and any purchase or purchases by or on behalf of the Committee, or the new Company, under any decree for the enforcement of any such lien, right or claim shall vest the property purchased in the Committee or the new Company,
1791 free from all interest or claim on the part of such stockholders or other parties.

Seventh. The Committee may construe this agreement (including the plan of reorganization), and its construction thereof or action thereunder in good faith shall be final and conclusive.

The Committee may supply any omission or correct any error in the plan or in this agreement, and may modify or depart from any provisions thereof which it shall unanimously deem not to be substantial. In case, however, in the opinion of the Committee, any substantial change or alteration of the plan or of this agreement shall be necessary, such amendment shall be made only in the following manner:

A copy of the proposed change or alteration shall be lodged with each of the Depositaries under this agreement, and a notice thereof shall be advertised in the manner specified in Article Tenth hereof. Thereupon any holders of receipts or certificates of deposit who do not assent to such alteration may, at any time before a date specified in such advertisement, which date shall be at least twenty days after the first publication of such advertisement, withdraw the securities represented by their receipts or certificates of deposit upon surrendering their said receipts or certificates of deposit to the proper Depositaries.

Any interest paid or advanced in purchase of coupons or otherwise to holders of receipts or certificates in respect of deposited bonds

represented thereby, or in respect of the new bonds to be issued
1792 in exchange therefor under the plan, must, in such cases, also be repaid with interest by the holders of such certificates of deposit before the deposited bonds represented by such certificates shall be surrendered in exchange therefor. Any assessments paid on deposited stock so withdrawn or the proceeds of the use thereof, shall be returned to the holders of certificates of deposit representing such deposited stock, less a *pro rata* share of the expenses and other expenditures and compensation of the Committee incurred up to the date of such withdrawal, which *pro rata* share shall be such as the Committee shall estimate to be properly applicable to the stock so withdrawn. All holders of certificates of deposit who shall not exercise this right to withdraw their securities within said time shall be deemed to have assented to and adopted such change or alteration and shall be bound thereby, and the Committee shall be fully authorized to carry the same into effect with all the powers provided in this agreement.

Wherever the plan or this agreement is referred to in the plan or in this agreement, it shall be deemed to include any change or alteration thereof so adopted.

The plan may be abandoned by the Committee at any time notwithstanding it may have previously declared the same to be operative.

The Committee may at any time abandon such portions and features of the Reorganization as relate to any of the lines, or parts of lines, embraced in said plan, which lines or parts of lines, by reason of failure of holders to deposit securities affecting the same, or for any reason satisfactory to the Committee, it may deem
1793 expedient to omit from the Reorganization; and in such event the Committee shall, upon the surrender of the corresponding certificates of deposit and reimbursement of advances in respect to the bonds represented thereby, as above provided in case of withdrawals, return to the holders the deposited bonds secured upon the lines, or portions of lines, thus omitted, and the securities apportioned in the plan to the bonds thus returned shall not be issued.

In case the Committee shall finally abandon the entire plan, after having once declared it operative, the stock, bonds and securities deposited hereunder, or their proceeds, or any stock, bonds, securities, or claims representative thereof, then under the control of the Committee, shall be delivered to the several Depositors in amounts representing their respective interests upon surrender of their respective receipts or certificates. In such case the assessment moneys paid by the depositing stockholders, or any coupons, notes, Receivers' certificates, or other claims or property acquired therewith, or the proceeds thereof when received, shall be distributed or equitably adjusted among the respective holders of the receipts or certificates of deposit for stock in proportion to the amount of the assessment moneys paid thereon respectively.

Eighth. The action of a majority of the members of the Committee, expressed from time to time, either at a meeting or in writing with

or without meeting, shall for all purposes constitute the action of the Committee, and have the same effect as if assented to by all. It may adopt its own rules of procedure. Any vacancy in the
1794 Committee may be filled by appointment in writing by the remaining members or a majority of them, and the Committee may by action of a majority of its members add to its number. All title, rights and powers vested in the Committee hereunder shall, from time to time, vest in the members of the Committee for the time being, without any further appointment, transfer or assignment whatsoever. In case of absence, any member may vote by any other member as his proxy.

Any member of the Committee may at any time resign by giving notice in writing to a majority of the remaining members, and the Committee may give full release and discharge to any such member, or to the personal representative of any deceased member. The Committee may act through sub-committees or agents, and may delegate any authority, as well as discretion, to any such sub-committee or agent. The Committee, or the Depositaries, or any present or future member of either, may be member of the Committee or of the Depositaries, and all or any of them may be or become pecuniarily interested in any contracts, property or matters which this agreement concerns, including any syndicate agreement, whether or not mentioned in the plan. Any direction given by the Committee shall be full and sufficient authority for any action of the Depositaries or any trust company or other custodian, or for any sub-committee or agent.

Ninth. The Committee undertakes in good faith to endeavor to carry out said Plan and this agreement, but the members of the Committee assume no personal responsibility for the execution thereof. No member of said Committee shall be liable in any case for the acts of the other members or of any other Committees or of any
1795 Depositary, nor for the acts of their agents, sub-committees or employees; nor shall they be personally liable for any error of judgment or mistake of law, but each shall be liable only for his willful misfeasance. No Depositary shall be liable for the acts of the Committee or of any other Depositary hereunder, or of any agents of the Committee or of any Depositary.

The members of the Committee shall be entitled to receive reasonable compensation for their services, and such compensation, with the reasonable expenses of said Committee, shall be paid as part of the expenses of reorganization, the amounts of such compensation and expenses being first approved of by at least four members of the Committee. The accounts of the Committee shall be filed with the Board of Directors of the new Company, and, when audited by said Board of Directors, shall be binding and conclusive on all parties, and the Committee shall be thereby discharged, turning over to the new Company any balance in the hands of the Committee.

The acceptance of new securities by any Depositor shall estop such Depositor from questioning the conformity of such securities, as to character or otherwise, with any provision of said plan, and the ac-

ceptance of new securities by a majority in amount of any class of depositors shall so estop all Depositors of such class.

Tenth. All calls for the deposit of bonds and stocks, for the payment of assessments or for the surrender of certificates, all notices fixing or limiting the time for the deposit of securities or the payment of assessments, and all other calls or notices hereunder, shall, except when otherwise provided, be inserted in two or more daily
1796 papers of general circulation published in the City of New York, and in one or more daily papers of general circulation published in the cities of London, Boston, Amsterdam and Frankfort, respectively, twice in each week for two successive weeks. Any call or notice whatsoever, when so published by the Committee, shall be taken and considered as though personally served on all parties hereto and upon all parties becoming bound hereby, as of the respective dates of insertion thereof, and such publication shall be the only notice required to be given under any provision of this agreement.

Eleventh. This agreement shall bind the Committee and their successors in office appointed in accordance herewith and the depositors hereunder, their and each of their heirs, executors, administrators, successors and assigns.

In witness whereof, the members of the Committee have hereunto signed their names, and all other parties hereto have deposited securities as above set forth.

1797 Q. I see by this plan, Mr. Schiff, that you were one of the re-organization committee.

A. I was.

Q. And Kuhn, Loeb & Company were the bankers of the committee.

A. They were.

Q. It also appears, on page 17 of this re-organization pamphlet, that a re-organization syndicate was organized under the management of Kuhn, Loeb & Company.

A. I remember about that.

Q. You remember that, do you?

A. Yes.

Q. Do you remember now, Mr. Schiff, when the present Union Pacific Company took over the properties and commenced business?

A. About. It was in the beginning of 1898.

Q. You were a member of the Board of Directors, were you not?

A. I remember some of the board.

Q. I say you were a member of the board?

A. Yes.

Q. Up to what time?

A. I think up to April, 1906.

Q. Mr. Kahn was also a member of the Board of Directors at the same time, was he not?

A. I think he was.

Q. Do you recall, Mr. Schiff, the issuance of a hundred millions of convertible bonds of the Union Pacific?

A. I do.

Q. They were brought out through your house?

A. Bought by our house.

Q. Do you remember the purpose for which they were issued?

A. I do.

Q. What was it?

A. To put the Company in funds.

Q. For what purpose were the funds to be used?

A. The first part, which was issued I think to the extent of $40,-000,000, if I remember correctly, was sold to put the Company in funds to pay for its purchase of Southern Pacific stock, or
1798 perhaps, rather, to put the Oregon Short Line Railroad Company in funds to pay for its purchase of Southern Pacific stock.

Q. Well, the purchase of the Southern Pacific stock was financed by the Union Pacific in the first instance, through those convertible bonds, wasn't it?

A. As far as I can remember, it was financed for the Oregon Short Line Railroad Company by the Union Pacific.

Q. Well, these various bond issues are in evidence. Do you remember the time that the Northern Pacific and the Great Northern purchased the stock of the Chicago, Burlington & Quincy?

A. Yes, I do.

Q. That is, you remember the fact of their purchasing it. At the time of that purchase, or prior to the time it was consummated, did Mr. Harriman and yourself have any conversation with Mr. Hill, or the parties who were negotiating that purchase, with reference to securing an interest in the purchase?

Mr. LOVETT. The defendants object to any testimony with reference to the purchase of the stock of the Chicago, Burlington & Quincy Railroad Company by the Northern Pacific or any other company, because there is no issue in regard thereto made by the petition in this case.

Mr. CRAVATH. You simply meant to ask about any conversation in which Mr. Schiff himself took part?

Q. Mr. Hill testified in the Northern Securities case that Mr. Harriman and yourself did have a conversation, and it is that evidence I want to ask you about.

A. Do you want me to answer?

Mr. LOVETT. Answer the question.

1799 WITNESS. As far as I can remember—this is a matter of seven or eight years ago, but as far as I can remember, there were either one or two discussions between Mr. Harriman and Mr. Hill, and I believe I was present at least at one of them, in which the general aspect of the situation was discussed, and in which Mr. Harriman objected to the Burlington & Quincy passing into the hands of

the Northern Pacific and Great Northern, and insisted that it should be kept independent. He said that the Union Pacific was perfectly satisfied with the position of the Burlington & Quincy as it existed, and he thought it was inadvisable that it should be attached to the two northern corporations, or either of them.

Q. Well, that is part of the conversation, but that is not the part that I was particularly directing your attention to. Do you recall a request that was made either by Mr. Harriman or yourself or both of you in one of those conversations, that you gentlemen or the Union Pacific, in case the purchase was to go through, should be allowed to participate in it with the Northern Pacific and the Great Northern?

A. I cannot exactly remember whether it was a formal request. I know such was the desire, in order to keep the Burlington & Quincy independent, that the Union Pacific interests, if the purchase was made by the two Northern companies, should have an interest in it.

Q. Yes. You do not remember the exact conversation, I suppose, so many years ago?

A. No. That is eight years ago.

Q. And was the desire expressed that that interest be an equal interest with the others, that is, one-third to each of the three companies?

A. That I cannot remember.

Q. All you remember is that it was the desire to have some interest in the purchase?

A. Yes.

1800 Q. What ground of objection did Mr. Harriman urge on behalf of the Union Pacific, or from its standpoint, to the Northern lines acquiring the Burlington?

A. As far as I can remember, he thought existing conditions should not be disturbed.

Q. But if it was to be purchased, that the Union Pacific interests should share in the purchase?

A. Should have an interest, yes.

Q. Do you remember about when that conversation was, Mr. Schiff?

A. As far as I can remember, it was in the spring of 1901, but I can not remember exactly whether it was in April or May.

Q. A little earlier, wasn't it?

A. It was in the spring of the year.

Q. What did Mr. Hill respond to that suggestion?

A. As far as I can remember, it was declined.

Q. Declined.

A. But I am not certain.

Q. Mr. Schiff, have you a recollection of the firm of Kuhn, Loeb & Company buying a large amount of Northern Pacific stock in the spring of 1901?

A. Indeed I have.

Q. And that was turned over to the Union Pacific or the Oregon Short Line, wasn't it?

A. It was re-sold to the Union Pacific or the Oregon Short Line.

Q. Almost immediately, wasn't it?

A. After a very short time.

Q. Now, prior to the time that your firm went into the market and bought that block of Northern Pacific stock, did you have any conversation with Mr. Harriman with reference to making those purchases?

A. We made the first purchase without conversation or conference with anybody. We only informed Mr. Harriman, after we had started purchasing Northern Pacific stock, that we had done so.

1801 Q. Do you remember how much you had bought up to that time, when you had your talk with Mr. Harriman?

A. I do not remember.

Q. It appears in the testimony that you turned that stock over in certain blocks.

A. We did.

Q. You recall that fact, don't you?

A. Yes, I do.

Q. Until finally the Union Pacific had acquired a majority of the then outstanding Northern Pacific stock, counting the preferred and the common together.

A. As far as I remember, of the common and preferred stock combined.

Q. What was the purpose of the Union Pacific or the Oregon Short Line in acquiring the majority of the stock of the Northern Pacific?

A. I think that is a question which Mr. Harriman is better able to answer than I, but as far as I can answer it I will say its purpose was to continue, if possible, the status quo as far as the Burlington & Quincy was concerned—to keep it independent.

Q. That is, to get a half-interest in the control of the C., B. & Q.?

A. There was nothing clearly thought or said about it. I think the Union Pacific managers felt that if they controlled the Northern Pacific, which they had no desire to control because it was the Northern Pacific,—but if they did control the Northern Pacific, which at that time, together with the Great Northern had accomplished the purchase of the Burlington & Quincy, they might still be in a position to enforce independent management of the Burlington & Quincy.

Q. And that was the purpose? It was for the purpose of controlling the action of the Burlington that you (and by "you" I mean the Union Pacific interests) sought to take over the control of the Northern Pacific?

1802 Mr. LOVETT. I object to that question because it is not a fair statement of the witness's statement.

Mr. SEVERANCE. I will ask him to state it, then.

A. By no means the action of the Burlington; it was rather to compel the action of the Great Northern and Northern Pacific, or, rather, the Northern Pacific which had bought the Burlington jointly

with the Great Northern, and to leave the Burlington & Quincy in its *status quo*.

Q. What do you mean by the "*status quo?*"

A. Leave it independent.

Q. What interest did the Union Pacific have in what was done with the Burlington?

A. While it was, to some extent, a sharp rival, it was always able to get along with it, but the managers of the Union Pacific did not know, with two new interests coming into that territory, what might become of the Burlington and what havoc might be played with existing competitive conditions which were entirely satisfactory.

Q. That is, you did not want new competitors to come into the Union Pacific territory? You did not want the Northern lines to come down there as competitors in the Union Pacific territory?

A. That was not the case, as far as I understand it. I do not believe, as far as I can remember, that anything was considered or thought about it at that time, except that existing conditions should not be changed. As you are aware, the thing worked out differently, and it is rather difficult to say now what would have been the result if the Union Pacific had carried out its purpose in forcing the *status quo* to be maintained.

Q. Now, Mr. Schiff, you say that the *status quo* meant that the Burlington, while a sharp rival, was one that you could get along with in the Union Pacific territory. That is what you said a
1803 minute ago, isn't it?

A. Yes.

Q. And it was to prevent any different or other rivalry, was it not, that you desired to prevent the Northern lines getting control of the Burlington?

A. By no means.

Q. What did you want then? What were you afraid of?

A. We were not afraid of anything, but we knew we were satisfied with the status quo and we wanted to have that maintained. We were not theorizing. We did not know what was beyond. We only knew what existed, and we wanted to hold on to that.

Q. You wanted to hold on to the situation that then existed?

A. Yes.

Q. This friendly rivalry with the Burlington?

A. Yes.

Q. You knew at that time, did you not, Mr. Schiff, that the western terminus of the Northern Pacific was the same as the western terminus of the Union Pacific with its subsidiary lines into Portland?

A. You mean that both companies had an entrance into Portland?

Q. Yes.

A. Yes.

Q. You knew they were competing for business to the Coast by way of Portland, did you not?

A. Yes.

Mr. LOVETT. That the Northern Pacific and the Great Northern were?

Mr. SEVERANCE. The Northern Pacific and the Union Pacific.

Mr. LOVETT. By way of Portland?

Mr. SEVERANCE. Yes.

Mr. LOVETT. That is news to me. You mean the business into Portland?

Mr. SEVERANCE. Yes.

Q. Judge Lovett thinks I did not state my question cor-
1804 rectly. What I meant to ask you (and I think you understood me) is, that both lines reached Portland and were competing for business into Portland. You understand my question, don't you?

A. That I do not know. I mean in a general way. You must understand, and I think it will clear up the situation as far as I am concerned, that as to the actual traffic arrangements and business of the Union Pacific, Mr. Schiff and Mr. Kahn, the directors of the Union Pacific, knew very little. They were simply the financial experts, or whatever you want to call them.

Q. Mr. Kahn testified in the record here that you were the fiscal agents, but in your answer you do not like that expression.

A. I cannot say exactly we were the fiscal agents. I think the Union Pacific, if it had found it to its advantage, would have done business with other people. We re-organized the Company. We were looking after its financial affairs as far as the directors desired us to do so.

Q. You were the financial representatives of the Union Pacific from the time of the re-organization, were you not, and are still?

A. I don't know what you call financial representatives. We attended to most or practically all of its financial business.

Q. You had no intimate relations with any other transcontinental line at that time, had you, and have not had since you re-organized the Union Pacific?

A. I was a director of the Great Northern for many years.

Q. Up to what time?

A. I think up to 1900 or 1901; I don't remember.

Q. But not since then?

A. Not since then, no.

Q. And in looking after the financial matters here, your firm
1805 has been the Union Pacific banker, since the re-organization, hasn't it?

A. Yes, you might style it so.

Q. And you have not acted in that capacity for any other transcontinental line during that time, except incidentally, perhaps?

A. We have done business with a great many transcontinental lines.

Q. Undoubtedly.

A. We have done considerable financial business with the Great Northern. While directors in the Union Pacific, we have done busi-

ness with the Atchison. I don't know whether we have done any business with the Northern Pacific, but it is not unlikely we have; I mean that we participated in the business, not directly probably.

Q. But you had no such character of relations with these other lines that you had with the Union Pacific? That is true, isn't it?

A. No, we had not.

Q. Isn't it a fact, Mr. Schiff, that since the re-organization, whenever the Union Pacific have had any securities to sell, or when they bought any large amount of securities, that they have been bought or sold through your house?

A. Yes; they gave us an opportunity to deal with them.

Q. How is that?

A. They gave us the first opportunity to deal with them.

Q. And you have accepted that opportunity?

A. Yes.

Q. Do you remember, Mr. Schiff, of certain conversations had by Mr. Harriman and yourself with Mr. Ripley and Mr. Morawetz, or either of them, in or about the year 1904, with reference to the Santa Fe?

A. I can not exactly remember. I know of those conversations. I am not quite clear in my mind whether I was present or not.

1806 I think I was present at one, but not more. However, I am not certain.

Q. Was that conversation with Mr. Morawetz or with Mr. Ripley, or both?

A. Even that I cannot remember. I have seen Mr. Morawetz so often, almost every week or oftener, that I cannot at present remember exactly what conversation you refer to.

Q. I will refresh your recollection or direct your attention to what I mean. Mr. Ripley testified, at the time an inquiry was being made into these railroads a couple of years ago, that in the summer of 1894 (1904) he had certain conversations with you and Mr. Harriman, and certain conversations with Mr. Morawetz, Mr. Harriman and yourself and your associates, with reference to having representation on the Board of Directors of the Santa Fe. It is about that representation I want to ask you.

A. If Mr. Ripley testified to a fact which he remembers, it is no doubt correct. I cannot for the moment remember whether I was present at those conferences, though in general I knew of them.

Q. You knew of them. From whom did you know of them?

A. I think Mr. Harriman, if I was not present. Mr. Harriman has probably, and I think almost certainly, repeated what was said at the conferences.

1807 Q. Mr. Schiff, you knew at that time that requests were made upon the Santa Fe people for representation of yourself and your associates?

A. I did.

Q. Who were the gentlemen that were included in the expression "Mr. Harriman, Mr. Schiff, and their associates?" Who were the other gentlemen?

A. Mr. William Rockefeller, Mr. Henry H. Rogers, Mr. Harriman, Mr. James Stillman, and ourselves.

Q. Mr. Frick?

A. No.

Q. He wasn't acting with you in that matter. Mr. Frick was then a director in the Union Pacific, was he not?

A. I have to refresh my memory. I do not remember just exactly about that.

Q. What was it that you gentlemen desired of the Santa Fe at that time?

A. We had been purchasing a large amount of the common stock of the Atchison, Topeka and Santa Fe Railroad, and, under the laws of Arizona, we were entitled to cumulative voting, to two directors.

Q. The laws of Kansas, I think you mean; Kansas instead of Arizona.

A. Well, one of them. Kansas. We were entitled to two directors and we wanted them without resorting to cumulative voting.

Q. What gentlemen did you ask to have put on the Santa Fe board in the first instance?

A. Mr. Rogers and Mr. Frick.

Q. Eventually; but whom did you ask in the first instance to put on before that?

A. Will you please repeat that question?

Question read by the reporter.

A. Eventually?

Mr. CRAVATH. Whom did you ask in the first instance?

1808 Q. Whose were the first names you suggested, Mr. Schiff?

A. I do not remember that anybody else was suggested, except Mr. Frick and Mr. Rogers.

Q. Don't you remember of Mr. Harriman being suggested as one of the gentlemen to go on the board, and that Mr. Ripley objected to an executive officer of the Union Pacific going on?

A. I do not remember that.

Q. You do not remember any names other than Mr. Rogers and Mr. Frick?

A. I do not.

Q. What was your object in asking for this representation?

A. We were large owners of Atchison, Topeka and Santa Fe stock, and we wanted to have representatives on the board to know that our interests were properly protected.

Q. Were you dissatisfied with the management of the Santa Fe road at that time?

A. I do not think we were.

Q. Were there any changes in the management that you desired to have made?

A. As I have said, we wanted to have two of our own representatives put on. It is but usual and natural that large stockholders should want to be represented on the board of managers.

Q. Yes; but I say was there any particular method of doing business on the Santa Fe that was objectionable to you, so that you wanted representatives to change it?

A. Not as far as I personally know.

Q. Did you know of anybody else in your syndicate who was dissatisfied?

A. I do not.

Q. Then there was no change of method of operation that you desired?

A. Not as far as I know of.

1809 Q. Mr. Harriman has testified in this case, with reference to his conversations with Mr. Ripley and Mr. Morawetz concerning representation on the Santa Fe road, as follows: I want to read it to you and see if your recollection agrees with his. He says: "It was, in substance, that we were to try to establish a better relationship between all railroads, in the line that we should deal more frankly with each other, more publicly and more frankly, and not operate our lines for the purpose of destroying each other, but for the purpose of helping each other and for developing the territory served by each; and to that extent I even went so far with Mr. Morawetz as to tell him that as far as the Southern Pacific was concerned, I would be willing to even put him on the Executive Committee of the Southern Pacific, so that he might know what our intentions were, if he chose to." Does that agree with your recollection of the attitude of you gentlemen at that time?

A. It does by no means. I must refer you to Mr. Harriman. I might as well state here, clearly, that as far as Kuhn, Loeb & Company were concerned they purchased Atchison stock because they considered it cheap; and for no other reason.

Q. You have no recollection of this matter that Mr. Harriman testified about being discussed—establishing better relations between the Union Pacific and the Santa Fe?

A. That is a matter, I suppose, of four years ago. I believe it was in 1904—four years ago.

Q. Yes.

A. I do not remember that it was discussed.

Q. You do not remember anything about it?

A. It may have been discussed with Mr. Kahn, and still I
1810 may not have been present, but I am sure I wasn't——

Q. You do not remember any such discussion in your presence?

A. No. Mr. Severance, I would like to add to this.

Q. Yes; go ahead, Mr. Schiff.

A. It is probable that in purchasing stocks, different participants had different purposes. As I have stated already, our purpose was to invest in Atchison stock because we considered it very low in

price; and it may have been said, even if I do not remember it now, that it would be an advantage if friendlier relations than existed could be obtained in consequence. That may have been stated. Even if I do not remember it, it may still be a fact that that might have been stated.

Q. That might have been stated, although you do not remember it?

A. Yes.

Q. You did not suggest that Mr. Kahn or yourself go on that board, did you?

A. I do not think so.

Q. You do not remember that?

A. No.

Q. I think you said that you were present at one conversation with Mr. Ripley. Do you remember what was said in that conversation?

A. I think I may have been.

Q. But you can not remember about it?

A. But I do not remember about it exactly, no.

Q. That is all.

Cross-examination by Mr. LOVETT:

Q. Mr. Schiff, this stock that you and your associates owned at the time of the discussions about representations on the Atchison
1811 board was stock that you gentlemen owned, and not stock of the Atchison that the Union Pacific owned; isn't that true?

A. That is correct.

Q. You were representing the personal interest of yourself and your associates in these discussions?

A. That is correct.

Q. At the time of the conversations with Mr. Hill, about which you were interrogated, the Burlington owned a line extending from Chicago to Omaha where it connected with the Union Pacific, did it not?

A. It did.

Q. And also a line as far westwardly as Denver, where it connected with the Union Pacific again?

A. It did, as far as that.

Q. Then it connected with the Union Pacific at other points in Nebraska and Colorado and Wyoming, did it not?

A. It did.

Q. Wasn't it a system that originated a great deal of traffic, Mr. Schiff?

A. As far as I know, it was.

Q. One of the effects of the control of the Burlington by the Northern Pacific and Great Northern would have been to divert to those lines, as against the Union Pacific lines—or the tendency would have been to divert to those lines as against the Union Pacific line—such traffic as originated on the Burlington lines for the Pacific coast, would it not?

A. I have no doubt that would have been possible.

Q. I understood you to testify in answer to questions from Mr. Severance that the first time that the purchase of the Northern Pacific was talked about was after the Burlington had been acquired in the interests of the Northern Pacific and Great Northern; isn't that true?

A. That is correct. Please repeat that question again.

The question was read by the reporter.

A. I am not certain that the purchase by the Great North-
1812 ern and Northern Pacific of the Burlington was then actually accomplished, but it had been talked about.

Q. You are not sure that the purchase at that time had reached the control of the Burlington?

A. I am not certain, sir.

Re-direct examination by Mr. SEVERANCE:

Q. Mr. Schiff, had Kuhn, Loeb & Company started in independently some time before to buy control of the Burlington?

A. Never.

Q. Never did. Judge Lovett has asked you with reference to certain lines of the Burlington which were in position to turn over business to the Union Pacific, which question of his you answered just now. It was not with reference to business that the Burlington could turn over to the Union Pacific, that they were in rivalry, as you stated a while ago, was it, but it was business that could move over either line, wasn't it?

A. I believe it was.

Q. Your associates at the time that you purchased this Santa Fe stock, that is, Mr. Kahn, Mr. Harriman, Mr. William Rockefeller, Mr. Henry H. Rogers and Mr. Stillman—were all members of the Union Pacific Board, were they not?

A. Mr. Kahn was only an associate, and like myself was a member of the firm of Kuhn, Loeb & Company.

Q. Well, he was a member of the Board of the Union Pacific.

A. Yes; he and I were members of the Board of the Union Pacific.

Q. He was a members of the Executive Committee of the Union Pacific?

A. He was a member of the Executive Committee of the
1813 Union Pacific.

Q. Mr. Stillman was a member of the Executive Committee of the Union Pacific?

A. I believe he was.

Q. Mr. Rogers and Mr. William Rockefeller were both directors of the Union Pacific?

A. Mr. Rockefeller was not.

Q. Wasn't he?

A. Never.

Q. Of the Union Pacific?

A. No.
Q. Mr. Harriman was?
A. Yes, sir, he was.

1814 STUYVESANT FISH,

called as a witness on behalf of the Complainant, being duly sworn, testified as follows:

Direct examination by Mr. SEVERANCE:

Q. Where do you live, Mr. Fish?
A. In Putnam County, New York.
Q. Have you ever been in the railroad business?
A. All my life, nearly.
Q. With what roads have you been connected?
A. With the Illinois Central Railroad, beginning in 1871.
Q. In what capacity did you work for the Illinois Central?
A. Oh, in various. For the last nineteen or twenty years, down to 1906, as president.
Q. Where does the Illinois Central run? What main points does it reach?
A. From Chicago to New Orleans; from Chicago at present, to Omaha; and, since about 1870 to Sioux City, just north of Omaha, on the Missouri River; various branches in other directions.
Q. St. Louis?
A. St. Louis, Louisville, Memphis.
Q. With what transcontinental lines does it have a physical connection?
A. With the Southern Pacific at New Orleans; with the Union Pacific at Omaha; with the Gould system at St. Louis and other points—if you call that a transcontinental line.
Q. Well, west of the Missouri River?
A. The only two points at which the Illinois Central reaches the Missouri River are Sioux City and Omaha.
Q. Mr. Fish, during the time that you were connected with
1815 the Illinois Central, say down to 1901——
A. 1906.
Q. Well, I am going to ask you about a period up to 1901.
A. Oh, I beg your pardon. I thought you misunderstood me.
Q. ——were the Union Pacific and the Sunset route of the Southern Pacific competing for business of the Illinois Central, and if so, in what territory?
A. They were competing for our business by the two several lines; that is to say, the Union Pacific taking it at Omaha for their direct line west, and the Southern Pacific taking it at New Orleans for their more circuitous route around through Southern California.
Q. Prior to 1901 how active was that competition?

A. I think it was as active as between any two roads that were in the business.

Q. What territory did that competition cover?

A. The competition between those two railroads covered the whole territory, as I understand it. Of course the Illinois Central did not reach the eastern states territory.

Q. No, but I mean did it cover the whole of the territory that is reached by the Illinois Central; that is what I want to get at.

A. Yes. We sent our business in differently, either way, one way or the other, as suited us best, as we could do best, and it varied from time to time.

Q. The rates were the same?

A. I understand the rates were the same. I am not a very good witness as to rates, because I did not have to do directly with them. I always understood the rates were the same, both on passengers and freight.

Q. What about the competition, if any, for passenger bus-
1816 iness to the coast—emigrant or first-class?

A. Well, I remember one time we sold tickets which were good to go around one way and come back the other, indifferently; and that lasted for some time; I couldn't tell you how long. About emigrant business I haven't a definite recollection; I do not remember about that.

Q. Mr. Fish, it appears in the testimony that the Union Pacific, in connection with the Oregon Short Line and the Oregon Railroad & Navigation lines, reaches Portland, Oregon. What do you say, as a railroad man, as to whether, for the purposes of competition, it would be feasible to work business to San Francisco over the Union Pacific to Portland and thence down by boat?

Mr. LOVETT. You don't mean that. You had better let him read that question. You don't mean what you said.

(Question read by the Reporter.)

Mr. LOVETT. Is that what you mean?

Mr. SEVERANCE. Yes. I mean for the purpose of competing with direct rail lines to San Francisco—whether that would be feasible.

A. I should think so.

Mr. LOVETT. I do not think you got your question straight; but it is all right if it is satisfactory to you.

Mr. SEVERANCE. In what way?

Mr. LOVETT. You asked whether it would be feasible to work business over the Union Pacific to San Francisco, then from San Francisco to Portland, and then down by boat. That is what you said.

1817 Mr. SEVERANCE. No, no; you have got it the other way. Read that question again. I may have mis-stated it. I don't think I said that.

(The question was re-read by the Reporter.)

Q. By way of the Union Pacific to Portland and thence by boat. That is what I intended to say. You understood my question?

A. I think I understood you. Of course the Union Pacific does not run to Portland. The Oregon Short Line and the Oregon Railroad & Navigation and their affiliations do.

Q. Well, they own the road?

A. Yes.

Q. What I intended to ask was—if I didn't put it properly, I think you understood me—whether as a competitive measure it would be feasible to work business destined for San Francisco by rail to Portland and thence down by boat, as against the all-rail line.

A. I should think so.

Q. And what effect, if any, do the boat lines have on transcontinental rates?

A. There is the boat line, sailing ship line, around the south end of South America. I presume that has some effect. I have very often seen references to it as having an effect. Then, of course, there is the boat line via the Panama Railroad, which, it is pretty well understood, was kept in control by the transcontinental lines for a long while. Then there is the line (coming north all the time) of the Southern Pacific, the Morgan line of steamers to New Orleans and overland from there. I should say generally that they had a marked effect, and that you might count, in the United States, in our own trade, including the trade of Panama—you could
1818 count the steamboat line, if it did not exceed five times as long as the rail line, as something that would compete. From three to five times is the generally received opinion—depending upon circumstances, as to whether it was three or whether it was five.

Mr. LOVETT. We are quite prepared to stipulate that the boat line running around Cape Horn would have a very considerable effect on rates between the Atlantic ports and the Pacific.

Q. What is the character of the business that originates down along the line of the Illinois Central, from Chicago to New Orleans? Is it very much diversified, Mr. Fish?

A. Yes, sir, it is a diversified business. It is some manufacturing, but it is agricultural products, lumber, and coal, and the agricultural products in some form of manufacture—I mean in the sense of flour and glucose, partly manufactured. Of course there is a local business of vegetables, you know, and very highly——

Q. It is a very general business, is it not?

A. It is a miscellaneous business. Coal is the largest item.

Q. Does your line—I mean by your line the Illinois Central, formerly your line—pick up business anywhere along the line down between Chicago and New Orleans at intermediate points, destined for the coast, delivered to it by other lines from the east?

A. Yes. I don't think a great deal of it, but it does get some at certain points.

Q. What points?

A. It would receive it at Louisville, for instance. Some would come in there. And at other points where what you might call the

eastern trunk lines cross the Illinois Central. The Illinois
1819 Central is crossed by all those lines at one point or another—Chicago, or south thereof—and at those points is where that business would come.

Q. Is that some of the business that you said you moved indifferently one way or the other, south or north?

A. Well, I meant that we moved all the business we had, indifferently. The whole policy of the road was to make no permanent alliances, but to deal with all our competitors, from time to time, as we thought best in our own interests from time to time.

Q. Your competitors or your connections, which do you mean?

A. Connections. Did I say "competitors?"

Q. You said competitors, yes.

A. Excuse me; I meant to say connections. Correct that, will you?

Cross-examination by Mr. LOVETT:

Q. And you would send the business over the route that would give you the most revenue, wouldn't you, Mr. Fish?

A. Yes, sir.

Q. I think you testified that the Illinois Central connected with the Southern Pacific at New Orleans and with the Union Pacific at Omaha, with its line from Chicago. With what other lines reaching west of the Missouri River has it connections, Mr. Fish?

A. With the Burlington; with the Missouri Pacific; with the Northwestern—not at Omaha; it connects with the Northwestern at Omaha, but not for business west of the Missouri River.

Q. It connects with the Northwestern at Chicago, doesn't it?

1820 A. No; it connects with the Northwestern more particularly at Sioux City, with the Sioux City & Pacific.

Q. With the St. Paul?

A. With the St. Paul.

Q. The Rock Island?

A. Well, let me see. I don't think on the Missouri River that it connects with the Rock Island.

Q. No; I don't ask——

A. I thought your question was directed to that.

Q. I am not asking about where the connection is, but with the lines that cross the Missouri River or lie west of the Missouri River.

A. Oh, at one point or another we connect with them all.

Q. That is, with the lines you have mentioned; with the Rock Island——

A. Yes, including the Atchison.

Q. With the Atchison?

A. Yes.

Q. And all the lines extending from Chicago, or St. Louis, westwardly?

A. Yes.

Q. Or the Missouri River westwardly?

A. Yes, sir.

Q. And I believe you said the policy of the Illinois Central was to treat all of those connections impartially and work its through traffic in the interests of its own line?

A. Yes, sir.

Q. I presume you had in with all of these lines, or practically all of these lines, through rates for traffic to the Pacific coast, did you not?

A. I presume we had, but I could not testify to it. I think so.

Q. It was consistent with your general policy to have such tariffs?

A. Yes, sir.

Q. And then to treat those connections impartially and let
1821 the traffic move the way that meant the most to the Illinois Central?

A. Not to treat the lines impartially, but to treat those best that treated us best. It was purely a selfish policy.

Q. Yes, that is what I thought. You worked it the way that was to the best interest of the Illinois Central?

A. Yes, sir; for the time being.

Q. None of those lines could make any lawful rates from points on the Illinois Central, without the consent of the Illinois Central, could they, Mr. Fish? That is to say, traffic originating on the Illinois Central, destined to the Pacific coast, moved under through rates established by agreement with carriers participating in the haul, is that correct?

A. I think so; until recently.

Q. And they could not make—any foreign line—neither the Union Pacific nor the Southern Pacific could make a rate on traffic originating or destined to a point on the Illinois Central, without the consent of the Illinois Central, could they?

A. No, sir. There was a division of the through rate, of which we got our part. We got our division of the through rate.

Q. But that through rate could not be changed without the consent of the Illinois Central, lawfully; I mean without some rebate or something of that sort.

A. I do not quite understand you. You mean the rate on the Illinois Central—our proportion of the through rate?

Q. No, I mean this: I assume the traffic originating on the Illinois Central, destined to the Pacific coast, was handled by the
1822 Illinois Central under a through rate made from that point to the final destination, and that through rate was divided among the Illinois Central and its various connecting lines participating in the haul, and that such through rate was filed with the Commission, or published as required by law. Now, my question is, is it not true that such rate, so established, and on which that traffic moved, could not be changed either by the Union Pacific or the Southern Pacific or any other line, without the consent of the Illinois Central Railroad Company.

A. In so far as it related to the Illinois Central's division—the share of the through rate—yes.

Q. The Illinois Central would not consent to its change in any way—that is, neither party to that rate had any right to change it without the consent of the others, had it—the through rate? In other words, wasn't the Illinois Central as much interested as the other lines in having the law observed? It would not allow one of its connecting lines to change a through rate to which it was a party, without consulting it, would it?

A. Well, we could not help ourselves with regard to matters west of the Missouri River. They were a law to themselves always—people west of the Missouri River. We could not control them.

Q. Do you mean that if the Union Pacific, or the Southern Pacific, or the Atchison wanted to change a rate from a point on the line of the Illinois Central to San Francisco, that they could change it without saying anything to the Illinois Central about it?

A. No, they couldn't, but——

Q. That is the question.

A. That is according to agreement. According to fact, they
1823 were a law to themselves out there and they made the rates.

Q. Well, I was asking about the open rate, the published rate. They could not lawfully change the rate without your consent?

A. On our road I don't think they could.

Q. The traffic that originated on the Illinois Central, destined to the Pacific coast, moved, I believe you have already testified, by these various connections as it might be to the interest of the Illinois Central to move it?

A. Yes, sir.

Q. You had a traffic manager of the Illinois Central, didn't you, Mr. Fish?

A. Yes, sir, for many years; Mr. T. J. Hudson, and his assistant, Mr. Markham.

Q. And your knowledge of the rate matter was such, I suppose, as was derived from such supervision and attention as you gave it as president of the company?

A. Well, I gave probably less than I ought to. If you want to get the rates you will have to call Mr. Hudson or Mr. Markham.

Q. I don't want to know the rates; I want to know just generally your relation to the matter. You relied on Mr. Hudson and Mr. Markham and their assistants for the details of the rate matters?

A. Yes, sir.

Q. All of these lines that you have mentioned were competing, in the sense in which you used the term to Mr. Severance, for this business originating on the Illinois Central, and the Burlington, the Rock Island, the Denver & Rio Grande, the Missouri Pacific, the Atchison, the Union Pacific, the Southern Pacific, the Northern Pacific, the Great Northern, the St. Paul, and the Northwestern? Didn't they all have men working for this business?

1824 A. Oh, they all had men in the field working for it, but they did not compete for our business—the Northern Pacific and

Great Northern, because we didn't reach them; the Milwaukee & St. Paul, because we did not run west of the Missouri River in those years; and the Atchison, because we ran away from it at Chicago; it simply crossed us in the neighborhood of St. Louis, and that was all; it was too close up to Chicago.

Q. The Atchison, then, did not compete for——

A. For the Illinois Central business, I should say the Atchison did not to any appreciable extent.

Q. Why not, Mr. Fish?

A. On account of its situation on the map. The Illinois Central is a north and south line from Chicago to New Orleans, with a branch up to Dubuque, Iowa, opposite the northwestern corner of Illinois, and they crossed us right there, within perhaps a hundred miles of Chicago.

Q. I suppose the Atchison would allow the Illinois Central as large a division on traffic from Illinois Central points to California, at Chicago, as the Union Pacific-Southern Pacific line would allow at Omaha; that is, you would turn it over to the Atchison then, wouldn't you, rather than haul——

A. There might be other considerations. I think we would.

Q. You don't know whether they did that or not, do you?

A. Oh, I don't think it was ever done.

Q. You think it was never done?

A. I don't think it was ever done.

Q. If the Burlington or the Rock Island and the Denver and Rio Grande would allow the Illinois Central as much on business interchanged at Chicago as the Union Pacific would allow at Omaha, wouldn't you interchange it with them at Chicago?

1825 A. I don't think we ever did.

Q. And then business to St. Louis: if you could get as much out of the Pacific coast business by working it by way of St. Louis as by hauling to Omaha, if St. Louis was a short haul on your line, you would naturally take it that way, wouldn't you?

A. Yes; but I don't think any business moved that way. I have no recollection of it.

Q. You testified in answer to questions by Mr. Severance, that you thought it was feasible for the Union Pacific to carry business to San Francisco by way of Portland—that is, by rail to Portland and thence by boat to San Francisco. Do you know whether any business ever moved that way from east of the Missouri River, Mr. Fish?

A. No; I do not. I am not familiar with that branch of the business.

Q. Then, in expressing that opinion you did not wish to be understood as having personal knowledge, or of testifying as an expert with respect to that particular locality, did you, Mr. Fish?

A. No; but as to these circumstances of the additional water haul not affecting the rate materially, I had in my mind the case of the Morgan Line of steamers exactly at the time. I do not know exactly the distance of the Morgan Line of steamers, but I suppose it is at

least 2,000 miles from here to New Orleans, and then 2,400 or 2,500 miles from San Francisco; whereas, when they start here they are only 2,300, something of that kind.

Q. And because business moves by water over the Morgan Line to New Orleans and Galveston and then to the Pacific coast by
1826 the Sunset route, you see no reason why the same thing could not be accomplished by way of Portland and San Francisco? That is the reason upon which you base that opinion?

A. Well, that and a good many other instances of long water lines.

Q. That is to say, you know that the Columbia River and the Pacific Ocean form a means of transportation by water between Portland and San Francisco?

A. Yes, sir.

Q. Therefore, you assume that business can be moved by boat between Portland and San Francisco, is that it?

A. Oh, I understand there was a line of steamers there maintained.

Q. Is that the reason you understand that it is feasible to move business that way?

A. Excuse me; you have got me confused. I don't understand your question. Which do you mean? Because what? Because there was a line of steamers?

Q. Yes.

A. Well, there wouldn't be a line of steamers unless somebody thought they could move freight.

Q. What I want to know is what circumstances you base your opinion that it is a feasible transportation route for the Union Pacific by way of Portland to San Francisco. What are the circumstances on which you base that opinion, if you wish to be understood as expressing a definite opinion on the subject?

A. The Union Pacific had their own line of rails, with their affiliations—the east lines controlled by them—up to Portland, and the market is San Francisco, and the sea is open to them, and I understand they had a line of steamers there for some time on that route.

Q. And it is upon those circumstances that you base the
1827 opinion that that is a feasible route for the Union Pacific, is that correct?

A. Yes, sir.

Q. You don't know what other circumstances, from a traffic standpoint or otherwise, or a transportation standpoint, may exist that would make that entirely impracticable from a railroad or traffic standpoint, do you, Mr. Fish?

A. No, I do not.

Q. And you don't know, I believe you stated, whether any traffic actually ever moved that way over the Union Pacific to San Francisco?

A. Any Illinois Central traffic, I do not.

Q. Any traffic east of the Missouri River?

A. I do not know about that.

Q. What is the western terminus of the Northern Pacific, do you know, Mr. Fish?

A. The western terminus of the Northern Pacific?

Q. It is on Puget Sound—Tacoma and Seattle, isn't it?

A. I think so. Tacoma rather than Seattle, I think, but I am not sure.

Q. And it has a line also to Portland from Tacoma, or that vicinity?

A. To testify to my own knowledge, I don't know. I am perfectly willing to admit the fact.

Q. You don't know, then, what is really the——

A. No. I know it is in the Puget Sound country. The last time I was there Tacoma seemed to me to be their place.

Q. Then there is an open sea from Tacoma to San Francisco, isn't there, Mr. Fish?

A. Yes.

Q. So that it would be quite as feasible for the Northern
1828 Pacific to move traffic from its eastern termini to San Francisco, by way of Tacoma, or Seattle, or Portland, as for the Union Pacific, wouldn't it?

A. I think not. They would have to go a good way to the north. They would have to go away up to the international boundary there at Victoria, or Vancouver's Island, to get out.

Q. By water, and the length of the water haul is not important, is it?

A. Well, there is a limit there. As I say, it is from three to five. What the distances are I cannot testify.

Q. Portland is 100 miles inland, isn't it, on the Columbia River?

A. It is somewheres inland.

Mr. SEVERANCE. I will correct your geography. It is on the Willamette River.

Q. Well, on the Willamette River.

A. And so is Tacoma as far east as Portland.

Mr. LOVETT. Read that question, will you?

(Question read by the Reporter.)

Mr. LOVETT. Change that to read "On the Columbia or Willamette River."

Q. What is the answer to that question?

A. Yes; but Tacoma is just as far east.

Q. But it is on the Puget Sound with straits to the sea, isn't it?

A. Yes—which, of course, they use up north to the international boundary.

Q. The Northern Pacific also has a line to Portland, hasn't it?

A. That is what I said I don't know. I believe they have. You tell me so.

Q. Well, I thought perhaps you knew of the general location.

A. It is a good many years since I have been out there.
1828½ It must be seven or eight years since I have been out there.

Q. And you did not have occasion to learn that during your connection with the Illinois Central Railroad Company?

A. No, sir. If I learned it I have forgotten it.

Q. So that if it is feasible for the Union Pacific to handle San Francisco traffic by way of Portland, it is equally as feasible for the Northern Pacific, except that it reaches Puget Sound instead of Portland, is that true?

A. No, I don't know that it would be equally. It seems to me the distance would be very much greater. I could figure it out. It looks to me as if the distance was very much greater.

Q. Do you know what it is?

A. No, I don't know what it is.

1829 EDWARD T. JEFFERY

called as a witness on behalf of the Complainant, being duly sworn, testified as follows:

Direct examination by Mr. SEVERANCE:

Q. Mr. Jeffery, where do you live?

A. New York.

Q. What is your business?

A. Railroading.

Q. How long have you been railroading?

A. 52 years and a half.

Q. How long?

A. 52½ years.

Q. With what railroad have you been connected?

A. Illinois Central and Denver & Rio Grande, in an official capacity, and as a director in several others, also chairman of the Board of Directors of the Wabash Company.

Q. What relation have you to the Western Pacific?

A. President of it.

Q. The Western Pacific is now under construction, is it not?

A. Yes.

Q. From what point to what point?

A. Salt Lake City to San Francisco.

Q. When did you begin the construction of the Western Pacific?

A. Active construction commenced about three years ago.

Q. How long have you been with the Denver & Rio Grande?

A. 17 years and four months.

Q. What capacity?

A. President.

Q. All the time?

A. Yes, sir.

Q. Where does the Denver & Rio Grande run?

A. From Denver, via Colorado Springs and Pueblo, to Salt
1830 Lake City and Ogden, Utah, with numerous branches and laterals.

Q. It originally ran to Grand Junction, didn't it, the Rio Grande Western?

A. Originally to Grand Junction, and from thence the connection to Salt Lake and Ogden was the Rio Grande Western, the control of which was acquired by the Denver & Rio Grande about seven years ago, and the two companies were consolidated a few months ago.

Q. And is the Denver & Rio Grande affiliated with the Western Pacific?

A. The Denver & Rio Grande owns two-thirds of the capital stock of the Western Pacific.

Q. With what lines does the Denver & Rio Grande connect on the east of Denver?

A. The Chicago, Burlington & Quincy; the Chicago, Rock Island & Pacific; the Union Pacific at Denver; the Missouri Pacific at Pueblo; and I might say with the Rock Island at two or three points—Denver, Colorado Springs and Pueblo; also with the Atchison, Topeka & Santa Fe road at those three points.

Q. Now, Mr. Jeffery, how many years were you connected with the Illinois Central?

A. Thirty-three.

Q. Thirty-three years?

A. Yes, sir.

Q. And what was your last position with that road?

A. General manager.

Q. For how many years?

A. Why, I think four or five.

Q. Before that what were you?

A. General superintendent and acting chief engineer.

Q. Now, Mr. Jeffery, do you recall and are you familiar with what is called the Morgan Line from New York to the coast, in connection with the Southern Pacific?

1831 A. I was, some years ago, when connected with the Illinois Central, familiar with it.

Q. Do you know what that line is composed of—a line of ships from here to New Orleans or Texas, and a railway line from there to the coast?

A. Yes.

Q. What I mean is, the Sunset route of the Southern Pacific is composed of the Morgan line of steamers and the rail lines west?

A. Yes, sir.

Q. During the time that you were familiar with that line was it in competition with the all-rail lines to the Coast, for business to the coast?

A. Yes.

Q. Including the Union Pacific?

A. Yes.

Q. Do you recall the time that the Southern Pacific stock was purchased by the Union Pacific—I don't mean to give the date, but you remember the fact?

A. Yes, in general I remember the fact.

Q. And the changes that were made in the organization of the companies?

A. In a very general way.

Q. Now what effect, if any, did that amalgamation of authority have upon the Denver & Rio Grande?

A. It gradually eliminated the free interchange that there was between the Southern Pacific and the Denver & Rio Grande system at Ogden, and at Salt Lake City to an extent.

Q. In what way was that elimination brought about?

A. Why, the common control of the Union Pacific, Southern Pacific and Oregon Short Line, working for the common interest of the properties named, would inevitably reduce the interchange with the Denver & Rio Grande system, a competing line from Denver to
1832 Salt Lake City and Ogden, and competing via its eastern connections from Missouri River points and Chicago and St. Louis, and so on.

Q. What difficulty, if any, did the Denver & Rio Grande find in securing east-bound business by reason of that change.

Mr. LOVETT. Before he answers that will the stenographer read the answer to the last question?

The reporter read the answer to the last question, and then, upon further request by Mr. Lovett, the answer to the next preceding question.

A. The east-bound business was gradually diverted from the Denver & Rio Grande.

Q. To what line or lines?

A. Well, I think the greater portion to the Union Pacific and its eastern connections; some was doubtless taken by the Atchison system when it reached San Francisco.

Q. Do the Denver & Rio Grande maintain commercial agencies on the Coast?

A. Yes.

Q. What places?

A. San Francisco and Los Angeles, and at Portland, Oregon.

Q. You had commercial agencies there before 1901, when the Southern Pacific stock was purchased, had you, as well as since?

A. Oh, our commercial agencies have been there a great many years.

Q. And what were those commercial agencies established and maintained for?

A. To solicit and route business via the Denver & Rio Grande system and its eastern connections.

Q. Was there any lessening of the efforts of your commercial
1833 agencies to route business that way since this consolidation?

A. No, I think they have been rather stimulated to greater effort.

Q. How does your tonnage, east-bound, delivered to you by the Southern Pacific, compare with what it was before the Union Pacific took over the Southern Pacific?

A. It is less.

Q. How is the business of the Pacific Coast in general as compared with what it was seven or eight age? greater or less?

A. Greater.

Q. Does your line maintain commercial agencies in the east?

A. Yes, sir.

Q. And the Union Pacific and others likewise?

A. Yes, sir.

Q. What is the purpose of a commercial agency off the line of a railroad?

A. To solicit and route business via the line or system that is represented by the commercial agency.

Q. Do you recall, Mr. Jeffery, the closing of the Sacramento gateway to Portland? I don't mean the date, but do you remember the fact?

A. No, I don't recall that very distinctly.

Q. You don't remember about that? Do you do business in and out of Portland? Did you before the Union Pacific bought the Southern Pacific?

A. Yes, we formerly had considerable business in and out of Portland and tributary territory.

Q. Over what line did that reach you?

A. Oregon Short Line, via Salt Lake City.

Q. And the same over the Southern Pacific?

A. Yes, the same over the Southern Pacific.

Q. What kind of traffic was that, if you remember?

A. Why, it was somewhat diversified. There was lumber in
1834 very considerable quantities, and some sheep, cattle, wool, fruits.

Q. Hops?

A. Some Oriental traffic, occasionally got a cargo of that; hops; diversified business, such as is generally shipped from the North Pacific coast points.

Q. The Oriental traffic you speak of was brought by ship from the Orient to Portland?

A. Yes.

Q. Did you at any time get Oriental traffic by way of San Francisco?

A. Yes, we had a share of that.

Q. Do you now share in that?

A. Very slightly.

Q. Do you get cargoes from Portland now, and the Orient?

A. No.

Q. Does the Southern Pacific maintain through rates with you now by the Ogden gateway?

A. Yes.

Q. Does the Oregon Short Line?

A. To a very limited extent. A number of the divisions of rates have been taken out, withdrawn, with the Oregon Short Line, by the Oregon Short Line.

Q. Prior to 1901 how was the Ogden gateway as to being free and open between you and the Union Pacific, or otherwise?

A. In 1901?

Q. Before that, I say?

A. Oh——

Q. Before the Southern Pacific bought the Union Pacific?

A. Oh, it was a free and unrestricted gateway.

Cross-examination, by Mr. LOVETT:

Q. Have not the Southern Pacific and the Denver & Rio Grande system the same rates and divisions on California business that they had prior to 1901, Mr. Jeffery?

A. Yes, substantially the same.

1835 Q. There has been no substantial change in the rates or divisions?

A. No, not substantial; no substantial change.

Q. The difference lies in the fact that whereas, prior to 1901, the Southern Pacific, as between the Denver & Rio Grande and the Union Pacific, was impartial, since 1901 it has preferred the Union Pacific with unrouted traffic; isn't that the difference?

A. That is the difference, yes. The Union Pacific is the preferential connection of the Southern Pacific, that is all there is to it.

Q. Such business as your agents on the Pacific coast or elsewhere can have routed over the Southern Pacific and your line, the Southern Pacific as a rule respects that routing, doesn't it?

A. No, as a rule they don't.

Q. If your agents route it?

A. Yes.

Q. I have never thought they ought to, but I thought they did?

A. No, not always.

Q. Are you sure about that, Mr. Jeffery?

A. Yes, I have had a good many reports on that subject.

Q. The reason that I question it so, is that Mr. Stubbs seems to be quite positive in the opinion that you are mistaken in that, with due respect to you—that the Southern Pacific does respect the routing of such traffic as your agents are able to control?

A. Well, I would not want that to be misunderstood, Judge Lovett, that after a shipment is secured and routed and in transit, that the Southern Pacific would disrespect the routing.

Q. That is the question I asked.

A. Because that would not be the case.

1836 Q. No.

A. Oh, no, the Southern Pacific would respect the routing under those circumstances.

Q. Well, that is the case that I referred to in my question. Now, what you really meant by your other answer was that the Southern

Pacific agents would really work against the agents of your system in favor of the Union Pacific; is that true?

A. Yes, very actively.

Q. In other words, the Southern Pacific and Union Pacific would work together?

A. Yes.

Q. As against your system?

A. Yes.

Q. The public is not suffering from that situation, is it, Mr. Jeffery?

A. I would rather the public would speak for itself, Judge Lovett.

Q. Well, I won't press that question. The Southern Pacific line was the only outlet for the Denver & Rio Grande system to the Pacific coast south of Portland, wasn't it, Mr. Jeffery?

A. Yes.

Q. And you mentioned the Western Pacific Railway Company just now. That is a line controlled by the Denver & Rio Grande, and being built—promoted by the Denver & Rio Grande to the Pacific coast, isn't it?

A. Yes.

Q. The construction of that line was really made necessary because of the changed relation between the Southern Pacific and Union Pacific systems which occurred in 1901, wasn't it, Mr. Jeffery?

A. Well, it was made necessary by the changed attitude of the Southern Pacific toward the Denver & Rio Grande.

Q. That is what I meant.

A. I would rather put it that way.

Q. Which you attribute to the control of the Southern
1837 Pacific by the Union Pacific, do you not?

A. Yes, I have so attributed it.

Q. The competition, which you testified in your answer to direct interrogatories, that had been eliminated by this changed attitude of the Southern Pacific, was competition east of Ogden, wasn't it, or east perhaps of your eastern terminus, Denver, inasmuch as both the Union Pacific and the Southern Pacific and all of the eastern connections of both of those systems were dependent upon the Southern Pacific for an outlet west of Ogden and Salt Lake?

A. I don't quite grasp the question. Could I have it read, Judge Lovett?

Q. Yes, certainly.

The reporter then read the question.

A. I would rather think, Judge Lovett, that it was all competition east and west of Ogden, on traffic in both directions.

Q. But all that traffic had to pass over the Southern Pacific from Ogden to the Pacific coast, hadn't it?

A. Yes.

Q. So this competition that you refer to, that was eliminated, was not competition between the Southern Pacific and the Union Pacific, but competition between the connections of the Southern Pacific east

of Ogden; that is to say, between the Denver & Rio Grande system and its connections on the one part, and the Union Pacific on the other? In other words, the Southern Pacific was not itself engaged in that competition, unless it was as an ally against the Union Pacific, since it got the traffic in any event, no matter which of its eastern connections got it, whether you or the Union Pacific?

Mr. SEVERANCE. Then, do you eliminate the Sunset Route by that question?

1838 Mr. LOVETT. Yes, that is a separate proposition now. I am asking only about the competition that Mr. Jeffery testified was eliminated by the changed relation or changed attitude of the Southern Pacific to the Union Pacific. As I understood him, he testified in substance that the effect was to eliminate the competition afforded by the Denver & Rio Grande system and its eastern connections. My question now is, whether that competition was not a competition between the Denver & Rio Grande system and its connections, on the one hand, and the Union Pacific on the other, and that the Southern Pacific was not interested in that competition, since it got the traffic anyway, no matter which of the others brought it to Ogden?

WITNESS. Do you mean prior to——

Q. 1901.

A. Prior to 1901?

Q. Yes.

A. Could I have my answer on direct examination read?

Q. Yes. (To reporter:) Will you look it up, Mr. Taylor?

The EXAMINER. The answer in which the witness stated about elimination.

The reporter read the questions and answers as follows:

"Q. Now what effect, if any, did that amalgamation of authority have upon the Denver & Rio Grande? A. It gradually eliminated the free interchange that there was between the Southern Pacific and the Denver & Rio Grande system at Ogden, and at Salt Lake City to an extent. Q. In what way was that elimination brought about? A. Why, the common control of the Union Pacific, Southern Pacific, and Oregon Short Line, working for the common interest of

1839 the properties named, would inevitably reduce the interchange with the Denver & Rio Grande system, a competing line from Denver to Salt Lake City and Ogden, and competing via its eastern connections from Missouri River points and Chicago and St. Louis, and so on."

WITNESS. I didn't quite get the relevancy of your question to that answer; that was the reason I asked to have it read.

Mr. LOVETT. Now, perhaps you had better read my question again, Mr. Taylor. Will you have it read again, Mr. Jeffery?

WITNESS. Yes.

The reporter read from Judge Lovett's previous question, as follows: "I am asking only about the competition that Mr. Jeffery testified was eliminated by the changed relation or changed attitude of

the Southern Pacific to the Union Pacific. As I understood him, he testified in substance that the effect was to eliminate the competition afforded by the Denver & Rio Grande system and its eastern connections. My question now is, whether that competition was not a competition between the Denver & Rio Grande system and its connections, on the one hand, and the Union Pacific on the other, and that the Southern Pacific was not interested in that competition, since it got the traffic anyway, no matter which of the others brought it to Ogden."

Q. I eliminate everything except what Mr. Jeffery had in mind in his answer to that direct interrogatory.

A. Thank you. What was in my mind, Judge Lovett, was this: that before the period named the relations of the Denver & Rio Grande and Southern Pacific were quite intimate. The South-
1840 ern Pacific would turn over business to the Denver & Rio Grande at times of its own accord without that business being routed by Denver & Rio Grande commercial agencies; and west-bound the Denver & Rio Grande, with its eastern connections ramifying clear through to the Atlantic seaboard, would of course secure all the transcontinental traffic they could and throw over to the Southern Pacific, feeding it at Ogden. For North Pacific coast territory the same policy was pursued; and during the receivership of the Oregon Short Line and the Oregon Railway and Navigation Company there was the fullest and freest interchange, and virtually a division of traffic—of competitive traffic—on the part of the Oregon Short Line and Oregon Navigation, according to the Denver & Rio Grande a fair proportion of it. Subsequent to the date named, due to common interest and control, there was gradual diminishing, shrinking of the interchange, notably east-bound, so that to-day the amount of freight traffic received from the Southern Pacific by the Denver & Rio Grande is very small, and it is very small, too, from the Oregon Short Line. West-bound, the Denver & Rio Grande gives a very, very much larger amount of business to the Southern Pacific than the volume of east-bound traffic it receives at Ogden, because the Denver & Rio Grande has no other channel open for its west-bound traffic.

Q. Whereas the Southern Pacific has the Union Pacific?

A. And east-bound the Southern Pacific has the Union Pacific and the excellent facilities that that system possesses.

Q. Now, I understand that answer thoroughly. But I don't
1841 think it answered the question.

A. I don't think I grasped your question, Judge Lovett.

Q. Let me state it again. I understood your answer to one of the questions on direct examination to be, in substance, that this changed attitude of the Southern Pacific greatly reduced (I will follow your own language as nearly as I can) the volume of traffic controlled by the Denver & Rio Grande system and its eastern connections, competing lines of the Union Pacific?

A. Yes.

Q. That they were able to control and interchange with the Southern Pacific, that is what I understood your testimony to be. Now, the question that I now ask you is whether that competition, that is to say, that traffic formerly controlled by the Denver & Rio Grande and its eastern connections in competition with the Union Pacific, and carried to or from Ogden—whether the competition with respect to that traffic was not between the Union Pacific on the one hand and the Denver & Rio Grande and its eastern connections on the other, and not with the Southern Pacific, the Southern Pacific being a connecting rather than a competing line for that traffic—eliminating for the present the Sunset Route?

A. Yes, I think it was largely so. I would not say wholly so, but very largely so.

Q. Well, it is entirely so with the Southern Pacific, where its Ogden line was not competing for that traffic, because it was a connecting and not a competing line—a connecting line of both systems—and got the traffic of both systems, no matter whether [illegible]ar line or the Union Pacific carried it to Ogden. Isn't that true?

A. Yes, I think that is true.

1842 Q. You haven't any doubt about it, have you, Mr. Jeffery?

A. I am not quite clear on the point you are making, but I think what you say is so.

Q. The facts are so much stronger than my own opinion about it that I want to get the fact, and I regret that I am unable to make myself understood about it. But the Southern Pacific owns or controls the Central Pacific, extending from Ogden to the Pacific Ocean, and during all the time about which you have testified, it was the only line extending westwardly from Ogden to the Pacific Ocean. The Union Pacific and the Denver & Rio Grande both lying east of Ogden, and on this transcontinental traffic, or traffic to the Pacific Ocean south of Portland—both the Union Pacific and the Denver & Rio Grande were dependent on the Southern Pacific to handle the business to the Pacific Ocean. Is not that true?

A. Yes.

Q. Now, such competition east of Ogden (except the Sunset Route, we will say) as existed between the Union Pacific on the one hand, and the Denver & Rio Grande and its eastern connections on the other, was competition only between them and their connections, and not between them or either of them and the Southern Pacific, the Southern Pacific being merely the connecting line and the outlet for both? In other words, whatever the Denver & Rio Grande or the Union Pacific brought was still grist for the mill of the Southern Pacific; isn't that still true?

Mr. SEVERANCE. And you are still eliminating the Sunset Route?

Mr. LOVETT. Let me finish my question first, please.

1843 Mr. SEVERANCE. I thought you had finished it.

Mr. LOVETT. I object to any interruptions till Mr. Jeffery answers my questions.

A. All that the Denver & Rio Grande brought to Ogden was grist for the Southern Pacific mill, because it was the only route that there was to send business west from Ogden by. Now, the reason why I am in doubt about answering your other question, which you have taken so much pains to elaborate, and which I apologize for troubling you with, is that there were periods, as I remember it, some years ago, when Southern Pacific rates ran back into Nevada, certainly into certain points in the interior of California, which affected competitive traffic to those points and in that territory; so that it made a competition at some of those points through the Ogden gateway for the Denver & Rio Grande or Union Pacific and their eastern connections, and through the San Francisco gateway to those points and connections via sometimes vessels around Cape Horn, an all-water route, sometimes via the Panama route, sometimes perhaps via New Orleans and the all-rail route thence to San Francisco, although I imagine that the Southern Pacific protected that long haul carefully. My recollection is that in the early days of my connection with the Denver & Rio Grande I heard the traffic officers discussing this phase that I have just mentioned, and that is the reason why I made the qualified reply to Judge Lovett that it was almost wholly so; that is, that the competition was almost wholly as you state it. Now, whether there is any truth in the views I have just expressed I am unable to
1844 say, but there is a doubt in my mind, and hence I would prefer to save the doubt.

Q. Well now, Mr. Jeffery, that answer of yours about that situation, from such knowledge as I have of the location of the lines on the ground, is perfectly inexplicable to me, and if you can make it a little clearer, just what you mean by it, I shall be very much obliged.

A. Well, I was told years ago, when I went to the Denver & Rio Grande, that there were times when the——

Q. I was asking about the situation that existed during your connection with the Denver & Rio Grande; I don't know but there might have been something about that—I can't see how it is possible—but wouldn't you limit your answer to anything that transpired from the time you commenced your connection with the Denver & Rio Grande, I think you said fifteen years ago?

Mr. SEVERANCE. 17 years and four months.

Q. Seventeen years and four months.

A. I was doing that, Judge.

Q. Now, did the conditions which you have just mentioned exist at any time since your connection with the Denver & Rio Grande?

A. Yes. I have just been explaining——

Q. Oh!

A. —— that our traffic officers advised me of this. I don't know so of my own personal knowledge.

Q. Where was it, Mr. Jeffery? How would that traffic move?

A. The way I have described it.

Q. Move by water?

A. Just as I stated, according to the statements that were then made to me.

Q. From what point to what point?

1845 A. From Atlantic coast points via Cape Horn to San Francisco, and thence to the jobbing houses in San Francisco, and then on certain rates of the Southern Pacific to its local territory.

Q. Then neither the Union Pacific nor the Denver & Rio Grande would handle that traffic at all, would they?

A. I am saying that in this territory, at those points, there would be competition from San Francisco on the one hand over the Southern Pacific, don't you see?

Q. Yes.

A. And through the Ogden gateway on the other, into the same territory; competition in markets, if you please to call it so; competition of jobbing points.

Q. But using the Southern Pacific in every case, wouldn't it?

A. Yes, using the Southern Pacific in every case.

Q. That is, it could not get west of Ogden without using the Southern Pacific?

A. Oh, no. Now, that is what I refer to, and that is all I refer to; that is all I had in mind when I hesitated a little about answering your question.

Q. Well, if I understand you, then, Mr. Jeffery, that was very foreign to the question that I was asking you.

A. Well, I regret that.

Q. It was whether the competition for this transcontinental traffic, east of Ogden (excepting such as went by the Sunset Route) was not between the Union Pacific and the Denver & Rio Grande and its connections.

A. That is, transcontinental traffic?

Q. Yes.

A. Yes.

Q. Traffic from the Atlantic seaboard and any points west of the Atlantic seaboard were always competed for by the South-

1846 ern Pacific Sunset Route in connection with the Morgan line, wasn't it?

A. Yes.

Q. But assuming that two trains moved from this territory, or anywhere east of the Mississippi River, or east of Denver, to San Francisco, for example, whether those trains go over the Union Pacific or the Denver & Rio Grande, when they get to Ogden they must go over the Southern Pacific to San Francisco; that is true, isn't it?

A. Yes.

Q. The Denver & Rio Grande, I believe you testified, still has its soliciting agents at Portland?

A. Yes.

Q. And that formerly the Denver & Rio Grande got business from Portland both by the Oregon Short Line (the O. R. & N. route) and by the Southern Pacific?

A. Yes.

Q. And that its business from that territory has been greatly reduced since 1901——

A. Yes.

Q. —— because the Union Pacific controls the Oregon Short Line and the Denver & Rio Grande, and naturally prefers its own line east of Ogden; that is one reason, I presume?

A. Yes, that is my judgment.

Q. And another reason is that the Southern Pacific prefers the Union Pacific for that business as well as for other business that it can control?

A. Yes.

Q. Now, business that formerly moved by the Southern Pacific to the Denver & Rio Grande from Portland and that vicinity to Willamette Valley went down over the Siskiyou Mountains by way of Sacramento and then to Ogden?

A. Yes.

Q. Do you know about what the length of that line is from Portland?

A. I don't recall it. It was a circuitous route.

1847 Q. And over two or three mountain ranges, wasn't it?

A. There was one pretty severe one, I remember.

Q. Where is that? On the Central Pacific?

A. Yes, there would be two severe mountain ranges, one on the Central Pacific and the other on the line running up north toward Portland.

Q. I believe you testified that your companies were building the Western Pacific from Salt Lake City to San Francisco because of the changed attitude of the Southern Pacific——

A. Yes.

Q. Since 1901. I think that is all.

Re-direct examination by Mr. SEVERANCE:

Q. Mr. Jeffery, it is in evidence in this case that what is called the Sacramento gateway from Portland has been taken out; that is, that traffic is not permitted to move over these two mountain ranges that you have spoken of, but it was all sent by the Oregon Short Line. That is already in the record. Now, that being the case, whatever traffic your agent is able to get at Portland must come over the Short Line, must it not?

A. Yes.

Q. If the other way around has been shut up?

A. I think so.

Q. Now, you testified a few moments ago, if I understood you correctly, that your divisions had been taken out with the Short Line?

A. I said most of the divisions, I think, Mr. Severance.

Q. Most of the divisions?

A. I said most of the through rates and divisions of rates had been withdrawn.

1848 Q. Well then, if the competition of the Southern Pacific line around by Sacramento, with the Oregon Short Line, has been removed, and if your divisions then with the Short Line have been taken out, how can you get any business out of Portland?

A. We don't get much.

Q. They wiped you off the map, then, as far as Portland is concerned, practically?

A. Oh, we come up smiling. We are still on the map, but we don't ——

Q. But are not doing any business?

A. We don't do much business.

Q. Well now, Mr. Jeffery, you were explaining to Judge Lovett (he didn't quite understand it, I think; I think I did, but I will see if I did) about this Nevada matter. As I understand you, the Southern Pacific years ago used to move traffic from Nevada points westerly to San Francisco and then south by the Sunset Route to the east, as against the straight line over the Southern Pacific?

A. No, I did not intend to testify——

Q. Then what did you intend to testify? Then I didn't understand you.

Mr. STUBBS. He didn't say anything of the sort.

A. In the first three or four years of my presidency of the Denver & Rio Grande, which commenced seventeen years and four months ago, I was told by Denver & Rio Grande traffic officers, and especially by its traffic manager, that there were certain lines of business at local points, in western Nevada, and in the interior of California, which points were reached by the Southern Pacific, to which points business was done from San Francisco by San Francisco jobbers, and perhaps by jobbers from the Atlantic seaboard

1849 through San Francisco, in competition with traffic that would go via Southern Pacific, the Union Pacific and Denver & Rio Grande, and the eastern connections of the two last named.

Q. Well, then, I understood you correctly, only I had the direction of the traffic turned around; it is traffic originating on the seaboard, instead of traffic destined to the seaboard, that you had in mind?

A. I was informed, and as a traffic proposition I should think it very reasonable to-day, to regard it as having been a fact—it might be to-day a fact—that certain classes of business would be shipped to certain interior points in California from San Francisco, which same points could buy directly from the east, and the business be sent on the long all-rail haul.

Recross-examination by Mr. LOVETT:

Q. But over the Southern Pacific as a part of the all-rail haul?
A. Over the Southern Pacific as part of the all-rail haul.
Mr. SEVERANCE. That is right.
WITNESS. And it was this idea in my mind that made me hesitate unnecessarily long, and trouble Judge Lovett unnecessarily in his explanation about answering his former question.
Mr. SEVERANCE. Yes, I understand that.
WITNESS. Because I was——
Mr. LOVETT. We all understand it now.
WITNESS. Because there would be, you see, in that instance, competition over the western portion of the Southern Pacific to the points referred to from San Francisco against similar classes of traffic that would come through the Ogden gateway destined to the same
1850 points, and passing over the Southern Pacific to reach those points.
Mr. SEVERANCE. That is right.
WITNESS. Now, that is all I had in mind, and I hope I made it plain.
Mr. SEVERANCE. That is plain.
Q. Rates to those points could not be made without the consent of the Southern Pacific, because it was part of the through line?
A. The Southern Pacific would no doubt adjust the rates so that both classes of shippers, east and west, would be put on an even keel.

By Mr. SEVERANCE:

Q. Just one other question. Now, in addition then to practically taking away your business in Oregon, by reason of the Southern Pacific agents in California working for the Union Pacific, your ability to compete with the Union Pacific has been diminished?
A. Very greatly.

By Mr. LOVETT:

Q. The Southern Pacific takes whatever business you can take to it, doesn't it, Mr. Jeffery?
A. I beg pardon?
Q. I say the Southern Pacific welcomes whatever business you offer it at Ogden, doesn't it?
A. This question has reference to east-bound traffic?
Mr. SEVERANCE. East-bound business I asked about.
Q. Or east-bound traffic. Well, does that matter affect the rates any, Mr. Jeffery?
A. No. That is, nothing affects the rates but the Interstate Commerce Commission and the Courts.
Q. I beg pardon?

A. I say nowadays there is nothing affects the rates but
1851 the Interstate Commerce Commission and the Courts, fortunately.

Q. That is true, yes. Mr. Jeffery, is not the substance of the situation this: That instead of being on an equality with the Union Pacific in working with the Southern Pacific for California business, that the Union Pacific is the favorite of the Southern Pacific?

A. Is the favorite?

Q. Yes.

A. Decidedly, decidedly.

(An adjournment was here taken until the afternoon of Tuesday, January 12, 1909, at 2 p. m.)

1852 ROOM 508, CUSTOM HOUSE, NEW YORK CITY,
*Tuesday, January 12, 1909, 2 P. M.*

The hearing was resumed before the Special Examiner, Hon. Sylvester G. Williams, at the above time and place, pursuant to adjournment.

Present: On behalf of the Complainant, Mr. C. A. Severance; on behalf of the Defendants, Mr. R. S. Lovett, Mr. John C. Spooner, Mr. Walker B. Hines, Mr. James M. Beck.

Mr. LOVETT. The defendants desire Mr. Victor Morawetz sworn on behalf of the defendants. He was subpœnaed on behalf of the Government to appear here, but the Government counsel have not examined him, but have consented that we might examine him at this time, as he may be abroad when we come to take the testimony of the defendants.

## VICTOR MORAWETZ,

being duly sworn on behalf of the Defendants, testified as follows:

Direct examination by Mr. HINES:

Q. Mr. Morawetz, please state how long you were connected with the Atchison, Topeka and Santa Fe Railway Company, and in what capacity?

A. In 1895 I was a member of the committee which reorganized the old Atchison system—and counsel of that committee. When the present company was organized and took over the properties on January 1, 1896, I became a member of the Board of Directors
1853 and of the Executive Committee of the new company, and its general counsel. Subsequently, I think in 1898, I became also the chairman of the Executive Committee. About two years ago I

resigned as general counsel, but continued to act as chairman of the Executive Committee until last October, when I resigned as chairman and as director, and since that date I have had no official connection with the company.

Q. During the time that you were chairman of the Executive Committee, please state whether or not you were familiar with the affairs of the company and the policy of the company.

A. Yes, I was quite familiar with the affairs of the company, except operating matters and traffic matters, and I was probably more familiar than anyone with the policy of the company so far as this policy was directed by the Board of Directors.

Q. Reference has been made in the testimony in this case to contracts to which the Southern Pacific and the Atchison were parties, respecting certain railroads in Northern California and respecting the Phoenix & Eastern in Southern Arizona. I wish you would please state in your own way the circumstances which led up to the Atchison's interest in the properties affected by those contracts, and the circumstances which led up to the contracts which were finally made.

A. You mean that I should state the negotiations also?

Q. Yes, and also the negotiations in regard to the matter.

A. In 1901 the Atchison company bought the stock and second mortgage bonds of the Santa Fe, Prescott & Phoenix Railway Company. At that time Mr. Frank Murphy was the president of the company. On account of Mr. Murphy's familiarity with the property and with the territory through which the line runs,
1854 and on account of our respect for his ability and his character, he was requested to continue to act as president of the company, and he has so acted until the present day. At that time Mr. Murphy had a project to build an extension from Phoenix to Benson. When we took the property over we did not favor building that line. It did not seem to me that the line would be profitable as an investment; it would be no part of the Atchison through line; traffic could not advantageously be sent via Phoenix over the Santa Fe, Prescott & Phoenix to Ash Fork and then around over our main line. The local business in prospect did not seem to me very attractive. Agricultural business there was none, and there were no developed mines along the line, but merely prospects; and of course mines are proverbially uncertain, and after they are played out there is nothing for a railroad to look forward to. For that reason I was not in favor of spending the capital of the Atchison system for the construction of that line. Mr. Murphy was very enthusiastic about it, and subsequently decided that he would cause the line to be built anyhow. When it became apparent that the line was going to be built, I advised Mr. Ripley that I thought if that line was to be built, we had better build it ourselves; and it was arranged, in substance, that we should build the line as far as Dudleyville. Mr. Ripley was not disposed to go down the San Pedro Valley to Douglas, because——

Mr. SEVERANCE. Benson, you mean?

WITNESS. To Benson, I mean—because he did not think it
1855 would pay to do so. In the summer of 1902 we concluded that it would be advisable to extend the Atchison system into the territory north of San Francisco Bay and west of the range of mountains which I believe is called the Coast Range. Negotiations were started by Mr. Ripley with the owners of the stock of the California & Northwestern Railroad Company for the purchase of their stock; but pending those negotiations the stock was sold either to the Southern Pacific or to persons from whom the Southern Pacific subsequently acquired it. Thereupon, in the autumn of 1902, we bought the stock of the Eel River & Eureka Railroad, which was a short line extending out of Eureka, and which I think originally was built merely as a logging road. The traffic of that line was the redwood timber into Eureka, from where it was transported by ship. We bought that line for the purpose of obtaining the redwood traffic, and for the purpose of obtaining a foothold in the territory which, as I have stated, we desired to enter. Sometime in the autumn or winter of 1902 negotiations were begun for the adjustment of the differences existing between the Southern Pacific Company and the Atchison with regard to conditions in Northern California and in Arizona. Mr. Harriman objected quite strenuously to our construction of the Phoenix & Eastern line, because he considered that an invasion of territory properly tributary to the Southern Pacific system. Mr. Harriman desired us to sell to him the constructed part of this Phoenix & Eastern road, and to retire from the territory south of Phoenix. I stated to Mr. Harriman that the settlement of any questions as to Ari-
zona territory, and as to Northern California territory, would
1856 have to go together. I was willing to sell the Phoenix & Eastern line, but I wanted to get into the territory in Northern California; and I then formulated the terms upon which I was willing to settle these controversial questions. These terms, in substance, were as follows: That the Southern Pacific Company should give us a half interest—an equal half interest—in all the lines—the California & Northwestern and another line——

Mr. LOVETT. The North Shore.

WITNESS. The North Shore line, which it had, north of San Francisco Bay, amounting to approximately 400 miles, I think. We would give them a half interest in our Eel River & Eureka line, amounting to about 40 miles of main line, and a few branches, amounting to less than 50 miles all together; and that all lines to be constructed in that territory as far up as Oregon, that is, up to the end of Humboldt County, should be open to the Atchison and to the Southern Pacific on equal terms. The idea of establishing a low-grade line between Phoenix and Deming, of which this Phoenix & Eastern line would be a part, was first suggested during these negotiations. I never heard of it, and it was not contemplated until that time; it was certainly not contemplated when the construction of the Phoenix & Eastern line was begun. I was more than willing—was desirous—of making a settlement on the terms which I have stated,

because the Atchison Company had no money at that time for the construction of the proposed line in Northern California, which would have cost approximately twelve millions of dollars, and it had no money for the construction of the new mileage in Arizona. The
1857 project of building a low-grade line up the Gila Canyon to Deming was not contemplated by us ever as a project to be immediately carried out, or to be carried out within any specific time. I was never convinced that it would pay us to build that line. It would have cost approximately ten millions of dollars to build the low-grade line between Phoenix and Deming, and it would have cost a million or two millions more to put the line between Deming and Belen in proper order for the carriage of any heavy amount of business. This low-grade line, even after the completion of the proposed cut-off between Wickenburg and Bengal, would have been about 160 miles longer than the present line between Belen and Bengal, and about 175 miles longer than the present line between Albuquerque and Bengal. It would have obviated only the objectionable grades on about 369 miles of our present line. In the winter of 1901 we took up the project of building a low-grade cut-off from Belen to our Pan-Handle Division, to serve as a second transcontinental line. The surveyors were put in the field in the winter of 1901–1902, and the line has since been constructed between Rio Puerco, which is a point west of Albuquerque, to Belen, and thence to Texico, where it connects with our present mileage, and very large sums have been spent in reducing grades and curvature on our Pan-Handle line with a view to establishing a better line than the existing one between Chicago and the Pacific Coast.

Q. By the Pan-Handle line, Mr. Morawetz, you mean the line from Texico through the northern part of Texas and northwestern Oklahoma?

1858 A. Yes. I wish to state that the construction of this line had absolutely nothing whatever to do with the proposed or contemplated construction of the cut-off—of the so-called low-grade line between Phoenix and Deming. This Belen cut-off was undertaken before this so-called low-grade line between Phoenix and Deming was ever thought of: and the reasons, if you care to hear them, for the construction of the Belen cut-off were as follows: Our existing line was nearing the limit of its capacity—that is, the traffic of our existing line was reaching the limit of the capacity of that line; and looking ahead, we saw that we should, in the not far distant future, have either to double-track the mountain divisions of our existing line or get another outlet.

Q. By the existing line you mean the line through southeastern Colorado by way of Trinidad?

A. Yes, over the Raton and Glorieta Mountains. At that time there were rumors and indications that other systems, or at least one other system, contemplated building in the direction of the Rio Grande River; and although we would have preferred to postpone somewhat the construction of the Belen cut-off, we somewhat hastened

our action because the Abo Pass was of great strategic value, and we thought it advisable to occupy that pass. We therefore began the construction of the Belen cut-off from the west and occupied the pass first, and then gradually extended it east. Another reason, and an important reason, for the construction of that line was that we contemplated, and the Atchison company still contemplates, the construction of a line from Texico in a southeasterly direction to
Brownwood, Texas, which, in conjunction with the existing
1859 Gulf line of the Atchison company, will give it the shortest,
and I am inclined to think, the best, line between San Francisco and the Gulf of Mexico. In connection with this Belen cut-off it was proposed to reduce the grades on the existing line to six-tenths of one per cent a mile as far west as Winslow. When that construction is completed there will be but 369 miles of road between Bengal and the east which is not a six-tenths grade, except as to one or two pusher grades or doubling grades. Mr. Harriman objected strenuously to the terms which I demanded of him, and the contest for the location of the Phoenix & Eastern line, which has been referred to in the testimony, took place because he was unwilling to accept the terms which I demanded. About September, 1904, while this controversy was still going on, I was informed by Mr. Harriman that he and some of his associates in business had purchased about 300,000 shares of Atchison stock, and he asked for representation on the Board of Directors. I stated to him that I would never willingly give any representation on the Board of Directors to the Union Pacific Railway, or to any rival company. He stated to me that not a share of that stock was owned by the Union Pacific Railway Company or the Southern Pacific Company, but that it had been bought by himself and several gentlemen who were associated with him as a private investment, because they believed in the Atchison property and in the country through which its lines ran. The gentlemen, I may say here, who were associated with Mr. Harriman, were Mr. Rogers and Mr. William Rockefeller, Mr. Stillman, and Mr. Schiff, or his firm,
Kuhn, Loeb & Company. I stated to him that I would not
1860 be willing to give any of these gentlemen a place on the Board
of Directors until the differences existing between the Atchison and the Union Pacific Company had been adjusted; but if those differences were adjusted I would be willing to give to those gentlemen some representation on the Board of Directors in view of their personal holdings, with the understanding that the nominees would be acceptable and satisfactory to my own Board of Directors. I further stated that I would not be willing to have any of the executive officers, including himself, on our Board of Directors. There was a little difference of opinion between us on that point. Mr. Harriman and I had discussed the subjects—the general railway policy—on more than one occasion, and he urged that the management of great railway systems—the different great railway systems in the country—should deal with each other openly, fairly, and in a broad spirit of live and let live; and I agreed with him as to that general policy. I

remember telling him that it was my belief that many, if not most, of the abuses in railway management were due to a failure to observe that policy, and to attempts of the officials of rival companies to obtain advantages over the others through petty methods and sharp practices; but I told him that I did not believe in having the officers of one company upon the Board of Directors of a rival company. He did not agree with me as to that, because he suggested that he should go on the Atchison board, and he offered me a place on the Executive Committee of the Union Pacific or the Southern Pacific (I don't re-
member which). At the time of the annual meeting of the
1861 stockholders in October, 1904, the differences to which I have referred had not been adjusted; but before I went out to the meeting Mr. Harriman handed me proxies for about 280,000 shares, but with the understanding that I would not use them unless in the meantime we had reached an agreement. The points open at that period of the negotiations were very few. One point—I don't know whether you care to go into the details——

Mr. LOVETT. I would like to hear the whole story.

Mr. SEVERANCE. Oh, yes, I want it all.

WITNESS. Well, one point was this, as I recall it. He had finally agreed that if the other terms of the settlement were carried out, the Southern Pacific would build a low-grade line between Phoenix and Deming, and give to the Atchison company an option, whenever it wanted, to take trackage rights over that line on very favorable terms—terms which would give us the use of that line for less than half of what it would cost us if we had built it ourselves. But he wanted to hitch on to this grant of trackage right a condition that we would not use the line for traffic to El Paso which there would be exchanged with the Missouri Pacific system or the Mexican Central or the Rock Island. While I did not attach much importance to this condition, because I knew we would never, if we could help it, send business that way, when we contemplated having the best line between the Pacific coast and Galveston, all over our own rails, yet I was not willing to assent to that condition; and therefore, at the annual meeting I did not vote the proxies, but brought them back
and handed them to Mr. Harriman. Soon after that he yielded
1862 the points in difference, and the terms which I had demanded from the very beginning of the negotiations were agreed to without any modification to the disadvantage of the Atchison system; and thereupon two of the directors of the Atchison company retired, and Mr. Rogers and Mr. H. C. Frick were elected directors, and one of them a member of the Executive Committee.

Mr. SEVERANCE. Which one?

WITNESS. Mr. Rogers. As further explanation, I wish to state that in discussing the question of representation on the Board of Directors, Mr. Harriman and I were quite open with each other. I realized and he realized that the gentlemen whom I have named could, if they had desired, have elected four directors of the Atchison Company—four out of fifteen—because our board is a classified board,

and under the system of cumulative voting one-fourth of the stock represented at a meeting can always elect one director; so that in four years the holders of one-fourth of the amount of stock represented at the meetings could put in four directors. With 300,000 shares to start with, and the proxies which they might obtain, it was evident that they could have elected one director a year—and then kept four directors in office. But I pointed out that no good could be obtained, either to the individuals or to the property, by a Board of Directors divided against itself, and that the only sensible course was to act amicably and give fair representation to these large interests, which I suggested should be two.

Q. Mr. Morawetz, the record shows that Mr. Rogers and
1863 Mr. Frick were elected members of the board, and Mr. Rogers elected a member of the Executive Committee, in February, 1905, and that these contracts respecting Northern California matters and the Phoenix & Eastern matter were not formally authorized by the board until December, 1906. I understand from you, however, that prior to February 8, 1905, the terms of those contracts had been substantially settled; is that correct?

A. Everything was agreed to before these gentlemen were elected members of the Board of Directors. The actual drafting of the various agreements was put off, and was done in a leisurely way, and was carried out at the dates indicated.

Q. That was largely just a matter between the lawyers, then, as to phraseology?

A. It was a matter between the lawyers altogether.

Q. Will you please state how many members were on the Executive Committee?

A. Seven. I want to state further, if I have not already stated it, that the line between Wickenburg and the Colorado River was started, and part of it built, irrespective of the construction of a low-grade line to Deming. Originally, at the urgent insistence of Mr. Murphy, we consented to the construction of 50 miles of road, easy construction, west of Wickenburg. There were several purposes in
view in building that line. One was to obtain the mining traffic
1864 which, it was represented to us, would come to us through the construction of that line. Another was that we were anxious to help on the construction of the dam of the Colorado River south of the Needles, and the reclamation of a very large body of land which is contemplated. A further reason was that ultimately this line would give us the best line from the west into the Salt River Valley, and would become an important, valuable link in any transcontinental line which might be established through Phoenix. There was talk at that time of other systems building in from El Paso, and we were desirous of occupying that territory so as to meet any line which might be constructed to Phoenix, and receive the traffic from that line at Phoenix, if possible. No doubt, also, it was considered that if ever we or the Southern Pacific should build its low-grade line between Phoenix and Deming, our line from Phoenix west to Mojave

would be a link in the whole transcontinental line established in that way.

1865 Q. You have stated that business originating on the Phoenix & Eastern could not be satisfactorily or profitably handled by the main line of the Atchison system.

Mr. SEVERANCE. No; I did not understand him to so state. Pardon me; he did not so state.

Q. I will be very glad if you will restate what——

A. I think I did.

Q. I will just get you to state again your view of that proposition.

A. I think I stated that business originating on the Phoenix & Eastern line could not be advantageously hauled up through Phoenix over the Santa Fe, Prescott & Phoenix to Ash Fork and thence west.

Mr. SEVERANCE. I beg your pardon. I thought you were speaking of east-bound business, and then through Deming.

Mr. HINES. Oh, no.

Mr. SEVERANCE. I misunderstood your question.

WITNESS. At that time there was no smelter on the Santa Fe, Prescott & Phoenix line. Afterward, a small smelter was established at Humboldt and was in operation for a short time, and has since failed. While that smelter was in operation, any ores from the Phoenix & Eastern line no doubt could be hauled, and I think some were hauled, to the smelter.

Q. I understood Mr. Murphy to express, in his testimony, the opinion that the arrangement which the Atchison made with respect to Northern California matters and the Phoenix & Eastern was an unwise one from the Atchison's standpoint. I would like you to

1866 explain what Mr. Murphy's connection with the matter was, and whether he was connected with the general situation in such a way as to be fitted to judge of the general situation.

Mr. SEVERANCE. I call attention to the fact that I did not examine Mr. Murphy at all with reference to the Northern California matter. However, you may go ahead.

A. Mr. Murphy had nothing to do with any of these negotiations, and I do not think that Mr. Murphy ever considered the conditions and needs of the Atchison system as a whole. Mr. Murphy was an enthusiastic son of Arizona and had very high ideas of the possibilities of Arizona, and he was always anxious to spend money of the Atchison company in the construction of lines in Arizona which he was certainly convinced were desirable for Arizona as well as for the Atchison system.

Q. With respect to the contracts which were made regarding the Northern California and the Phoenix & Eastern, I would like you to state specifically whether Mr. Frick and Mr. Rogers exerted any influence, in the Board of Directors or otherwise, regarding the shape that those contracts took, or the substance of those contracts.

A. They certainly exerted no influence. I do not think they ever considered either contract. The terms of the contracts were settled before they ever became directors.

Q. I wish to ask you further, Mr. Morawetz, if, during the time you were chairman of the Executive Committee, and while Mr. Frick and Mr. Rogers were directors and Mr. Rogers was a member of the Executive Committee, either of these gentlemen ever undertook to exert in favor of the Southern Pacific any influence upon the Atchison board or the Union Pacific.

Mr. SEVERANCE. I object to that as purely speculative.

1867 Mr. HINES. I ask him if it is a fact.

Mr. SEVERANCE. He would have to form a conclusion as to what was to the interests of the Southern Pacific and give his conclusion as to whether what they did was in the interests of the Southern Pacific. It would be a mere conclusion, necessarily. It could not be anything else.

A. I always found both Mr. Frick and Mr. Rogers to be as zealous Atchison directors as any on the board. I do not recall that at any time any question was raised as to the interests or desires of the Union Pacific or of the Southern Pacific Company.

Q. I will ask you, Mr. Morawetz, whether Mr. Harriman ever exerted, or undertook to exert, any influence upon you, on the board of the Atchison, adverse to the Atchison and in favor of the Southern Pacific or Union Pacific interests.

Mr. SEVERANCE. I object to that for the same reasons as I did the preceding question. I think it is pretty evident from Mr. Morawetz's testimony that he tried to do something.

A. He never did, and he never was consulted. To indicate the relations that existed, I wish to state an incident. About two years ago, at an Atchison board meeting, I recommended to the Board of Directors an increase of $98,000,000 in the capital stock of the company, to provide for future capital requirements. The board voted the increase and called a meeting of the stockholders to ratify the action, and the action of the board appeared in the newspapers on the following day. I casually met Mr. Harriman on the street on that day, and he stated to me that he thought it rather rough

1868 that, as he and his associates were the largest individual stockholders of the Atchison, he should first learn of so radical an action as an increase of $98,000,000 of stock in which he was interested by reading it in the newspapers.

Q. Mr. Morawetz, it is in evidence that the Union Pacific owns $10,000,000 of the preferred stock of the Atchison. I wish to ask you if that, or anything else, has led to the Union Pacific controlling in any way the action of the Atchison, or exerting any influence upon the action of the management of the Atchison affairs?

A. Not the slightest.

Q. If you care to do so, I would be glad to have you state to what extent, if at all, you have owned stock in the Southern Pacific or Union Pacific.

A. I have never owned a share in the Southern Pacific Company. At the time of the recent panic I bought 1,000 or 2,000 shares of Union Pacific stock, held it for three days, and then sold it. Except

for that I never owned a share of Union Pacific stock. I have none to-day.

Q. Mr. Morawetz, so far as you know, has there ever been any relaxation in the competition between the Atchison, on the one hand, and the Union Pacific and the Southern Pacific on the other, since the matters about which you have testified took place?

A. I never heard of such a thing.

Mr. SEVERANCE. What do you mean? Since these contracts were made?

Mr. LOVETT. Since the negotiations commenced.

Mr HINES. Since the negotiations respecting these contracts commenced.

1869 Mr. SPOONER. What was the answer?

WITNESS. I never heard of it.

Q. You don't mean you never heard of any competition between them?

A. Of any relaxation.

By Mr. BECK:

Q. Mr. Morawetz, in the discharge of his duties as a director and a member of the Executive Committee of the Atchison, has Mr. H. H. Rogers been a loyal director of the Atchinson?

Mr. SEVERANCE. I object to that as calling for a conclusion, purely speculative, and asking for an opinion.

A. I think a most loyal and zealous director in the interests of the Atchison company.

By Mr. LOVETT:

Q. Mr. Morawetz, I have only one or two questions. To what extent, if any, did Mr. Murphy—Frank Murphy I believe it is—direct or control the policy of the Atchison, Topeka and Santa Fe Railway Company?

A. Not at all. He confined his attention to the Santa Fe, Prescott & Phoenix line and the conditions in Arizona.

Q. He was never a director of the Atchison, Topeka and Santa Fe Railway Company, was he?

A. No, sir.

Cross-examination, by Mr. SEVERANCE:

Q. Mr. Morawetz, when was the construction of the Wickenburg line commenced?

A. I should think it was begun in 1903, but I will ascertain and furnish you the date definitely.

Q. When was the construction of the Phoenix & Eastern begun?

1870 A. In the summer or winter of 1902, I should say.

Q. Then the Phoenix & Eastern was under construction before the Wickenburg branch?

A. I think it was.

Q. When was the first talk between Mr. Ripley and Mr. Murphy and yourself, or any of you, with reference to continuation of the Phoenix & Eastern to Deming? When was that matter first discussed? Wasn't it prior to the time the construction of the Phoenix & Eastern was actually entered upon?

A. I can ascertain those dates, but I can not state definitely now. In 1902, when the construction of the Phoenix & Eastern was begun, the idea was to build to Benson. The idea of a line up to Gila canyon was first brought up at the time of the controversy with the Southern Pacific, on account of our building into what they called their territory.

Q. Do you remember when that was?

A. That must have been the winter of 1902. I wish to state here, if you please, that at no time, until we sold the Phoenix & Eastern line, was any definite line decided upon as the proposed low-grade line, if any should be constructed. Our engineers were at work both in the South and in the North to ascertain what line would be the most desirable; and the line which was under consideration at the close of the negotiations was a line through the Arivapa canyon, which is south of the Gila canyon.

Q. That is interesting, but that is not what I asked. What I asked is this: When did the Santa Fe people—that is, Mr. Murphy, Mr. Ripley and yourself, or any other gentlemen in the Santa Fe with whom you discussed the mater—first take up the ques-
1871 tion (not the definite location of a line to Deming) of building a connection from Dudleyville, or somewhere in that vicinity, to Deming? Was that in 1902?

A. I think it was first discussed in the winter of 1902–3.

Q. And the Wickenburg line was started in 1903, as you stated—the construction of the Wickenburg line—about six months after, would you say?

A. I do not remember the date.

Q. You stated a little while ago it was 1903.

A. That is my impression. I could ascertain.

Q. If that is the case, then, your testimony on direct examination, or your statement—I don't know as it was asked, but you made the statement on direct examination, that the building of the line through to Deming had not been considered up until after you had commenced the construction of the Wickenburg line. Now did you intend to so state?

A. No.

Q. Or was that an inadvertance?

A. I think I referred to the Belen cut-off then, did I not?

Q. No; the Wickenburg. You did not intend to so testify?

A. I did not intend to so testify, no. I don't think I did.

Mr. LOVETT. I don't think so either.

Mr. HINES. Won't you let him re-state what he understands the fact to be?

Mr. SEVERANCE. No, that is all I want.

Mr. HINES. Do you object to his stating that right there?

Mr. SEVERANCE. Stating what?

Mr. HINES. What his understanding of the fact is.

Mr. SEVERANCE. Well, I have brought it out now. Certainly.

1872 Go on, Mr. Morawetz. Make any explanation you wish to.

WITNESS. I simple state that I do not remember the precise dates. They were in 1902 or 1903, or about there. I can get you exact dates, if you want them.

Q. You do not intend to testify, then, that the Santa Fe commenced the construction of the line from Wickenburg west previous to the time that you had had the matter of a low-grade line to Deming under discussion, do you?

A. I do not.

Q. You stated at the beginning of your statement that Mr. Murphy projected the Phoenix & Eastern, individually, or with some associates. Was that in 1901?

A. At the time when we bought the line in 1901. He had those plans under consideration.

Q. You learned, did you not, while that line was under construction, that citizens along the line had given rights-of-way to the Phoenix & Eastern to induce the construction of a competitive line to Benson?

A. I may have, though I do not recall it.

Q. You knew, did you not, that terminal facilities had been furnished by the residents of Benson to induce you to come down there, and that the Phoenix & Eastern owned those facilities, or that land, at the time you sold the line?

A. I may have. I do not know.

Q. Did it seem to you a proper and just thing to sell that line out to the Southern Pacific after those people had given you the right-of-way and the terminal grounds at Benson, merely on account of the trade in Northern California, and to keep out of the Southern Pacific territory?

1873 A. I do not know, Mr. Severance, that I knew those facts. I know this: that when we took up the Phoenix & Eastern it was with an understanding with Mr. Murphy that we would cause the line to be built as far as Dudleyville, and that we were not ready to go any farther; and I remember that Mr. Ripley did not think it advisable to go to Benson, while I was disposed to go to Benson if we went anywhere.

Q. Well, you went somewhere, didn't you?

A. We went to Dudleyville.

Q. You were overruled in that, were you? If so, by whom?

A. Hardly overruled, no. I was inclined to think that sooner or later the line would be extended to Benson anyhow.

Q. That was your idea?

A. After being built to Dudleyville.

Q. You knew that the right-of-way had been given to you along the line between Phoenix and Dudleyville in order to get a competing line in there, didn't you?—A. I can not say yes and I can not say no. I do not recall it. But it is not unlikely that I was informed.

Q. You knew the Southern Pacific had a line over as far as Mesa along the line of the Phoenix & Eastern?—A. Yes.

Q. When was it that Mr. Harriman came to you and objected to the invasion of his territory? Was that after the line was completed, or before?—A. Oh, before it was completed; while it was in the course of construction.

Q. Was that at the time rocks were being thrown down on the tracks, as Mr. Murphy says, or was it before that?—A. Oh, it was before.

1874 Q. Before that?—A. The contest as to the location of the Phoenix & Eastern line took place after I had formulated my demands and after Mr. Harriman had refused to agree to them.

Q. I see. So when you found you couldn't agree otherwise, he tried the "rock" treatment, did he?—A. I remember stating to him that I did not think such action would facilitate the negotiations and that it certainly would not influence me favorably to agree to his demands.

Q. Mr. Morawetz, if the line had been extended to Benson, as originally contemplated when Mr. Murphy proposed to build it, you would have connected there with the El Paso & Southwestern, would you not?—A. Yes.

Q. The El Paso & Southwestern is an entirely independent line, isn't it?—A. I believe it to be.

Q. Built by the Copper Queen people?—the Phelps-Dodge people, controlled by them?—A. Yes, sir.

Q. Mr. Douglas is the president—Prof. Douglas?—A. Yes.

Q. That line reaches El Paso, doesn't it?—A. Yes.

Q. And there connects with the Mexican Central, doesn't it?—A. Yes, sir.

Q. Running to Mexico City?—A. Yes.

Q. And connects with other lines to the east?—A. Yes.

Q. The Texas & Pacific?—A. Yes.

Q. At the present time the El Paso & Southwestern has no way of reaching the Pacific Coast, except by the Southern Pacific from Benson, has it?

A. No. Practically none.

Q. Has it any other way, except by going around by El Paso?

A. It connects with the Atchison at El Paso and at Deming, and through the Southern Pacific it connects with the Atchison

1875 at Phoenix; but practically its only outlet is the Southern Pacific.

Q. Yes. It would be a very round-about way to go around there?—A. Yes.

Q. The only thing that was left, in order to give an outlet and an interchange between Arizona and the country to the west and the country along the El Paso & Southwestern and down into Mexico,

was the construction of this short line from Benson to Dudleyville, as long as the Santa Fe owned that road; isn't that true?—A. Yes.

Q. And was that the invasion of Southern Pacific territory which Mr. Harriman objected to?—A. No, he did not specify. It was generally extending our mileage south of Phoenix.

Q. He thought that there should be a wall erected at Phoenix, and you should stay on your side of the fence and he on his side of the fence; isn't that right? Or didn't he propose to stay on his side of the fence?—A. I should have proposed it if he had not.

Q. Well, that was his suggestion, was it—that you should not go south of Phoenix?—A. No. Really all that I can remember is that he objected to our construction of this line south of Phoenix, on the ground that we were going into territory which was properly tributary to Southern Pacific lines.

Q. This territory that he was trying to protect was not served at that time by the Southern Pacific, was it? That is, the territory lying between Benson on the south and, you might say, Mesa on the north, except for that little line over by Maricopa?—A. No. I
1876 presume that we were as near it as the Southern Pacific. But the mineral traffic there was traffic between the local points and the east, which could not be properly served by the Atchison lines, but which naturally fell into the system of the Southern Pacific or of the El Paso & Southwestern, which was equally near. So far as the Atchison was concerned, it was simply a question of a short local haul.

Q. Of a short local haul, to deliver over to another line to the east, wasn't it?

A. Yes.

Q. If you had built on to Benson?

A. Yes.

Q. But that would have created a competition in that business to the east, which Mr. Harriman desired to prevent, by reason of the action of the El Paso & Southwestern?

A. Practically there was no business from those points.

Q. But the business was being developed, Mr. Murphy testified. People were opening up mines there, largely.

A. They were prospects, yes. There were no real——

Q. He says there was a great deal of money spent there in opening up mines, and that people were obliged to haul their ore out with wagons, and all that.

A. You cannot operate a copper mine without a railroad, and there was no railroad reaching to the mines.

Q. In the San Pedro Valley?

A. In the San Pedro Valley. I do not think there is a mine there today.

Q. Mr. Murphy testified to the contrary.

A. I think he is mistaken.

Mr. LOVETT. I don't think he did, Mr. Severance.

Mr. SEVERANCE. Yes, he said they were opening up mines.

1877 Mr. LOVETT. He testified there was development going on there, but what kind of development he did not say.

Mr. SEVERANCE. Yes, very large development.

Q. You haven't heard of the Southern Pacific extending their lines in there to open up that territory, have you?

A. No, sir.

Q. The Southern Pacific did not need the Phoenix & Eastern line for any local purposes, did it?—A. I did not understand.

Q. They did not need a line from Dudleyville into Phoenix for anything, did they—the Southern Pacific?—A. No more than we did. If there was any traffic there they would want it as much as we did, and more.

Q. They had a line out as far as Mesa, which reached the rich fruit-growing district, didn't they?—A. A few miles out.

Q. Well, 18 miles. And that reached out into the rich fruit-growing district of Salt River Valley, didn't it?—A. I presume so.

Q. You have been out in the Salt River Valley, have you not?—A. I have been, yes.

Q. Do you recall where Mesa is located?—A. Southeast of Phoenix, isn't it?

Q. Southeast.—A. Yes.

Q. And the Southern Pacific had their own line there, so they did not need the Santa Fe's Phoenix & Eastern to tap Mesa?—A. The Phoenix & Eastern does not go to Mesa, does it?

Q. Yes. Doesn't it?—A. I think not.

Mr. HINES. Would you like to have the map, Mr. Morawetz?

Mr. SEVERANCE. You should know better than I. You are

1878 chairman of the board, and I am not.

Witness and counsel examine map.

Q. Then, you see it does go there?—A. It does, yes.

Q. Judge Lovett says it is not 18 miles, but only 17½, I believe.—A. I accept the amendment.

Mr. LOVETT. Judge Lovett did not say that.

Mr. SEVERANCE. I thought you did. What did you say?

Mr. LOVETT. I am not on the witness stand.

Mr. SEVERANCE. You said 17 and a fraction.

Mr. LOVETT. No.

Q. Was there, then, any substantial reason why that line should have been acquired by the Southern Pacific, except to stop any possible competition in that territory and to prevent a new outlet?—A. I do not doubt that the Southern Pacific wanted to buy the line, and did buy it, for the reason which was assigned, namely, that they did not want the Atchison to extend into that territory.

Q. Well, that is another way of stating that they did not desire competition from any other line in that territory, isn't it?—A. No. They did not want that territory to be occupied by the Atchison, because if there was anything in the territory for a railroad company they wanted it for themselves.

Q. That is not entirely the whole truth, is it, Mr. Morawetz? If your line had been extended down to Benson, it would have produced

competitive conditions, certainly, between the country to the east and Phoenix, would it?—A. Oh, I agree.

1879 Q. Yes.

A. Yes. I agree. I thought you meant the line to Dudleyville.

Q. No, I am speaking of the whole proposition.

A. The whole proposition, yes.

Q. Getting control of the proposition?

A. No doubt.

Q. So that the real reason why Mr. Harriman desired to get that line into their hands was to prevent possible future competition through a line that you might run down to Benson?

A. I think that is true.

Q. And you accommodated him in that regard?

A. No, sir.

Q. Getting for it what you thought was a sufficient equivalent in another direction?

A. No, sir. I would have sold that line independently for cost and interest, because, according to my best advices, it would not pay for years to come, if at all, and if we ever wanted to build a line through there to Deming we could build it without having lost in the meantime interest on the investment.

Q. Why did you undertake the construction of this line in 1902, if you proposed to sell it out to anybody who would buy it for cost and interest?

A. There was no thought at that time of selling it, of course.

Q. There wasn't any thought of selling it out until Mr. Harriman came to you and made his objection to your going into the territory, was there?

A. There were several reasons.

Q. Just answer that question.

Mr. HINES. Well, let him answer the other one. Let him get through answering the other one.

Mr. SEVERANCE. I think I got an answer. I am not try-

1880 ing to choke off Mr. Morawetz. I think you will agree to that.

Mr. HINES. I didn't think so. That is why I called attention to it.

Mr. SEVERANCE. Let Mr. Morawetz answer it in his own way.

WITNESS. Strike out the answer "There were several reasons." There was no thought of selling it out until the controversy arose with the Southern Pacific Company.

Q. Well, the controversy was as to whether you would build the line or whether you would not, wasn't it?

A. That was the controversy.

Q. And there was never any proposition made to you by anybody else to buy it, was there?

A. Never.

Q. You stated that Mr. Murphy was a very enthusiastic son of Arizona and had rather large ideas of the possibilities of the Territory, and so forth. He built the line from Ash Fork to Phoenix, did he not?

A. He did.

Q. And you thought enough of that afterward to buy it?

A. I think very well of it now.

Q. So that when Mr. Murphy projected that enterprise he was building very well, was he not?

A. He was.

Q. And that is a successful line for the Santa Fe?

A. It is.

Q. He certainly knows the possibilities of the territory much better than anybody in New York that you are acquainted with, does he not?

A. He does.

Q. Did Mr. Murphy have anything to do with the California-Northwestern situation? I ask you that because Mr. Hines seemed to include that in his question.

1881 A. Nothing. He was interested in that situation when we bought the Eel River and Eureka road. He furnished us the engineer of the Santa Fe, Prescott & Phoenix line to make a reconnaissance of the country to the south of Eureka, and we went over the project quite fully with him at that time. But he had nothing to do with the negotiations.

Q. I don't mean the negotiations with Mr. Harriman, but did he have anything to do with the negotiations pursuant to which the Santa Fe acquired some lines of road up there?

A. I am not sure of that. He was very much interested in the project.

Q. Then he sometimes laps over outside of Arizona?

A. Yes; occasionally.

Q. Yes; that is what I wanted to find out. Now, I notice by the contract that you made with the Southern Pacific at the time you turned this Phoenix & Eastern over there is a provision that you have referred to with reference to trackage rights to the Atchison at such time as the line is built through to Deming.

A. Yes, sir.

Q. I find in Article 2 of the contract, complainant's Exhibit 104 (which is the agreement with respect to the sale of the Phoenix & Eastern, dated December 7, 1906) the following language: "The Southern Company further agrees that it will cause such line between Phoenix and Deming to be completed within three years after delivery to it of an instrument signed by the president and authorized by the Board of Directors of the Atchison Company, requesting the Southern Company to cause such line to be completed and to execute such trackage contract, Exhibit 'B,' and agreeing that the

1882 Atchison Company will execute such trackage contract, if said line between Phoenix and Deming shall be completed within three years after the delivery of such request." So far as you are

advised, has the Atchison, Topeka & Santa Fe road made any request of the Southern Pacific to build that line?

A. Never.

Q. And you don't think they ever will, do you?

A. I am confident that the Atchison Company never will ask trackage under that agreement, because I do not think it would pay.

Q. Then, you don't think much of the contract that you made in that regard?

A. I think it is a desirable option to have. I do not believe that it would ever pay the Atchison Company to haul its transcontinental traffic that way.

Q. Then, that leaves this situation, doesn't it; that the Atchison Company turned over to the Southern Pacific the Phoenix & Eastern so as to keep out of its territory, reserving a right which you regard of no value, so far as trackage is concerned; that is the fact, isn't it?

A. An option is always of some value. I do not regard it of much value.

Q. That is the traffic agreement that you referred to in your testimony concerning which you had such long discussions with Mr. Harriman?

A. No, sir. The principal difference was in regard to the Northern California situation. Mr. Harriman refused to give us a half interest in his lines north of San Francisco Bay. He wanted us to sell him our investment at Eureka, or he proposed that we should build from Eureka down to Willetts, to a connection with his lines, and that the line so built north of Willetts should be owned jointly by the Southern Pacific and the Atchison. That was the principal
1883 difficulty between us.

Q. Yes, but you testified in your long statement which you made in answer to Mr. Hines, if I understood you correctly, that you had a long controversy with Mr. Harriman with reference to the movement of business by El Paso, in some way; I didn't quite catch what it was.

A. I stated, Mr. Severance, that most of the points in difference had been settled before the meeting at which the stockholders were to be elected; but a few questions remained open, and one of those questions was this question as to the movement of traffic over this Gila canyon line, if we should exercise the option.

Q. If you regard that contract giving you that option, or rather the rights that you could get by exercising that option, as of so slight advantage to the Santa Fe that you do not think they will ever exercise the option, why did you have any trouble over a little matter of that sort which would never become operative?

A. As I stated, the particular difference seemed to me of especially little importance, because I knew we would not send traffic to Galveston via the Texas & Pacific line in any case, having our own line all the way through; but I was not willing to yield the point, although I did not consider it of much consequence.

Q. That is, you were trying to make a point that would look well on paper, but was really of no value; is that right?

A. It never appeared on the papers. The point never appeared in the papers. Mr. Harriman wanted to limit our trackage contract. I refused to limit it.

Q. You wanted it unlimited?

A. I wanted it unlimited.

1884 Q. But it was such a valueless thing you are satisfied the Santa Fe will never take advantage of it. It would not if you continued chairman of the Board.

A. It is not of very much value, in my judgment. Mr. Harriman considered it of very much more value than I did.

Q. Well, Mr. Morawetz, the fact is that you traded off the situation in Arizona for a half interest in the Harriman lines in California? Isn't that it, practically, to sum it up?

A. No, sir. I went into the construction to Dudleyville reluctantly. Personally I was quite willing to sell this Phoenix & Eastern line at cost and interest, because I did not believe it would pay, and I do not believe it has yet paid operating expenses.

Q. Well, most any line which starts for some connecting point with other lines and stops half way, is not lucrative, is it—is not apt to be? Suppose you had taken your Belen cut-off and built it half way and stopped out on the prairie somewhere: that wouldn't have been of much value, would it?

A. Well, that line to Dudleyville was built to develop local traffic, and not as a tunnel between two points.

Q. But if it had gone to Benson, it was a line that would have opened up new traffic, wouldn't it, in connection with the El Paso & Southwestern?

A. I am not a traffic man, but Mr. Ripley, who is a traffic man, advised me that he did not think enough traffic would be obtained there to pay for the construction of the line from Dudleyville down.

Q. He did not think the interchange of business would be sufficient?

A. So I understood, yes.

Q. Are you sure he said that?

A. I am very confident that that was his view.

1885 Q. What was Mr. Ripley's attitude—as long as we are going into that—on building the line to Deming from Dudleyville?

A. You mean the low-grade line?

Q. Yes, sir.

A. Mr. Ripley and I discussed the matter, and he stated to me that it would be many years, if ever, before the Atchison company could afford to build that low-grade line.

Q. Why? Because it was hard up, or because it wouldn't pay?

A. Because it wouldn't pay. To establish that low-grade line would have involved the expenditure of more than $15,000,000.

Q. You stated on your direct examination $10,000,000 to build to Deming and $2,000,000 more to strengthen the line up to Belen. Where did the other $3,000,000 come in?

A. Well, it is something over $3,000,000 from Wickenburg to Bengal.

Q. Well, you are building that anyway?

A. Partly.

Q. You built as far as the Colorado River and built a very expensive bridge across the river, didn't you?

A. Yes.

Q. And how much further have you to build up to Bengal?

A. About 90 miles; 96 miles.

Q. How much will that cost, according to your estimates?

A. I should think about $2,000,000.

Q. Is it the intention of the Santa Fe to stop where they are, after building that big bridge over the Colorado River?

A. Some day the line will undoubtedly be extended and a line will be built from somewhere about Parker, in a northeasterly direction, to Ash Fork, to give us a second line between Bengal and Ash Fork. That will leave only the short piece of line between
1886 Ash Fork and Winslow to be covered, in order to give us practically two lines across.

Q. Do you think it will be a matter of a number of years before that line is completed?

A. I think very likely.

Q. You kept right on building your bridge and your other line, didn't you?

A. It would take two years to build that bridge. The foundation had to be put in at low water in the river. The subject was discussed, and it was decided that we had better get that bridge in so that whenever we found it desirable, or profitable, or otherwise desirable, we could strike quickly across to Bengal. The construction of that bridge meant two years' delay.

Q. The construction of the line from Bengal to the Colorado River, at the bridge, is not difficult, is it?

A. Not seriously difficult.

Q. I mean it is not heavy work?

A. Not very.

Q. For the western country it is not heavy work?

A. Not very.

Q. And therefore you do expect, do you not, Mr. Morawetz, that that will be rather speedily completed, so that you will have the advantage of the through cut-off; isn't that the intention?

A. There was no authority granted to complete that line when I left the Atchison last October, and it was not intended to construct the line within any definite period. It was held in abeyance.

Q. Wasn't that largely owing to the financial situation?

A. No.

Q. If the panic had not struck, a year ago last fall, don't you think that line would have been completed through to Bengal speedily?

A. No.

Q. You don't?

A. No, I think not.

1887 Q. Up in Northern California you originally contemplated the purchase of the California & Northwestern yourselves?

A. Yes, sir.

Q. And the Southern Pacific got ahead of you and bought it first, did they?

A. Yes, sir.

Q. And you bought some lines up around Eureka?

A. The Eel River and Eureka lines.

Q. And you bought them with the intention of continuing them down to San Francisco bay?

A. In contemplation, but not with the intention.

Q. Well, in contemplation?

A. Yes—of the possibilities.

Q. You didn't buy them simply to keep and have them stand still, but you expected to make a connection with your main system at San Francisco bay, didn't you?

A. We wanted a foothold in that country. We knew we could get out the timber and bring it down by water, as it goes now, until we found it profitable to build a line down to a connection with our own system.

Q. Are the mills on the tidewater there, or are they inland?

A. Some inland and some on tidewater, I think.

Q. And you bring the lumber out, or, in case the mills are on tidewater, bring the logs out, and the lumber is taken down by boat?

A. Yes, sir.

Q. Do you have a line of boats there?

A. No; we have no boats.

Q. Mr. Morawetz, I notice in your contract with the Southern Pacific you grant them trackage rights between Phoenix and Mojave. That is the contract annexed to the agreement relating to the sale of the Phoenix & Eastern?

1888 A. If they are willing to take it. They have not been willing to take it yet.

Q. But they are entitled to it any time, aren't they?

A. They are; and we are anxious for them to take it, because if they will take it, we will instantly finish the line. But one of the reasons why we are not finishing it is we are afraid the Southern Pacific will not take the trackage rights.

Q. The Southern Pacific, if they would take their business through over your line, when it is finished, by Wickenburg, would get a much better grade into California than they do over their present line, would they not?

A. A much better grade for their Northern California business.

Q. That is what I mean—Northern California.

A. But not for Los Angeles.

Q. I don't mean for Los Angeles. I mean for San Francisco and Northern California business.

A. Oh, yes; much better.

Q. So that that privilege of the Southern Pacific to run over your line from Phoenix to Mojave is a valuable privilege, is it not?

A. Well, I discussed that subject with Mr. Ripley, and he was very anxious that they should exercise the trackage rights, because it would relieve us of half the interest on the cost of construction and of half the taxes and of half the maintenance charges. But of course the Southern Pacific are not going to do that unless they find it more profitable to pay all that than to use their own line.

Q. Do you think that was another instance of putting something in a contract that is of no consequence and no use—like your trackage rights from——

A. I didn't say it was of no consequence and of no use.

1889 Q. Don't you think, Mr. Morawetz, that that is a valuable right that you gave to the Southern Pacific there to get a low-grade route up to Mojave or up to Bengal, wherever it is?

A. Well——

Q. Didn't they regard it as so in their negotiations with you?

A. I can only say that they did not ask for it, but I offered it.

Q. You offered that?

A. I offered it.

Q. So that you not only let them have your line out to Dudleyville, but you offered them a half interest in your line on to California?

A. I did not offer them anything of the kind. I offered them an opportunity to pay half the interest on cost and half the taxes, half the operating expenses and maintenance.

Q. Did you offer them anything else?

A. I did not.

Q. You kept the rest for the Santa Fe, did you?

A. I tried to.

Q. Mr. Morawetz, what reason did Mr. Harriman give you for wanting representatives on your Board of Directors?

A. The only reason he gave was that these gentlemen had acquired large personal interests in the stock of the Atchison and it was only proper that they should have representation. He stated to me, and I believe it to be true, that these gentlemen bought Atchison stock because they thought it was a good investment. One of them (I think it was Mr. Schiff) stated to me that his interest in the Atchison was relatively as large as his interest in the Union Pacific.

1890 Q. I am asking you at present about your conversation with Mr. Harriman. I will come to the Schiff business a little later, perhaps.

A. All right.

Q. Mr. Harriman made no other suggestion than that—that they ought to have representation because they had secured stock?

A. None other.

Q. You had some discussion with him about the propriety of his going on your board?

A. Yes.

Q. Did he ask to go on your board?

A. Yes, as I have stated. He suggested he should go on the Atchison board and that I should go on their board.

Q. Why did he say he wanted to go on the Atchison board?

A. I don't think he assigned any reason.

Q. On your direct-examination you gave some explanations as to conversations you had had with Mr. Harriman.

A. As to policy.

Q. As to policy?

A. As to policy.

Q. Let me ask you this: in substance, did he ask to be put on the Atchison board so that he might be kept advised as to prospective action to be taken by the Atchison?

A. He did not so state: but, of course, the object of going on a Board of Directors would be to take part in the management. There could be no other.

Q. So that he wanted to go on the board so as to take part in the management of the Santa Fe road, and you objected to it?

A. I objected to his going on the Santa Fe board and objected equally to my going on his board.

Q. Why did you make that objection?

A. Because I did not believe it to be wise to have the officers of a rival company on the Board of Directors.

Q. Why not?

1891 A. Because I thought, and still think, that the management would be more satisfactory if there were no divided counsels upon the board.

Q. Does not that apply to directors as well as to other officers?

A. I do not think so. I have not found it so in my experience. The strongest and richest men commonly have interests in a great many companies, and I have never found there was any substantial objection to allowing them to sit as directors of these companies, even though the companies be to some extent competitors or rivals.

Q. I think I have read in some books on corporations—of recognized merit—that directors who are interested adversely to their companies are disqualified from acting; have I not?

A. Undoubtedly. If a question had arisen between the Union Pacific and the Atchison, I should have considered that any director who owns stock in the Union Pacific would have been disqualified.

Q. Is it not also a fact that a corporation is entitled to the unbiased advice of each member of the Board of Directors?

A. Undoubtedly. But it is perfectly well settled that a man may be a director of more than one company.

Q. Oh, yes, undoubtedly. But therefore you would favor, as a general proposition, would you——

A. Independent boards of directors; yes, of course.

Q. Oh, you would? That is what I want to know.

A. Of course.

Q. Then, you don't think that Mr. Rogers and Mr. Frick, who were directors of the Union Pacific, should have been placed on your board?

A. That does not follow.

Q. Are they better than other men?

A. Not at all.

Q. How is it that you want independent boards of directors,
1892 and still think it is all right that these two particular gentlemen should be on both boards?

A. There are no better directors than Mr. Rogers or Mr. Frick, except upon questions in which they have conflicting interests, when, of course, they would not undertake to vote. It is very rare—I do not recall any case where a question arose in the Board of Directors since these gentlemen were on the board in which the Union Pacific or the Southern Pacific interests were involved, or in which it was necessary that they should abstain from voting.

Q. Let me ask you this: you stated that the completion of the Wickenburg cut-off would add greatly to the facilities of the Atchison in handling transcontinental business, and give you that much more double-track. Did you not so state?

A. No, sir.

Q. Didn't you state that that would make you practically another double track from Ash Fork to Bengal? I so understood you.

A. I should say if we should construct a line which has been under consideration from some point east of Parker to a point between Prescott and Ash Fork, it would give an alternate line between Bengal and Ash Fork.

Q. That would be a useful thing to the Santa Fe, wouldn't it; save you a lot of grades there?

A. No, sir, it wouldn't pay now to build such a line.

Q. Wouldn't it, when business is normal? Isn't your business large enough so that it would pay?

A. No, sir; oh, no.

Q. It is not?

A. Oh, no. If we had another line we could not use it now to advantage, because the increase of interest charges and of maintenance charges would far exceed any saving in operation.

Q. When a question like that arises, the Santa Fe board, or the Santa Fe corporation is entitled to an unbiased judgment of its Board of Directors upon the question as to whether those additional facilities should be provided or not, isn't it?

A. Yes, sir.

1893 Q. And if the Santa Fe were in active competition with other transcontinental lines, any additional facilities of the

Santa Fe which enable them to do business more cheaply helps them that much in their competition with the other lines, doesn't it?

A. Yes, sir.

Q. Therefore it is at least preferable that directors of the Union Pacific or Southern Pacific or any other company that is in competition with the Santa Fe should not be in a position to pass upon the advisability of additional facilities for the Santa Fe, isn't it?

A. They should not be in a position to decide whether additional facilities should be made, but in this case there would be thirteen to two.

Q. So that you would expect them to vote in the interests of the Union Pacific, but be beaten thirteen to two; is that the idea?

A. No, sir, I should expect them to vote as they have always voted—to do the best thing for the Atchison.

Q. But that is because you have confidence in these two gentlemen, and the rules that would ordinarily apply to everyday men do not apply to them?

A. Well, I have not found that men in large affairs take so petty a view of a situation.

Q. That is, they are not swayed by self-interest?

A. They are not swayed by small considerations.

Q. Well, of course the amount of stock they might have in a rival line would determine to some extent whether the consideration was small or great, wouldn't it?

A. Presumably.

1894 Q. Now, if you don't think any harm would naturally result from having two Union Pacific representatives in the Santa Fe board——

A. There are not two Union Pacific representatives on our board, Mr. Severance. Mr. Frick never was suggested or considered a Union Pacific representative.

Q. I will change the form of my question. I will say two directors of the Union Pacific on your board. You are aware of the fact that Mr. Frick was a director of the Union Pacific?

A. He is now.

Q. He was at the time he went on your board, wasn't he?

A. I understand so.

Q. You say he was not suggested. Who did suggest him? You say he was not suggested by them. Who did suggest Mr. Frick as a director of the Santa Fe?

A. His name was suggested by Mr. Harriman.

Q. And he was then a director of the Union Pacific?

A. It was not suggested that Mr. Frick was a representative of the Union Pacific.

Q. Oh, I would not have expected it would be put in that way, of course.

A. That is what you said.

Q. I changed my question when you objected to that; it didn't occur to me that it was an improper way to state it. Instead of Union

Pacific representative I will put it this way: There are two directors on the Santa Fe who had been directors of the Union Pacific at the time they were elected to the Santa Fe board?

A. Yes, sir.

Q. Now, you think no harm can result from so small a minority of Union Pacific directors on the board. How large a
1895 minority would you still think safe for the Santa Fe, so that the action of the Santa Fe could not be in any way affected by the fact that they are representatives of a competing line or directors of a competing line?

A. Well, Mr. Samuel Tilden said, "It is difficult to tell the results of things that never happened."

Q. That would be a mere speculation, would it?

A. A mere speculation. But I may state here, Mr. Severance——

Q. Oh, that answers the question.

A. ——that I was willing to accept two gentlemen who were satisfactory to me and my board rather than to have four gentlemen thrust into the board, concerning whose selection I had no choice.

Q. Now, what reason did Mr. Harriman assign for inviting you onto the Union Pacific board if you were not a stockholder?

A. It was because of his expressed policy that two great railway systems should deal with each other openly and frankly, and on the principle of live and let live.

Q. That is, he was opposed to what he termed in his testimony destructive competition, is that it?

A. I didn't understand it.

Mr. Severance. Just one moment. I will put the question in its own words.

(Printed transcript of record of proceedings taken before Interstate Commerce Commission sent for.)

Mr. Severance. You can make a statement, if you like, so
1896 that it will be in the record, that the Belen cut-off makes a difference of 11 miles.

Witness. I state, in order that it may be put into the record, that the line of the Atchison between Chicago and the Pacific coast is 11 miles shorter via the Belen cut-off than via the existing line, but that Albuquerque is a few miles nearer to Chicago than Belen. The difference in favor of the Belen route arises because of the cut-off from Belen to the main line west of Albuquerque.

Q. Mr. Harriman testified before the Interstate Commerce Commission, and his testimony by stipulation has been read into this record, concerning his conversations with you as follows; see if this accords with your recollection.

A. I didn't know that he testified to that at all.

Q. Yes; see if this accords with your recollection. He was asked to state his interviews with Mr. Ripley and yourself concerning putting some of these gentlemen on the Santa Fe board, and, after having been asked to state what he said, this is his response: "It was in substance that we were to try to establish a better relationship

between all the railroads, in the line that we should deal more frankly with each other, more publicly and more frankly, and not operate our lines for the purpose of destroying each other, but for the purpose of helping each other, and for developing the territory served by each, and to that extent I even went so far with Mr. Morawetz as to tell him that as far as the Southern Pacific was concerned, I would be willing to even put him on the Executive Committee of
the Southern Pacific so that he might know what our inten-
1897 tions were, if he chose to." Is that about your recollection?

A. That is about my recollection, yes.

Q. Then it was his opinion, expressed to you, that you should have common directors, and the roads should be operated so as to help each other instead of being operated, as he expresses it, to destroy each other or in opposition to each other, they should be operated to help each other; is that right? Is that the way you recall it?

A. Yes, substantially that.

Q. And he speaks of them being so operated as to develop the territory served by each, and then his idea was that wherever the Southern Pacific had established itself in a certain territory, or wherever the Santa Fe had established itself in a certain territory, the other lines should not build in and attempt to divide the business; is that right?

A. Substantially that.

Q. One question I forgot to ask you. Do you know anything about the difficulty the Santa Fe has in Northern Arizona in getting water to run their engines?

A. Yes, we have spent a great deal of money in Northern Arizona in building dams and sinking wells. Formerly it was necessary to haul water by train, at times considerable distance.

Q. Is not that still done?

A. I think at times of the year, at certain times, they still haul.

Q. That is very expensive, isn't it? It makes it a very expensive operation?

A. It makes it a very expensive operation, yes.

Q. Now, you would not meet with that difficulty along this
1898 Southern line in Arizona, down the Gila Canyon?

A. No.

Q. That is an expense you would save in operation?

A. Yes, that is relatively, not very large.

Q. Well, isn't it considerable?

A. It is a considerable expense, but when it comes to an interest charge of $750,000 per annum, and a maintenance charge of an equal amount, it becomes trifling.

Q. I understand that is not the whole thing. Now, west of the place that the Belen cut-off strikes the main line at present you have some heavy mountain climbing, haven't you?

A. As far as Winslow, Arizona, that is, between Rio Puerco and Winslow, by the expenditure of $1,700,000 we can establish a six-tenths of one per cent grade, leaving the stiff grades to be dealt with only those between Winslow and——

Q. Bengal?

A. Well, really the Colorado River.

Q. Now, what altitude do you have to climb between Winslow and the Colorado River?

A. I don't recall.

Q. Where is the continental divide; east or west of Winslow?

A. The San Francisco mountain is west of Winslow, I think the continental divide is also, but I am not sure.

Q. There is very heavy climbing in the vicinity of Flagstaff, isn't there?

A. That is the San Francisco mountain.

Q. That is west of San Francisco, of course, I can tell you that.

A. Yes, I know, that is the San Francisco mountain.

Q. Then you don't get away from that mountain climbing?

A. No.

Q. If you make your line low grade to Winslow?

A. About 1½ per cent.

1899 Q. And you go up and down several times there, don't you?

A. Twice.

Q. Only?

A. Once or twice, I think that is all.

Q. Haven't you a big climb west of Ash Fork, and a curve too?

A. The road drops down to the river at Needles, and then there is a steady rise from the river up.

Q. Up to Ash Fork?

A. No, up toward——

Q. Well, coming east how is it?

A. The same thing; that is, coming east it drops down towards the river and then rises from the river.

Q. You have got a great big climb a little ways west of Ash Fork, where you have a horseshoe bend with rises around the mountain, haven't you?

A. Between Ash Fork and the river is a stiff grade.

Q. Now, all that climbing—that 300 and how many miles?

A. 369 miles contains the material grades to be dealt with.

Q. That is, between Winslow and what point?

A. And Bengal.

Q. And Bengal, yes. And those grades would be substantially eliminated if you made this detour around by Deming, wouldn't they?

A. Yes, but by the addition of 160 miles of additional mileage.

Q. Yes, I understand that; you have to travel 156 or 157 miles farther, but you would get practically a water-grade?

A. No.

Q. Nothing above six-tenths?

A. Oh, yes, there would be more. The main line between Wickenburg and the Colorado River has a grade of 1.25.

1900 Q. That is only for a short distance?

A. A short distance.

Q. But substantially all the way you have got a low-grade line?

A. Then the line between Wickenburg and Phoenix is one per cent or more.

Q. All the way?

A. Not all the way.

Q. Very little of it, isn't it? That is an easy grade, as a rule, up to Wickenburg from Phoenix, isn't it?

A. I think it is about 54 miles, something like that.

Q. But there is no such climbing to do as there is on the other line?

A. No such prolonged grades, no.

Q. Now, in the matter of double tracking, you cannot handle as much business on a single track in a mountain country as you can in a level country, can you?

A. No, because the movement is slower.

Q. The movement is slower, yes. And even a double track in a mountain country is not as efficacious as one track in a mountain country and another track where it is level?

A. No, I don't agree with you there. Of course a double track is very much better than two single tracks.

Q. Undoubtedly that is true, but if you wanted a second outlet—for instance from this point west of Albuquerque to Kansas you have two tracks; they are not double tracks, but they are two single tracks, very far apart. Now, that relieves your congestion a good deal on the eastern end, doesn't it?

A. Yes.

Q. And the same would be true if you had a second track going up through by Wickenburg into Bengal. Although the
1901 tracks would not be side by side, that is, that track and the original track, still it would relieve the congestion?

A. Of course, I would very much rather have them together, but it would decidedly relieve congestion, and that is one of the things we have in consideration.

Q. And if one of those tracks is a low-grade line, as the Belen cut-off is a low-grade line, it is more useful to you and more easily operated than as though you had a second track which was subject to the same grades as the original line?

A. Yes, if it didn't cost more.

Q. Yes, I understand. Well, the cost of coal and men, and all that.

A. That is, if the construction and maintenance did not cost more it would of course be better.

Q. Yes, I understand that. Now, you stated in answer to the general question put you by Mr. Hines, that these contracts with Mr. Harriman were agreed to, but there was some delay in putting them in writing. It appears that these gentlemen whose names were suggested as directors by Mr. Harriman went on the board in February, 1905, and the contracts were not approved by the Board of Directors until December, 1906; that is practically two years. What occasioned that long delay?

A. Well, I went off on a vacation; the thing was as good as settled; and, as is very common in the management of railway companies, the drafting of the contracts is postponed until the convenience of the counsel.

1902 Q. And you would not be able to suggest any other reason for this two years' delay except the convenience of counsel?

A. There was no other reason.

Q. Just one other thing, and then I am through. You stated that at the time you turned this Phoenix & Eastern over to Mr. Harriman, or at the time you agreed to turn it over, the Santa Fe did not have any money to build the line down to Benson. Are you sure of that?

A. I know that we were very short of money for all the things which were pressing upon us—improvements, additions, construction.

Q. Well, you were engaged in other expensive construction at the time, weren't you, amounting to very much more than the cost of that little line?

A. Oh, yes; that was one of our troubles. We have a system of 10,000 miles, and the requirements of such a system for capital for improvements, additions and extensions are enormous.

Q. You make a good many extensions out of operation, don't you—charge it to operation?

A. Well, we never charged extensions specifically to operating expenses, but we undoubtedly spent a very large amount of earnings in betterments and improvements and additions.

1903 Q. Now, these contracts were approved in December, 1906. I have in my hand your annual report for the year ending June 30, 1907, and I observe by this annual report that $9,600,000 was expended on capital expenditures out of earnings that year?

A. Yes, sir.

Q. Well then, if you were able to spend money at that rate out of your earnings, capital expenditures, you certainly could have built a line costing less than two millions down there to Benson, couldn't you, if you wanted to?

A. I think we needed twenty millions that year, and spent over twenty millions, didn't we?

Q. I dare say. As a matter of fact, you were not so hard up, with your big railway system, with 100 millions of capital, that if you had desired to build into Southern Pacific territory you could not have built that line to Benson?

A. Mr. Severance, it is undoubtedly true that if it had been deemed urgently in the interest of the Atchison company to build that line down to Benson it would have been built.

Q. That is what I thought.

A. But the management didn't think that the advantages of building that line were sufficient to counterbalance the disadvantages.

Q. What were the disadvantages?

A. The disadvantages were two-fold: one, that the profits—the profitableness of the line was, to say the least, problematical; and, so

far as I am concerned, that I did not think it was good policy to invade the territory of another company unless I saw that it would be very profitable to do so.

Redirect examination by Mr. HINES:

1904 Q. Mr. Morawetz, Mr. Severance asked your opinion as to the value to the Atchison of the option to use the line between Phoenix and Deming which was given by the contract with the Southern Pacific. Now, I want to ask your opinion as to the comparative value of that option, considering that the Atchison was relieved of the cost of carrying the property as compared with building that line itself?

A. Well, as I have stated, while I did not believe that it would be profitable to build the line, there was some value to the option. I doubt that it will ever be to the advantage of the Atchison to exercise that option for the purpose of hauling its own through transcontinental business. It is barely possible that the time may come when for the purpose of hauling the business of the Missouri Pacific and the Rock Island from El Paso it may pay the Atchison to exercise that option and haul the business over that line when constructed.

Q. That is, you think the status of the Atchison in having that option is more advantageous than if the Atchison had built that line itself and had to carry the burden of it?

A. I consider that it would be ruinous to the Atchison to build that line, at least for many years to come. If, in the future, the growth of business should be so large as to make it profitable, why, the Atchison will build it.

Q. It still has that right?

A. There is nothing to prevent it. I wish to say that it could build the line, duplicate the line from Phoenix to Dudleyville, at far less than it received for that line from the Southern Pacific.

1905 Q. Mr. Severance asked you a question to this effect, which apparently was not answered: Why did you build that Phoenix & Eastern line if you were willing to sell to anybody for cost and interest? I did not understand that you made a complete answer to that question.

Mr. SEVERANCE. Yes, he did.

Q. You started to state that there were several reasons which prompted the acquisition or building of that line by the Atchison, and then another question was asked; I just want to ask you if you had anything further to state on that proposition?

A. The reasons were mixed. Mr. Murphy was going ahead to build the line. I thought it better that we should build it than that it should be an independent line in that territory; and furthermore, there was certain strategic value possible to that line at a time when other lines coming in from the east were talking about building to California. Furthermore, we had the glowing accounts of Mr. Mur-

phy as to the mineral possibilities of the territory in question. Our attitude, however, is indicated by the fact that originally we did not want to build it.

By Mr. LOVETT:

Q. I have one or two questions only, Mr. Morawetz. You were asked by Mr. Severance whether you did not believe that the reason, and perhaps the only reason, why the Southern Pacific wanted to buy the Phoenix & Eastern was that it was an invasion of the Southern Pacific's territory?

A. It occurs to me I ought to limit that. I believe the Southern Pacific did have a project—had had a project for some time—to build a line down the Gila Valley to a connection with its Maricopa
1906 line south of Phoenix, without going to Phoenix, and this would have been part of that line; but I think the main reason, so far as I knew, was a desire to keep the Atchison out of that territory.

Q. Didn't you understand that the Southern Pacific had a project of building down the Gila Canyon and shortening its main line, reaching its line in the vicinity of Lordsburg on the east, and the extension westerly from Phoenix to Yuma?

A. I understood that the Southern Pacific had that project under consideration.

By Mr. SEVERANCE:

Q. Have you heard anything more about that project since they bought the Phoenix & Eastern?

Mr. LOVETT. They are building it just the same.

A. I have not. I have not been interested in it.

Q. Now, you stated in answer to Mr. Hines a moment ago that you were impressed by the strategic value of this line because of other lines that might come in from the east.

A. That was one item.

Q. What was the line coming from the east that you were fearful of?

A. We were not fearful of them——

Q. Of course you feared nobody, but what was the line you had in mind?

A. ——but we were anxious to connect with them and receive their traffic as soon as possible.

Q. Well, who were they?

A. The rumors—they were mere rumors—related to the Rock Island and the Missouri Pacific.

Q. Well, those lines still reach El Paso?

A. They do.

Q. And can still reach farther west to Benson over the El Paso & Southwestern?

A. They can.

1907 Q. There was no change in that situation, then, at the time you turned this road over to the Southern Pacific, from what it was at the time you built it?

A. No.

Q. So that, as a matter of fact, you held this strategic position for the benefit of the Southern Pacific?

A. Oh, no. The Southern Pacific——

Q. In effect?

A. ——didn't need it.

Q. That is what I think.

A. And the conditions changed very materially. The idea of rival construction across the continent in that part of the territory I think has been given up.

Q. That is, the Southern Pacific didn't need it, as you say, but they bought it.

A. The Southern Pacific did not need it to make connection with those lines, because it connects with them now at El Paso. So it would.

Mr. SEVERANCE. That is all.

By Mr. BECK:

Q. A question was addressed to you by Mr. Severance with reference to the propriety of Mr. Frick and Mr. Rogers going on the board of the Atchison. He quite ignored, in the question, the fact that they were largely interested in Atchison stock. Did that fact influence your judgment in reaching your conclusion?

A. I stated to Mr. Harriman at the outset that I never would consent to representation on the Atchison board of any Union Pacific stock, but that as those gentlemen were very large stockholders in their own interests, and as they had the power to elect directors, I should favor giving them representation voluntarily and amicably.

1908 Q. And in asking for such representation they were within their rights as stockholders under the laws of the state of the incorporation?

A. Of course.

By Mr. SEVERANCE:

Q. Now, that brings up another question. You said that you told Mr. Harriman that you would not consent to any Union Pacific stock being represented. Suppose the Union Pacific had had this 30 millions of stock, or 27 millions, or whatever it was, in its treasury at that time, how would you have prevented it?

A. Well, I should have said, "Force your way on the board if you can, but you won't get there with my consent."

Q. Now, you are aware of the fact, are you not, that in the treasury of the Union Pacific at the present time there are 10 millions of Santa Fe stock?

A. I am aware that subsequent to the date of these transactions the Union Pacific Railway Company acquired a block of Atchison stock.

Q. Then you know, don't you, that the Union Pacific is now the owner of 10 millions of that stock?

A. Yes, but it was not at the time.

Q. I understand the way you limit it?

A. I do.

Q. You know that they have now?

A. That they have now, yes.

Q. Now you say that if the Union Pacific itself had owned this stock, and had suggested a representation on the board, you would have let them fight their way in through the elections?

A. Yes, sir.

Q. And that is still your attitude, is it?

A. It was when I resigned from the Atchison board.

1909 Q. And in your opinion it is not proper, is it, that a corporation should own stock in a rival competitive line?

A. It is certainly undesirable, if it is legal.

Q. And of the latter you are not prepared to give an opinion as a witness, I suppose? [Witness laughs.]

Q. You leave the legality open?

A. I leave it open.

Mr. LOVETT. He said it is undesirable.

Mr. SEVERANCE. Undesirable.

By Mr. LOVETT:

Q. The ownership of 10 millions of stock by the Union Pacific in the Atchison would be without any influence in the management of that corporation, wouldn't it, necessarily?

A. The mere ownership of the stock?

Q. Yes, or any effort to vote it, or any voting of it?

A. I don't see how it could influence it in the least.

By Mr. SEVERANCE:

Q. It could, if its managing officers had some stock to vote with it, as they did have at the time of these negotiations, couldn't it. It would simply add 10 millions to their power over the Santa Fe election?

A. Yes.

Q. That is what I mean.

Mr. SEVERANCE. I ask to have identified a list of the executive committee of the Santa Fe for the last few years, which will be marked as complainant's Exhibit 110, and I offer the same in evidence. It was delivered to me by Mr. Hines, and is agreed to be a proper list.

Complainant's Exhibit 110 (Morawetz) is as follows:

1910 COMPLAINANT'S EXHIBIT 110. (Morawetz.)

LIST OF MEMBERS OF EXECUTIVE COMMITTEE OF THE BOARD OF DIRECTORS OF THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY FROM AND INCLUDING ELECTION OF JANUARY 6, 1904, TO AND INCLUDING ELECTION OF NOVEMBER 4, 1908.

January 6, 1904, to April 6, 1904.

Messrs. E. J. Berwind, B. P. Cheney, Thomas P. Fowler, R. Somers Hayes, Victor Morawetz, E. P. Ripley and Charles Steele.

On April 6, 1904, Mr. R. Somers Hayes resigned, and Mr. George G. Haven was elected in his place. With this exception, the above members constituted the Committee until February 8, 1905.

February 8, 1905, to November 1, 1905.

Messrs. E. J. Berwind, Thomas P. Fowler, George G. Haven, Victor Morawetz, E. P. Ripley, H. H. Rogers and Charles Steele.

November 1, 1905, to November 7, 1906.

Messrs. E. J. Berwind, Thomas P. Fowler, George G. Haven, Victor Morawetz, E. P. Ripley, H. H. Rogers and Charles Steele.

November 7, 1906, to November 6, 1907.

1911 Messrs. E. J. Berwind, Thomas P. Fowler, George G. Haven, Victor Morawetz, E. P. Ripley, H. H. Rogers and Charles Steele.

November 6, 1907, to March 18, 1908.

Messrs. E. J. Berwind, Thomas P. Fowler, George G. Haven, Victor Morawetz, E. P. Ripley, H. H. Rogers and Charles Steele.

On March 18, 1908, Mr. George G. Haven died and on May 6, 1908, Mr. Paul Morton was elected in his place.

On October 7, 1908, Mr. Victor Morawetz resigned, and Mr. Walker D. Hines was elected in his place. With these exceptions, the above members constituted the Committee until November 4, 1908.

November 4, 1908, to date.

Messrs. E. J. Berwind, Thomas P. Fowler, Walker D. Hines, Paul Morton, E. P. Ripley, H. H. Rogers and Charles Steele.

I hereby certify that the above is a true and correct list.

(Sgd.) L. C. DEMING,
*Assistant Secretary,*
*The Atchison, Topeka & Santa Fe Ry. Co.*

New York, January 8, 1909.

(An adjournment was here taken until the afternoon of Wednesday, January 13, at 2 o'clock.)

1912 ROOM 508, CUSTOM-HOUSE, NEW YORK CITY,
*Wednesday, January 13, 1909, 2 P. M.*

The hearing was resumed before the Special Examiner, Hon Sylvester G. Williams, at the above time and place, pursuant to adjournment.

Present: On behalf of the Complainant: Mr. C. A. Severance; on behalf of certain defendants, Mr. R. S. Lovett.

## JAMES DOUGLAS,

being duly sworn on behalf of the Complainant, testified as follows:

Direct examination by Mr. SEVERANCE:

Q. Professor Douglas, where do you live?

A. Spuyten Duyvil.

Q. What is your business?

A. I am president of the El Paso & Southwestern, and I am president of several mining enterprises.

Q. Are you president of the Copper Queen?

A. I am president of the Copper Queen, yes.

Q. Where is the Copper Queen mine located?

A. The Copper Queen is located in Cochise County, Arizona, near the town of Bisbee.

Q. Has the Copper Queen other mines than that?

A. It is interested in other mines.

Q. What is the nature of the country around Bisbee? What are the productions there?

1913 A. The principal production is copper; nothing else to speak of.

Q. Are the mines very extensive, or otherwise?

A. Very extensive.

Q. How large a town is Bisbee?

A. I do not think there is any exact census, but the population is in the neighborhood of 15,000 people.

Q. All engaged in mining or industries that are supported by the mines?

A. Supported by the mines.

Q. Merchants?

A. Merchants.

Q. Where is Douglas?

A. Douglas is in the Sulphur Spring Valley, 28 miles from Bisbee.

Q. What is the industry that is carried on there, chiefly?

A. The industry carried on there chiefly is the smelting of ores that are raised in Bisbee by the two large companies which are operating in Bisbee.

Q. What is the other large company in Bisbee aside from the Copper Queen?

A. There are several large ones. The C. & A. is the largest—that is, the Calumet & Arizona.

Q. That is the Calumet & Arizona?

A. Yes. The Superior & Pittsburg is the next largest.

Q. Can you tell generally about the output of the Copper Queen?

A. The output of the Copper Queen is about 6,000,000 pounds of metallic copper a month, and the output of the C. & A. and the Superior & Pittsburg at the present time is in the neighborhood of between four and five million pounds a month.

Q. What railroad is there at Bisbee and at Douglas?

A. The El Paso & Southwestern runs into Bisbee and connects Bisbee with Douglas.

1914 Q. How long is the El Paso & Southwestern road?

A. The El Paso & Southwestern road, with branches, is 290 odd miles.

Q. Was that road built by the interests that own the Copper Queen?

A. It was built by people who have interests in the Copper Queen.

Q. When was the El Paso & Southwestern built?

A. The El Paso & Southwestern bought the Arizona & South Eastern, which was built from Bisbee into Fairbank, and then into Benson, and subsequently the road was extended to Douglas, and when it was decided to build into El Paso it was then called the El Paso & Southwestern, and that road bought the original Arizona & Southeastern roads; so that the El Paso & Southwestern at the present time extends from El Paso into Benson and has a branch up to Bisbee.

Q. Outside of the mines at Bisbee and the smelters at Douglas, what other industries are there along the line of the El Paso & Southwestern, if any?

A. Outside of those interests very little freight comes to the line except from Clifton, which is a mining region about 120 miles from a place called Hachita, where the junction occurs between the A. &

N. M. Railroad and the El Paso & Southwestern. That is the only large body of freight that we receive.

Q. Now, what kind of traffic is there over the line?

A. The traffic is principally mineral traffic, but of course there is a population fed by the El Paso & Southwestern approximating 30,000 people, and they of course are large consumers, and
1915 therefore there is a certain amount of merchandise and there is a certain amount of general mining. Moreover, at Douglas the El Paso & Southwestern has a junction with the Nacozari Railway, which runs down into Mexico for a distance of 70 odd miles, and that of course yields the El Paso & Southwestern a considerable amount of traffic.

Q. At El Paso with what lines do you connect?

A. We connect at El Paso with the Southern Pacific, the Mexican Central, the Santa Fe, the Rock Island, and the Texas & Pacific.

Q. Do you exchange traffic with all of those lines?

A. Yes.

Q. Prof. Douglas, are you familiar with the San Pedro Valley, from Benson up to Dudleyville?

A. Yes, quite familiar with it.

Q. What is the nature of that country?

A. Well, the San Pedro Valley is the only perennial stream between the Rio Grande and the Colorado River. It runs almost the whole way between Benson and Dudleyville between ranges of mountains. It is a narrow valley and swept by floods from the mountain ranges on each side. At about 80 miles from Benson one gets into a highly mineralized country, where the mines have never been developed very actively, partially for the want of cheap transportation.

Q. You say it is a highly mineralized country?

A. Yes.

Q. Have you personally investigated that region to some extent?

A. I have looked at various mines down there, and near Dudleyville I had charge of mines at one time. They are all low-grade mines; they are mines that could only be made to pay under very favorable conditions, supposing they could be made to pay at all.
1916 Q. That is, they could only be made to pay if you had proper transportation facilities?

A. With cheap transportation facilities and cheap fuel.

Q. You say it is highly mineralized. Do you mean by that, that there are a great many mines in there?

A. I mean that there is a large territory over which mineral is found, but it does not follow that the mineral is worth anything.

Q. I see. But you say you did have charge of one mine there?

A. Yes, sir; I had charge of a mine on the Indian Reserve, close to San Carlos Canyon.

Q. How far from the railroad?

A. 70 miles. It didn't pay.

Q. You had to transport everything by wagon, had you?

A. Yes, sir.

Q. A 70-mile wagon haul for copper is prohibitory, isn't it?

A. Unless the price of copper is very high, which it was at the time.

Q. But under ordinary conditions?

A. No, under ordinary conditions it is out of the question.

Q. Prof. Douglas, are you acquainted with Mr. Frank Murphy?

A. Yes, sir.

Q. Did the El Paso & Southwestern Railroad, or its officials, including yourself, have any negotiations with Mr. Murphy with reference to exchange of traffic or trackage lease?

A. Yes, we had.

Q. That is, between the El Paso & Southwestern, on the one hand, and a line from Phoenix to Benson, on the other?

A. Yes, sir.

1917 Q. The proposed line. What form did that take—the form of correspondence?

A. It took the form of correspondence and drafts of possible contracts, which were never made.

Q. How long a time did those negotiations extend over?

A. Over a whole year.

Q. Have you copies of those letters and telegrams and drafts of contracts?

A. I have copies of a number of letters and telegrams and some drafts of the terms on which we agreed or didn't agree to possibly make possible contracts.

Q. Now, at that time was or was not the El Paso & Southwestern desirous of making a contract to move traffic over that proposed line?

A. We had no objections at all. Otherwise we would not have contemplated the making of a contract.

Q. And your negotiations extended over a period of more than a year?

A. Yes, I think they extended from August, 1901, to July, 1902.

Q. At the time those negotiations began, was that proposed line of Mr. Murphy independent of the Santa Fe or was it a Santa Fe project, if you know?

A. Oh, I think it was independent of the Santa Fe. Mr. Murphy's line, the Phoenix & Eastern, at that time was independent of the Santa Fe, so we understood.

Q. And before the negotiations concluded had it been taken over by the Santa Fe? Do you know or don't you know?

A. I don't know.

Q. Your negotiations were all with Mr. Murphy?

A. All with Mr. Murphy, yes.

Q. Can you produce that correspondence?

1918 A. Yes, sir. Some of it is here in duplicate letters and some of it is in letter-books.

Q. Have you arranged those papers in chronological order?

A. Yes, sir.

Q. Will you let me have them, please.

(The witness handed papers to Mr. Severance.)

Q. I show you Complainant's Exhibit 111–A (Douglas). What is that exhibit?

A. That is Mr. Murphy's letter to Mr. Hutchinson.

Q. And attached to it is what?

A. Attached to it is evidently the memorandum of the contract which Mr. Murphy was anxious that Mr. Hutchinson should sign.

Q. That initiated the correspondence?

A. That initiated the correspondence.

Mr. SEVERANCE. I offer Complainant's Exhibit 111–A (Douglas) in evidence.

Complainant's Exhibit 111–A (Douglas) is as follows:

COMPLAINANT'S EXHIBIT 111–A. (Douglas.)

THE DEVELOPMENT CO. OF AMERICA

Park Row Building, New York City.

AUG. 10, 1901.

Mr. HUTCHINSON,
*Phelps Dodge & Co., New York.*

MY DEAR MR. HUTCHINSON:

Enclosed herewith please find a memorandum from which we 1919 hope you will be able to prepare for me the first thing Monday morning a letter which will be of such a character as to permit of my using the same in connection with negotiations that I expect to have under consideration constantly from this on, looking towards the early construction of the line between Phoenix and Benson.

"As suggested in the memorandum I fully expect to be prepared to enter into a definite contract with you within 90 days and I shall be disappointed if I am not able to do so within 40 days.

"I must, however, have something from your company to show that arrangements have been agreed upon for exchange of business on favorable terms or I cannot hope to get the money necessary to build the road. It is almost impossible to get any one to believe that we can develop sufficient business between Phoenix and Benson to justify the expenditure of the large sum of money that will be required.

"I understand that you would not care, probably, to write as definite a letter as I would wish to have, prior to your seeing Prof. Douglas. However please make your letter as full and comprehensive as circumstances will justify and as soon as you have had a chance to talk the matter over with Prof. Douglass I shall hope to receive from you or from him a letter that I can depend upon in making representations and basing my calculations.

Very truly yours,

F. M. MURPHY.

"P. S.—Please understand that by referring to another com-
1920 pany as being likely to construct the road, I did so in order to avoid complications such as might arise if compelled to construct under the Santa Fe, Prescott and Phoenix charter.

F. M. M."

MEMO RE CONTRACT BETWEEN ARIZONA & S. E. RY. AND S. F. P. & P. RY.

1st. Conditioned on the S. F. P. & P. Ry., or some other reliable company designated by them, extending its line or building from Phoenix to Benson, within three years and completing 25 miles thereof within one year from date, continuing construction at the same rate per annum until the road is completed between Phoenix and Benson; the A. & S. E. will grant the S. F. P. & P., or the company building as above, a rate of $\frac{3}{4}$ cent per ton per mile over the A. & S. E. Ry. between Benson and El Paso or Deming on all freight in C. L. of 24,000 lbs. or over, or western classification.

2d. Will grant a constructive mileage of $1\frac{1}{2}$ miles for one, on all business originating on S. F. P. & P., or the company above designated, and destined to points on A. & S. E. when the distance hauled by S. F. P. & P., or company designated, is equal to or in excess of that hauled by A. & S. E. or 2 ms. for one, when the distance is less than that hauled by A. & S. E.

3d. If and when desired, will grant S. F. P. & P., or company constructing as above, the right to run its cars and engines over
1921 the A. & S. E. between Benson and Deming or El Paso upon payment to A. & S. E. of a proportion of interest on cost, taxes and maintenance, such proportion being based on use, i. e. on the number of wheels run by S. F. P. & P. or company constructing the road herein referred to, over the line as compared with total number of wheels run thereon. This to apply to both freight and passenger business, but S. F. P. & P. or the company herein suggested, to have no rights as to local business originating at stations on A. & S. E. Ry.

4th. Unless and until the S. F. P. & P. or the other company referred to exercises its option to run its own trains over A. & S. E., the rates, both passenger and freight to be made so far as practicable by adding together the local rates of each party, but when these appear too high, through rates to be established by mutual consent.

5th. The S. F. P. & P. or other company referred to, agrees as to business originating on A. & S. E. and destined to points on S. F. P. & P., Deming to Phoenix inclusive, it will allow A. & S. E. the same constructive mileage as is allowed the S. F. P. & P. or other company referred to, on business in the other direction.

6th. Both parties agree that as to business which can be handled with reasonable directness by the joint routes contemplated under this contract, each will work exclusively with the other and will make no divisions thereon with other roads without the written consent of the other party.

7th. The Arizona and South Eastern Railroad Company or the El Paso and South Western Railroad Company agree to construct

1922 a road from Tombstone to a connection with their road at Fairbank, or some point in that immediate vicinity, beginning construction of said branch at the same time or prior to the Santa Fe, Prescott and Phoenix Road beginning the construction of the branch between Phoenix and Benson, and continue construction as rapidly as is the case on the part of the Santa Fe, Prescott and Phoenix Road or the road referred to above, in the construction of the line between Phoenix and Benson, and further agree that they will make the connection between Tombstone and some point on their road at or near College Peak by constructing a line from Tombstone to such point on the El Paso and South Western Railroad, same to be completed by the time the Santa Fe, Prescott and Phoenix Road, or company referred to above, or other reliable company, completes its line between Phoenix and Benson.

8th. During the construction and prior to the completion of the line from the Arizona and South Eastern via Tombstone to College Peak, or some point in that vicinity, the rate to the Tombstone Consolidated Mines Company will be based on the direct distance from Tombstone to Deming or El Paso via College Peak.

9th. On Materials to be used for the original construction of the Tombstone Consolidated Mines Company, Ltd., plant, a rate of ¾¢ per ton per mile from Benson, Deming or El Paso to Tombstone will be given. This to cover fuel, tools, general supplies of all kinds during construction, etc. The rate on fuel and materials after construction not to exceed 1¼¢ per ton per mile final rate to be agreed upon.

10th. Of course it is not expected that this memorandum
1923 is to cover all of the details necessary to be put into the contract, but it gives the general understanding.

11th. The length of time that this pro-rating railroad contract and traffic arrangement is to cover is understood to be 10 years unless otherwise mutually agreed.

12th. It is further understood on the part of the Arizona and South Eastern or El Paso and South Western Road that if the conditions herein are acceptable, the Santa Fe Prescott and Phoenix or some reliable company as herein indicated, will enter into a reliable contract within 90 days from date covering all the essential points mentioned herein.

13th. It is understood that if, for any reason, it should prove impracticable to complete the line from Tombstone via College Peak within the time as herein indicated, the contract arrangement between Benson, Deming and El Paso, covering all through business, will be based upon short mileage from Benson to Deming and El Paso via Tombstone, but it is expected the road will be constructed from Benson via Tombstone, as herein contemplated and set out.

Q. Complainant's Exhibit 111-B (Douglas) is the answer to Mr. Murphy's letter, isn't it?

A. Yes; the answer of Mr. Hutchinson to Mr. Murphy's letter. I will state, however, that the board did not altogether agree in Mr.

Hutchinson's views as expressed in that letter—the terms which he provisionally agreed to.

1924 Q. That afterwards came out in the correspondence, did it?
A. Yes.

Mr. SEVERANCE. I offer Complainant's Exhibit 111–B (Douglas) in evidence.

Complainant's Exhibit 111–B (Douglas) is as follows:

COMPLAINANT'S EXHIBIT 111–B. (Douglas.)

"EL PASO & SOUTH WESTERN RAILROAD COMPANY,

99 John Street.

James Douglas,
President.
Arthur Curtiss James,
First Vice-President.
S. P. Hutchinson,
Second Vice-President
and General Manager.

NEW YORK, *August 12th, 1901.*

Mr. F. M. MURPHY,
*Care of Development Company of America,*
*Park Row Building, New York City.*

MY DEAR MR. MURPHY:

"I beg to acknowledge the receipt of your letter of August 10th, enclosing memorandum of a proposed traffic and trackage agreement between the Arizona & South Eastern Railway, the title of which is now the El Paso & South Western Railroad, and the Santa Fe, Prescott & Phoenix Railway.

"Considering the proposed agreement in detail, we will agree to the first paragraph, viz: that when the S. F. P. & P. Railway or some other reliable Company designated by them, has extended its line to Benson and connected with the El Paso & South Western, said El Paso & South Western will establish joint rates with the S. F. P. & P. or their designated Company, on all through freight
1925 in carloads according to the minimums in the Western Classification. The proportion of the through rate accruing to the El Paso & South Western will be three-fourths cents per ton per mile.

"We will agree to the second paragraph, viz: to grant a constructive mileage of one and one-half miles for one, on all business originating on S. F. P. & P. or their designated company, and destined to local points, when the distance hauled by the S. F. P. & P. or their designated Company is equal to or in excess of that hauled by the El Paso & South Western; and a constructive mileage of two for one when the distance hauled by the S. F. P. & P. or Company designated is less than that hauled by El Paso & South Western.

"We will agree to the third paragraph, viz: that we grant the S. F. P. & P. or Company designated, the right to run both passenger

and freight trains over the El Paso & South Western Railroad from Benson to Deming or El Paso upon payment to El Paso & South Western of a proportion of interest on the cost, taxes and maintenance, such proportion being based on use, that is, number of wheels run by S. F. P. & P. or Company designated. It is understood, however, that the S. F. P. & P. or Company designated, will have no rights as to local business originating at stations on El Paso & South Western Railroad.

"We will agree to the fourth paragraph, viz: that joint rates for local carload business, that is, business shipped from points on the S. F. P. & P. or designated Company, to points on the El Paso &
South Western Railroad west of El Paso or Deming, shall be
1926 made as far as practicable, by adding together the local rates
of each railroad. When necessary for competitive or other reasons, through rates may be established by mutual consent. This paragraph is to be understood as applying also to freight originating at local points on the El Paso & South Western Railroad and shipped to local points on the S. F. P. & P. or designated Company.

"We agree to the fifth paragraph, viz: that on business originating on the El Paso & South Western at local points and destined to points on the S. F. P. & P. to Phoenix inclusive, the same constructive mileage as is allowed the S. F. P. & P. or designated Company, will be allowed the El Paso & South Western Railroad.

"We agree to the sixth paragraph, viz: that all business which can be handled with reasonable directness by our joint route under this agreement, will be handled exclusively over this joint route, and that no divisions with other roads on such business without the written consent of both companies shall be made.

"We agree to the seventh paragraph, viz: as to the construction of the branch from Tombstone, Arizona, to the connection with the El Paso & South Western at or near Fairbank, as I understand from conversation with you that President Douglas agreed to do this. However, it is expressly understood that the building of this branch depends entirely on the development of the mines at Tombstone, as otherwise nothing would be accomplished by said branch being built.

"We agree to the eighth paragraph, viz: that the mileage dis-
1927 tance shall be computed on the direct distance from Tombstone
to El Paso or Deming via College Peak. The same distance will be used in computing the mileage on freight delivered to or received from the S. F. P. & P. between Benson and El Paso or Deming.

"We agree to the ninth paragraph, viz: to grant a construction rate of three-fourths cent per ton per mile from Benson, Deming or El Paso to Tombstone, for material used in the original construction of the Tombstone Consolidated Mines Company, Limited. This to cover fuel, tools, general supplies of all kinds during construction, etc., and I would like to add to that, that this construction rate ceases two years after the signing of a formal contract, as this seems to be

ample time for the original construction to be completed, but we also agree to consider favorably a request for said rate to continue for a longer period in case original construction work is still being pursued. We also agree that the rate on fuel and material after the original construction is not to exceed one and one-fourth cents per ton per mile.

"We understand the tenth paragraph, viz: that this memorandum gives merely the general understanding between the two companies.

"We agree to the eleventh paragraph, viz: that ten years is to be the period for the existence of the proposed traffic and trackage arrangements.

"We agree to the twelfth paragraph, viz: That the El Paso & South Western Railroad will enter into a reliable contract with the Santa Fe, Prescott & Phoenix or their designated Company,
1928 within ninety days from date, with the essential points mentioned herein, agreed to by the parties to the contract.

"We agree to the thirteenth paragraph, viz: that in computing the mileage covering all through business from Benson to Deming or El Paso, the short line distance, viz: via Tombstone and College Peak, shall be used.

"It is distinctly understood however, that nothing in this letter shall be considered to be binding upon the El Paso & South Western Railroad Company to build the branch into Tombstone except on the understanding which you had with President Douglas. It is further distinctly understood that nothing in this letter shall be taken as binding on the El Paso & South Western Railroad to build the line from Tombstone to College Peak. The fact that the El Paso and South Western Railroad agrees to base their mileage on the short line distance should however, prove a strong inducement to your people to construct your railroad.

Yours truly,

EL PASO & SOUTH WESTERN RAILROAD CO.

*2nd Vice-Pres't and Gen'l Manager.*"

Q. I show you Complainant's Exhibit 111–C (Douglas). Is that a copy of a letter you wrote to Mr. Murphy?

A. October 23, 1901; yes; Douglas to Murphy regarding modification of Hutchinson's letter.

Q. Who was Mr. Hutchinson?

A. Mr. Hutchinson was general manager of the road.

1929 Q. Now, in this letter Exhibit 111–C, you start out by saying: "Referring to our conversation this morning, I shall see Mr. Kenna in Chicago on either Friday afternoon or Saturday morning. As he was interested in the extension of your road, I shall talk over the matter with him." Had you had a talk with Mr. Murphy here in New York?

A. I suppose I had, judging from that letter; I should say I had.

Q. You did have talks with him about this proposed contract?

A. Oh, yes.

Mr. SEVERANCE. I offer in evidence Complainant's Exhibit 111–C (Douglas).

Complainant's Exhibit 111–C (Douglas) is as follows:

COMPLAINANT'S EXHIBIT 111–C. (Douglas.)

"OCT. 23RD, 1901.

F. M. MURPHY, Esq.,
*13 Park Row, New York.*

DEAR SIR:

"Referring to our conversation this morning, I shall see Mr. Kenna in Chicago on either Friday afternoon or Saturday morning. As he was interested in the extension of your road, I shall talk over the matter with him:

"As pointed out to you in our interview this morning, there would necessarily have to be modifications in some particulars in the letter of Aug. 12th, but as our railroads are at present en-
1930 tirely uncommitted to any one, when you are in a position to make a contract, we shall be very happy to confer with you, and feel sure we can come to an agreement which will be mutually satisfactory.

Yours very truly,

*President.*"

Q. I show you Complainant's Exhibit 111–D (Douglas). Is that an original telegram received from Mr. Murphy?

A. I suppose so.

Mr. SEVERANCE. I offer in evidence Complainant's Exhibit 111–D (Douglas).

Complainant's Exhibit 111–D (Douglas) is as follows:

COMPLAINANT'S EXHIBIT 111–D. (Douglas.)

THE WESTERN UNION TELEGRAPH COMPANY
Incorporated

Received at the Western Union Building, 195 Broadway, N. Y.
Nov. 3 1901

Dated Newton Kas 3
To James Douglas
99 John St. N. Y. City.

Where do you expect be about tenth I expect meet Mr. Ripley Prescott eighth or tenth answer Prescott.

F. M. MURPHY.

1931 Q. I show you Complainant's Exhibit 111–E (Douglas). Is that a letter from Mr. Murphy to Mr. Hutchinson?

A. Yes.

Mr. SEVERANCE. I offer in evidence Complainant's Exhibit 111–E (Douglas).

WITNESS. I was in the City of Mexico at the time when those telegrams were exchanged, hence the——

Complainant's Exhibit 111–E (Douglas) is as follows:

COMPLAINANT'S EXHIBIT 111–E. (Douglas.)

"SANTA FE, PRESCOTT & PHOENIX RAILWAY COMPANY.

PRESCOTT & EASTERN RAILROAD COMPANY.

F. M. Murphy,
President and General Manager.
J. H. Emmert,
Assistant to the President.

PRESCOTT, ARIZONA, *9th November, 1901.*

Mr. S. P. HUTCHINSON,
*2nd Vice Pres't. & General Manager,*
*El Paso & So. West. R. R. Co.,*
*99 John Street, New York.*

DEAR SIR:

"This will confirm my message of even date, reading: 'I am prepared to make contract in accordance with my letter to you dated August tenth with memorandum enclosed, and your reply dated August twelfth last. Will be in New York first week in December. Will it be agreeable for you to meet me then in this connection. Hope see Professor Douglas El Paso next week.'

Very truly yours, F. M. MURPHY."

1932 Q. I show you Complainant's Exhibit 111–F (Douglas). Is that a letter to Phelps, Dodge & Company from Mr. Hutchinson?

A. Yes. Phelps, Dodge & Company were the fiscal agents of the railroad.

Q. Of the El Paso & Southwestern?

A. Yes.

Q. And of the Copper Queen, too, aren't they?

A. Fiscal agents of all the concerns.

Mr. SEVERANCE. I offer in evidence Complainant's Exhibit 111-F (Douglas).

Complainant's Exhibit 111-F (Douglas) is as follows:

COMPLAINANT'S EXHIBIT 111-F. (Douglas.)

"EL PASO & SOUTHWESTERN RAILROAD CO.

New York Office, 99 John St.

W. G. Choate, General Sup't.
C. P. Colburn, Auditor.

EL PASO, TEXAS, *November 11, 1901.*

Messrs. PHELPS, DODGE & Co.,
*99 John Street, New York, N. Y.*

GENTLEMEN:

"I herewith beg to acknowledge the receipt of your message Nov. 11th reading as follows:— 'Murphy telegraphs to you here ninth that he desires to meet you in New York to make contract on terms of your letter of August 12th, part of which was withdrawn by President Douglas. It will not do for you to see Murphy, or to discuss contract until President Douglas and we have fully discussed 1933 all points of contract.' I also confirm my reply, reading as follows:— 'Your message about Murphy received, and will be obeyed.'

"I also confirm the following telegram received from President Douglas today. 'Reply to Murphy if you see or hear from him, that Company cannot renew negotiations till my return to New York, after middle of December.'

"I have had some conversation with President Douglas regarding my letter of August 12th to Mr. Murphy, and I am sorry to learn from him that a certain portion of my letter did not meet with approval, and was withdrawn. I have not a copy of the letter with me, but I remember very distinctly one clause in it stating that the negotiations were only preliminary, and that nothing in the letter was to be construed as binding on either party, or words to that effect. I understand the clause to which exception is taken, was that relating to the terms under which Mr. Murphy's trains could have trackage rights over our road. Possibly my wording was unfortunate, but I had in mind, and I am sure that Mr. Murphy did also, that the value placed on our road was to be fixed by us. I think President Douglas interpreted my wording too literally; it should be remembered that the letter was merely preliminary—Mr. Murphy was sailing for Europe very soon, and I certainly understood from President Douglas that it was advisable to hold out every legitimate inducement to Mr. Murphy to enter into arrangements with us in case his road was built.

"I naturally do not like to be put in a position of seeming not to safe-guard the Company's interests, or of assuming too much authority. I regret that I have been misunderstood in the matter, but do not see that the Company's interests have been at all jeopardized by any action of mine.

Yours truly,

S. P. HUTCHINSON,
*2nd Vice President & General Mgr.*"

1934 Q. I show you Complainant's Exhibit 111-G (Douglas).
A. That is a letter from Mr. Hutchinson to me.
Q. A letter from Mr. Hutchinson to you?
A. Yes.
Q. Under date of November 14, 1901?
A. Yes.

Mr. SEVERANCE. I offer Complainant's Exhibit 111-G (Douglas) in evidence.

Complainant's Exhibit 111-G (Douglas) is as follows:

COMPLAINANT'S EXHIBIT 111-G. (Douglas.)

"EL PASO & SOUTHWESTERN RAILROAD CO.

New York Office, 99 John St.

W. G. Choate, General Sup't.
C. P. Colburn, Auditor.

EL PASO, TEXAS, *14th November, 1901.*

Mr. JAMES DOUGLAS,
*President, New York City.*

DEAR SIR:

"I had a conversation with Mr. F. M. Murphy today at the Sheldon House. He is very anxious to see you before you go East. He asked me to tell you that he was going to Tombstone tomorrow (Friday) and would leave there probably Sunday morning, and he will be much obliged if you will telegraph him at Tombstone when you can see him. He thought that possibly you might be going West on Sunday. I told him I was not posted as to your movements. Mr. Murphy will tell you all that he told me in regard to his plans, so it is hardly necessary to put them in the letter. There is noth-
1935 ing much now in addition to what he told us last Summer, except that his survey is nearly completed, and he will shortly start the corps on the final location, and proceed to secure the right-of-way, etc.

"In regard to the trackage clause in my letter to him, which you did not approve of, Mr. Murphy stated that he understood perfectly that my letter was merely a preliminary one, and that the trackage arrangement would be put on a basis satisfactory to our Company; he did not expect us to move his trains over our track except on a basis that would yield us a fair return. He seemed a little worried lest we might have made some arrangement with the Southern Pacific Company which would render us less anxious to build to Tombstone, but I told him, that to the best of my knowledge, we were not making arrangements with the Southern Pacific just at this time.

Yours truly,

S. P. HUTCHINSON,
*2nd Vice-Pres't & General Manager.*"

WITNESS. Now, there are some telegrams in the letter book, which are not in that file. Do you wish to see them?

Mr. SEVERANCE. No, I don't think so.

Q. I show you Complainant's Exhibit 111-H (Douglas). Is that a letter from Mr. Murphy, on the 10th of March, 1902, addressed to El Paso & Southwestern Railroad Company?

A. Yes.

Q. That is the letter of the Santa Fe, Prescott & Phoenix, by F. M. Murphy, its president?

A. Yes.

1936 Mr. SEVERANCE. I offer in evidence Complainant's Exhibit 111–H (Douglas).

Complainant's Exhibit 111–H (Douglas) is as follows:

COMPLAINANT'S EXHIBIT 111–H. (Douglas.)

"SANTA FE, PRESCOTT & PHOENIX RAILWAY COMPANY.

F. M. Murphy,
President and General Manager.
J. H. Emmert,
Assistant to the President.

PRESCOTT, ARIZONA, *10th March, 1902.*

EL PASO & SOUTHWESTERN RAILROAD COMPANY,
*99 John Street, New York.*

GENTLEMEN—

"Referring to your letter of August 12, 1901, addressed to Mr. F. M. Murphy, in regard to a proposed traffic and trackage agreement to be entered into between your Company and the Santa Fe, Prescott & Phoenix Railway Company or some other reliable company to be designated by it that shall build a line from Phoenix, Arizona, to Benson, Arizona, and to a point of connection with your Road: The Santa Fe, Prescott & Phoenix Railway Company hereby respectfully notifies you that it designates the Phoenix & Eastern Railroad Company, a corporation organized under the laws of the Territory of Arizona for the purpose of constructing and operating a railroad between Phoenix and Benson, as a reliable and proper Company with which your Company can enter into the proposed agreement, but the Santa Fe, Prescott & Phoenix Railway
1937 Company assumes no responsibility for said Phoenix & Eastern Railroad Company.

Yours truly,

SANTA FE, PRESCOTT & PHOENIX RAILWAY CO.,
By F. M. MURPHY, *Its President.*

Q. I show you Complainant's Exhibit 111–I (Douglas), with papers attached. Is that a letter to Phelps, Dodge & Company from you.

A. Yes.

Q. Under date of May 10, 1902?

A. Yes, sir; suggesting a traffic agreement.

Mr. SEVERANCE. I offer Complainant's Exhibit 111–I (Douglas) in evidence.

Complainant's Exhibit 111–I (Douglas) is as follows:

COMPLAINANT'S EXHIBIT 111–I. (Douglas.)

EL PASO & SOUTHWESTERN RAILROAD COMPANY,
99 John Street.

James Douglas,
President.
Arthur Curtiss James,
First Vice-President.

NEW YORK, *May 10th, 1902.*

Subject ------ File No. ------

Messrs. PHELPS, DODGE & Co.,
*New York.*

GENTLEMEN:

"If Mr. Murphy wishes to discuss the traffic arrangement between his prospective road, and the El Paso & South Western, 1938 you will find the draft of an agreement drawn up by Mr. Osborne. I think it would be eminently fair to base the proposition on the following terms:

Say for the long haul from Benson to El Paso, 300 miles at $20,000 per mile, $6,000,000, 5% would make fixed charges $300,000, on the assumption that the Phœnix & Eastern pay one-half, the charge to them per train mile would be 69 cents. The average cost of maintenance of way, as per annexed statement, made from the Inter-State Commerce Reports, Group No. 10, is $827.00 per mile of road. Therefore the proportion which the Phœnix & Eastern should pay for maintenance of way would be $.57, making a total cost of $1.26 per train mile. The maintenance of way charges do not include terminal facilities and switching at termini, telegraph service, joint depot service, roundhouse service, nor water; and therefore it would be proper and right to increase that sum of $1.26 by at least 5 or 10 cents per train mile.

I should say that this charge should cover the right to run one freight train of 20 cars a day, and one passenger or mixed train of six cars, and that all subsequent traffic should be done at a reduced rate. An equitable charge would probably be five cents per car mile for freight cars, and 10 cents for passenger cars. This car mileage should be computed on cars in excess of those allowed by the

train mileage on trains, or whether they compose additional trains. When they compose additional trains, one locomotive might be counted equal to two cars.

Yours truly,

JAMES DOUGLAS,
*President.*

1939 Group X—14927 miles—cost $12,346,880.00 per year.

The average cost of Maintenance of Way and Structures in 1900 for roads in Arizona, New Mexico and the Pacific Coast was $827.00 per mile of road. Assuming that the El P. & S. W. R. R. absorbs one-half this charge, it will leave $124,050.00 per annum, which applied to S. F. P. & P. train mileage above, will equal a per train mile charge of .57 cents.

300 miles at $20,000.00 per mile ..... $6,000,000.00
At 5%—$300,000.00 Fixed Charges.
S. F. P. & P. R'y proportions $150,000.00 ..... 69 cts. per train mile

S. F. P. & P. Ry. Fixed Charges ..... 69 cts. per train mile
" Maintenance W. & S. ..... 57 " " " " "

Total cost S. F. P. & P. R'y ..... $1.26 " " " "
Equal to $272,160.00 per annum.

NOTE.—

Group X—14927 miles—cost $12,346,880.00 per year.

The average cost of Maintenance of Way and Structures in 1900 for roads in Arizona, New Mexico and the Pacific Coast, was $827.00 per mile of road. Assuming that the El P. & S. W. R. R. absorbs one-half this charge, it will leave 124,050.00 per annum, which applied to S. F. P. & P. train mileage above, will equal a per train mile charge of .57+ cts.

This would make the total charge per train mile for 1940 the S. F. P. & P. R'y

Covering Fixed charges ..... $1.05—
" Maintenance ..... .57+
$1.62

equal to $349,920.00 per annum.

To arrive at the proportion of Maintenance of Way and Structures each road should pay, based on train mileage, add the train mileage of the S. F. P. & P. R'y to that of the El P. & S. W. R. R. for a total mileage; divide the total annual Maintenance of Way & Structures cost, by the total train mileage, which will give the per train mile charge to be borne by each road.

SECOND PROPOSITION.

| | |
|---|---|
| 300 miles at $20,000.00 per mile | $6,000,000.00 |
| At 5%=$300,000.00 Fixed Charges. | |
| S. F. P. & P. R'y proportion $150,000.00 | .69 cts per train mile |
| S. F. P. & P. R'y Fixed Charges | .69 cts per train mile |
| " Maintenance W. & S | .57 cts per train mile |
| Total cost S. F. P. & P. R'y | 1.26 cts per train mile |

Equal to $272,160.00 per annum.

Q. I show you Complainant's Exhibit 111–J (Douglas). Is that the traffic agreement that Mr. Osborn drew up?

A. I believe that is the traffic agreement that Mr. Osborn drafted, yes.

Q. Who is Mr. Osborn?

A. Mr. Osborn is our attorney.

1941 Q. In connection with this matter?

A. In connection with that matter. As you will see, it never went further.

Q. I notice at the bottom of the eighth article of this document a memorandum. Is that in your writing?

A. That is my writing, yes.

Mr. SEVERANCE. I offer in evidence Complainant's Exhibit 111–J (Douglas).

Complainant's Exhibit 111–J (Douglas) is as follows:

COMPLAINANT'S EXHIBIT 111–J. (Douglas.)

This agreement made this day of 1902, by and between the El Paso & Southwestern Rail Road Company, a Corporation organized and existing under the laws of , party of the first part, hereinafter called the E. P. & S. W. R. R. Co., and the Santa Fe, Prescott & Phoenix Railway Company, a corporation organized and existing under the laws of party of the second part, hereinafter called the S. F. P. & P. Ry. Co.,

Witnesseth: That whereas the parties hereto desire to establish joint rates for exchange of freight in car load lots and less and for the running of freight and passenger trains, now, therefore, the parties hereto mutually covenant, promise and agree each to and with the other as follows:

1942 First. The S. F. P. & P. Ry. is hereby granted the privilege of connecting its Railroad at or near Benson, N. M., with the Railroad of the E. P. & S. W. R. R. and for the period of five years after such connection shall have been made and thereafter until either party hereto shall have given one year's notice to the other of its desire to terminate this contract, the S. F. P. & P. Ry. shall have the right to operate its locomotives, engines, trains and cars over the Railroad of the E. P. & S. W. R. R. to and including all junctions

with other railroad lines with which said E. P. & S. W. R. R. may connect and including the use of all terminals, side-tracks and stations and facilities of the E. P. & S. W. R. R. on the terms and conditions following, to-wit: The S. F. P. & P. Ry. (Solid Trains) shall and will pay to the E. P. & S. W. R. R. for all locomotive engines, trains and cars run by it over said line of Railroad during the continuance of this agreement at the following rates, viz.: One Dollar and twenty cents ($1.20) per train mile for each train and in addition thereto the sum of five (5) cents per car mile for each car in any such freight train in excess of twenty cars.

One dollar and twenty-five ($1.25) cents per train mile for each passenger train or mixed passenger and freight train and in addition thereto the sum of ten (10) cents per car mile for each car in any such train in excess of six cars.

For each light engine or light engine and caboose the sum of forty (40) cents per mile run, the return trips of pushers or helpers engines, nevertheless, to be free unless such engines shall be used to haul cars, in which event they shall be considered as parts of the trains of cars so hauled.

1943 It being mutually understood and agreed that the foregoing rates of charge are conditioned upon the undertaking by the S. F. P. & P. Ry. to move each way over the entire length of said line of road not less than one freight train every day and not less than one passenger train per day, Sundays excepted, and the S. F. P. & P. Ry. shall pay to the E. P. & S. W. R. R. for the right to use said line or road as aforesaid at the rates above prescribed for the number of trains above provided to be moved daily, whether said trains are actually moved or not.

JOINT RATES ON CAR LOADS OR LESS.

Second: Other through freight in car loads will be rated according to the minimum in the Western classification; the proportion of the rate accruing to the E. P. & S. W. R. R. will be three-fourths (¾) cents per ton mile.

Where business originates on one line destined to local points on the other line, the constructive mileage of one and one-half (1½) miles for one will be granted to the line on which the business originates when the distance hauled by the line on which the business originates is equal to or in excess of that hauled by the line to which it is consigned; and a constructive mileage of two for one when the distance[a] hauled by the line on which the business originates is less than that hauled by the line to which it is consigned.

Joint rates for local car load business, that is business
1944 shipped from points on one of the lines of the parties hereto, to points on the line of the other of the parties hereto, shall be made as far as practicable by adding together the local rates of each

[a]After the word "distance" appears in pencil the words "actual mileage."

railroad. When necessary for competitive or other reasons other rates may be established by mutual consent.

All business which can be handled with reasonable directness by the joint route established under this agreement will be handled exclusively over this joint route and no division shall be made with other roads on such business without the written consent of both companies.

Third: Monthly accountings shall be made between the parties hereto for all sums of money to become due under and by virtue of this agreement and the S. F. P. & P. Ry. shall pay to the E. P. & S. W. R. R. on or before the 15th day of each calendar month during the continuance of this agreement all sums of money which shall have accrued thereunder during the next preceding calendar month.

Fourth: All trains run upon said Railroad of the E. P. & S. W. R. R. are to be dispatched by and run under the rules and superintendence of said Railroad or its successors. Passenger trains are to be given precedence over other trains and trains of all parties to be given equal dispatch according to their class.

All time cards, rules, regulations or orders for the movement of trains, cars and engines, or in respect to the operation of the
1945 said line or railroad shall be reasonable and fair to all parties and without favor or discrimination in favor of or against any party.

Fifth: The S. F. P. & P. Ry. shall not do any local business at any point on the line of Railroad of the E. P. & S. W. R. R.

Sixth: The E. P. & S. W. R. R. shall direct and control in respect to the maintenance, improvement and operation of the Railroad, bridges and facilities so to be used by the S. F. P. & P. Ry. and other appurtenances but shall not be liable in any event to the S. F. P. & P. Ry. for or in respect to any damage or injury which may result in defects in or injuries to the said line of Railroad or the bridges included therein or from the act or negligence of any persons or parties in charge of the maintenance, improvement or operation thereof.

Seventh: In case of any interruption or delay to the traffic or the road by reason of the destruction of any structure by fire, or washout of bridges or embankments, or destruction or damage caused by wrecked train, tornado, cyclone or the elements generally, or in case of interruption from any cause, neither party shall have the right of action for damages as against the other party for such delay to traffic or damages to persons or property by reason of such delay.

Eighth: Each of the parties hereto shall be solely responsible for all damage and injury caused by its locomotives, trains or
1946 cars, or the operation thereof, or which occur to its locomotives, trains or cars, or the contents thereof, or to its passengers.

On this page appear the following pencil notes:
How about payment for joint use of terminal depots?
Should be without telegraph service?
Water?

Ninth: It is further understood and agreed by and between the parties hereto that when the S. F. P. & P. Ry., or its successors, shall at any time during the continuance of this agreement fail to comply in all respects with the obligations imposed upon it by this agreement then and in that case the E. P. & S. W. R. R. may at its election declare this agreement at an end and upon notice thereof in writing given by said E. P. & S. W. R. R. to the S. F. P. & P. Ry. this agreement shall be terminated and all rights and privileges hereby granted to said S. F. P. & P. Ry. shall then and there and thenceforth cease and determine.

In witness whereof the parties hereto have caused these presents to be signed by their respective presidents, vice-presidents and secretaries, or assistant-secretaries, and their corporate seals to be hereunto affixed the day and year first above written.

The following endorsement appears on the cover of this document:
E. P. & S. W. R. R. Co.
with
S. F. P. & P. Ry. Co.
Contract

1947 Q. I show you letter copy-book marked No. 4, El Paso & Southwestern Railroad Company, and call your attention to a letter appearing under date of March 18, 1902, page 186. Is that the answer to the letter of Mr. Murphy of March 10th which was introduced in evidence here as Complainant's Exhibit 111–H?

A. That is my letter to Mr. Murphy.

Q. Answering his letter of March 10th?

A. I suppose so, I would like to see the letter of March 10th. [After looking at letter of March 10th.] Yes, that is it; that is in answer.

Q. Is that right?

A. Yes.

Mr. SEVERANCE. This letter is as follows:

"MARCH 18, 1902.

Mr. F. M. MURPHY,
*President, Prescott, Arizona.*

DEAR MR. MURPHY:

Yours of March 10th with regard to the negotiation of the agreement between the Phoenix & Eastern Railroad and the El Paso & South Western has been received and we will be glad to take it up when you reach New York or after Mr. D. Willis James, who is now absent in California, returns. Yours truly, J. Douglas, President."

Q. I show you copy of a letter appearing on page 348 of the same copy-book, No. 4, El Paso & South Western Railroad Company. Is that a letter-press copy of the letter you wrote Mr. Murphy, under date of April 8, 1902?

A. Yes, that is it.

Mr. SEVERANCE. I will read this letter into the record:

1948 "APRIL 8, 1902.

F. M. MURPHY, Esq.,
*New York.*

MY DEAR MR. MURPHY:

"In confirmation of our conversation over the telephone this morning, I would be glad to see you to-morrow morning to renew negotiations for a contract between your projected road and our own. I feel that a contract can be made which will be mutually advantageous, and I understand from your conversation that you have the same feeling.

J. DOUGLAS."

Q. I show you copy of a letter appearing on page 334 of copy-book marked No. 5, El Paso & Southwestern. Is that a letter written to Mr. Murphy by yourself?

A. Yes.

Mr. SEVERANCE. I will read this into the record.

"JUNE 23, 1902.

F. M. MURPHY, Esq.,
*President, New York.*

DEAR SIR:

"We have carefully read and considered the contract which you submitted to us, and there are a number of clauses as well as conditions which we are unwilling under any circumstances to agree to. As a preliminary to further negotiations we want to again repeat that the letter of Mr. S. P. Hutchinson, at one time this company's second vice-president, addressed to you August 11, 1901, and relating to traffic and other arrangements proposed by you to be entered
1949 into between the S. F. P. & P. Railway Company and the El Paso & South Western and other companies, was wholly unauthorized and has never been recognized as binding by any of the parties concerned, it may be added, including the interests you yourself represent. Nevertheless this company will be glad at any convenient time to consider a fair traffic agreement which will give due protection to its own interests, while recognizing the advantages of a connection such as is proposed by your Company.

Yours truly,

J. DOUGLAS,
*President.*"

Q. I show you Complainant's Exhibit 111–K (Douglas). Is that the answer of Mr. Murphy to that communication?

A. That is the answer exactly.

Q. To the one I have just read.

A. Yes.

Mr. SEVERANCE. I offer in evidence Complainant's Exhibit 111-K (Douglas).

Complainant's Exhibit 111-K (Douglas) is as follows:

COMPLAINANT'S EXHIBIT 111-K. (Douglas.)

"Telephone No.
5690 }
5691 } Cortlandt.

THE DEVELOPMENT CO. OF AMERICA
13–21 Park Row, New York City.

JUNE 24/02

Prof. JAS. DOUGLAS,
*Pres. El Paso & Southwestern R. R. Co.,*
*99 John St., City.*

DEAR SIR:

1950 "I am just in receipt of your favor of the 24th enclosing official letter referred to dated June 23rd. While I am forced to disagree with you as regards the construction to be placed upon the letter received from Mr. S. P. Hutchinson addressed to me while Second Vice-President of your Company, wherein he undertook to indicate in writing in substance the conversation we had had at various times when it was made clear to me that your Company was disposed to encourage the construction of the Phoenix & Eastern Road in some substantial way, I have no desire to contend for anything that might be claimed from that letter, not in every sense right and proper, all things considered. I do think, however, that it is not right for you to undertake to disregard the letter entirely. I am pleased to know that your Company is disposed to enter into a fair traffic agreement with the Phoenix & Eastern, granting due protection and consideration to all interests concerned.

"I leave for Chicago today, returning here about the 6th of July at which time I shall hope to have the pleasure of meeting you and if possible agreeing upon a satisfactory traffic contract between the two companies.

Yours very truly,

F. M. MURPHY,
*Prest. Phoenix & Eastern Ry. Co.*

Q. I show you Complainant's Exhibit 111–L (Douglas). Is that a copy of a letter written by you to Mr. Murphy?

A. On July 14th?

1951 Q. Yes, sir, 1902.

A. Yes. That is a letter suggesting a new contract?

Q. Yes, that is with reference to a contract.

Mr. SEVERANCE. I offer in evidence Complainant's Exhibit 111–L (Douglas).

Complainant's Exhibit 111–L (Douglas) is as follows:

COMPLAINANT'S EXHIBIT 111–L. (Douglas.)

"Copy.

JULY 14, 1902.

FRANK MURPHY, Esq.,
*President, S.-F. P. & P. R. R. Co.,*
*Park Row Building, City.*

DEAR SIR:

"Pursuant to our conversation of the 11th inst., the El Paso & South-Western Railroad Company will be glad to take up with you, at any time within ninety days, the preparation and execution of a contract, between your road and itself, upon substantially the following terms:

"1st. Each road to grant the other a rate of three-fourths of a cent per net ton-mile on carload lots, (tons 2000 lbs.) whether originating on the line of either road, or from points beyond, on coal, coke, bullion, if released to $100 per ton, ore not exceeding $100 per ton in value, lumber and construction materials. Hauls less than 100 miles in length at said rate, to be reckoned one hundred miles.

Rate not to include loading, unloading, switching, delivery
1952 or receiving charges accruing to other parties, and no arbitraries or differentials to be granted. The parties to make joint tariff rates on other freights from time to time.

"2nd. The El Paso & Southwestern will grant you the right to run your trains over its main tracks and passing tracks, for an annual rental charge of 2½% on $30,000 per mile of main track, with an added charge at the same rate, for betterments and additions, not exceeding $5,000 per mile in all.

"Your rights under this head to be limited to receipt and discharge of traffic at Deming, El Paso or Benson, which has been received at, or is destined for points on the line of your railroad, or its connections beyond; all traffic originating at, or destined for points on the line of the El Paso & Southwestern, between the termini or originating at one of said termini and destined for another, being reserved for that company exclusively.

"Traffic exchanged at either of said termini, with carriers other than your own lines, to be considered as having originated at that point.

"The foregoing rental shall not entitle you to the use of any side track, other than passing tracks for meeting trains, nor any terminal; but your use, if any, of terminals, shall be specially arranged for, upon a fair basis.

"Your rights to the use of said tracks and facilities to be in common with the use thereof, by the El Paso & Southwestern, and any other companies or persons admitted by the latter-named company to the use thereof.

1953 3rd. The cost of maintenance and operation, including taxes, water, telegraph and telephones to be divided between all parties using said tracks, on a wheelage or car-mile basis.

4th. The other provisions customary in contracts between railroads having similar relations to be agreed upon.

5th. Your said rights to the use of the property and the accruing of rentals, to begin as soon as your road shall be ready for operation, but in any case, within not less than two (2) years, from this date, and to continue for the period of ten (10) years from the date of the commencement of your rights. Rentals to be paid whether you shall actually use the said rights or not, provided you are not prevented from using the same by the fault of the El Paso & Southwestern.

6th. The length of the contract to be ten years from the date when the rental begins to accrue.

7th. Rentals to be paid in gold coin of the U. S., and together with your share of maintenance and operation, to be paid monthly.

As the preparation of the contract will be a matter of some complexity, we would suggest that if you are able to join us in its preparation before the ninety days have expired, we would be glad to take the matter up by our joint attorneys.

Yours very truly,

EL PASO & SOUTHWESTERN R. R. Co.,
(Sd.) J. DOUGLAS, *President.*"

1954 Q. I show you Complainant's Exhibit 111–M (Douglas). Is that an original letter to you from Mr. Murphy, under date of July 19, 1902?

A. Yes, sir.

Q. Received by you?

A. Yes.

Mr. SEVERANCE. I offer in evidence Complainant's Exhibit 111–M (Douglas).

Complainant's Exhibit 111–M (Douglas) is as follows:

COMPLAINANT'S EXHIBIT 111–M. (Douglas.)

"Telephone No.
5690 }
5691 } Cortlandt.

THE DEVELOPMENT CO. OF AMERICA.
13–21 Park Row, New York City.

JULY 19/02.

Prof. JAMES DOUGLAS,
*President, El Paso & Southwestern R. R.,*
*99 John St., Manhattan.*

DEAR SIR:

"I left New York Monday morning, returning last evening, and have before me your letter of the 14th inst. I shall be very glad to take up and discuss with you within the next 90 days, as you suggest, the form of contract to be entered into between your road and the Phoenix & Eastern, which I have arranged to construct. I shall expect that it will be agreeable to you when considering the form of contract to take into account the correspondence that has passed between us in this connection and the various conferences we
1955 have had relating to the proposed contract.

"I should be pleased to receive a letter from you to the effect that you will make a rate of 3/4¢ a ton per mile on all material used in connection with the construction of the Phoenix & Eastern hauled over your road within the next two years, including such material as may be required for the construction of any branch lines into the mining districts from points along the line of the Phoenix & Eastern.

"This rate of 3/4¢ per ton per mile to be given to me as President of the Phoenix & Eastern irrespective of any contract arrangements that may hereafter be entered into. I may find it necessary to begin construction at Benson at an early date, and while I of course understand that your verbal statement in accordance with the suggestions above would be binding upon your Company, I should like to have the same in writing as a matter of record prior to becoming compromised to any considerable extent involving the expenditure of a large sum of money.

Yours very truly.

F. M. MURPHY."

(Stamp:)
Received
Jul 21 1902
Ans'd_____

Q. The answer to that must be in the copy-book?

A. That was answered on July 24th. It is in letter-book 5, page 694.

Q. I show you two letters to Mr. Murphy appearing on
1956 page 694 of the El Paso & Southwestern copy-book No. 5. Were those sent by you to Mr. Murphy?

A. They were both sent by me to Mr. Murphy.

Mr. SEVERANCE. I will read these letters into the record:

"JULY 24, 1902.

F. M. MURPHY, Esq.,
*President, Phoenix & Eastern Railway Company,*
*Park Row Building, New York.*

DEAR SIR:

"The El Paso & Southwestern R. R. Co. will carry all construction material for the Phoenix & Eastern Arizona from either Deming or El Paso to Benson at 3/4 of a cent per ton mile for full carload for two years.

Yours truly,

J. DOUGLAS."

Mr. SEVERANCE. The other letter is dated the same day and is as follows:

"F. M. MURPHY, Esq.,
*Park Row Building, New York.*

MY DEAR MR. MURPHY:

I enclose you a formal offer to carry your construction material for the Phoenix & Eastern at 3/4 of a cent a ton per mile for two years. I have made it as you request for two years. With regard to the contract, it will have to take the form of an ordinary freight and traffic agreement as between two roads, for I am sure that our board would object to a preamble such as you insert in your
1957 draft, which might be interpreted as rendering us more or less responsible for your financial arrangements.

Yours truly,

J. DOUGLAS."

Q. I show you Complainant's Exhibit 111-N (Douglas). Is that a letter to you from Mr. Murphy, under date of July 25, 1902?

A. Yes.

Mr. SEVERANCE. I offer in evidence Complainant's Exhibit 111-N (Douglas).

Complainant's Exhibit 111–N (Douglas) is as follows:

COMPLAINANT'S EXHIBIT 111–N (Douglas.)

"Telephone No.

5690 }
5691 } Cortlandt.

THE DEVELOPMENT CO. OF AMERICA
13–21 Park Row, New York City.

JULY 25, 1902.

Prof. JAMES DOUGLAS,
*President, El Paso & Southwestern R. R. Company,*
*99 John Street, Manhattan.*

DEAR SIR:

"I beg to acknowledge the receipt of your letter of July 24th, granting a rate of 3/4¢ per ton mile for full carloads for two years for construction material used in connection with the Phoenix & Eastern.

"I would be pleased to have you name a rate on less than
1958 carload lots, subject to such mutual understandings as may be had from time to time.

Yours very truly,

F. M. MURPHY."

Q. I show you Complainant's Exhibit 111–O (Douglas). Is that a letter to you from Mr. Murphy under date of July 28, 1902?

A. Yes, sir.

Mr. SEVERANCE. I offer in evidence Complainant's Exhibit 111–O (Douglas).

Complainant's Exhibit 111–O is as follows:

COMPLAINANT'S EXHIBIT 111–O. (Douglas.)

"Telephone No.

5690 }
5691 } Cortlandt

THE DEVELOPMENT CO. OF AMERICA
13–21 Park Row, New York City.

JULY 28/02.

Prof. JAMES DOUGLAS,
*99 John St., Manhattan.*

MY DEAR PROFESSOR:

"I am just in receipt of your valued favor enclosing copy of a letter received from your son. I am glad to know that they have been able to improve the alignment in a way calculated to reduce the expense.

COPY BOUND CLO

1959 "I also appreciate the rate you have named of 1¢ per ton per mile on material used in connection with the construction of the Phoenix & Eastern when shipped in less than carload lots.

Yours very truly,

F. M. MURPHY."

Q. Do you find any other correspondence with reference to this matter than that which you have produced?

A. There were several telegrams that you passed over in the letter-book. Outside of those, nothing.

Q. They were passed over by consent. You do not find any further correspondence later than that?

A. No correspondence later than that.

(It was agreed by counsel that after the foregoing exhibits had been incorporated into the record, the reporter should return the same to Mr. Douglas, and that the copies should stand in lieu of the originals.)

Q. Prof. Douglas, what direct outlet to California points do you have now in connection with the El Paso & Southwestern?

A. The most direct is over the Southern Pacific from Benson and likewise the next most direct is of course over the Santa Fe from Deming.

Q. But if you connect at Deming you have to send everything away up north, almost to Albuquerque?

A. Yes.

Q. That is a long way around.

A. Yes. So we do not get much over the Santa Fe; most of our traffic comes over the Southern Pacific.

Q. That is a direct line to California?

A. That is a direct line.

1960 Cross-examination by Mr. LOVETT:

Q. Did the negotiations between Mr. Murphy and your companies ever proceed beyond the point shown by this correspondence, Mr. Douglas?

A. No, sir; never.

Q. The contract contemplated by the negotiations never consummated?

A. Never consummated.

Q. Was it down the San Pedro Valley that the line promoted by Mr. Murphy was to be constructed?

A. It was up the San Pedro Valley, yes, from Dudleyville, you know. It would run up the San Pedro Valley from Dudleyville to Benson.

Q. Oh, the river flows north?

A. The river flows north; yes, sir.

Q. Is Benson in the San Pedro Valley?

LOSE IN CENTER

A. Yes, sir.

Q. I believe you have already testified that the San Pedro Valley is rather narrow and is swept by the floods in the river. There is no agriculture there, is there?

A. Oh, there is agriculture but not a great deal. In the upper reaches of the valley there is a good deal of agriculture, but below 20 miles from Benson there is very little agriculture.

Q. Most of the agriculture country is in the vicinity of Benson?

A. Yes; within 20 miles of Benson.

Q. About what would be the distance, according to a practicable route, for a railroad from Benson to Dudleyville?

A. Between 80 and 90 miles, I should think.

Q. Your company has never deemed it to its interest to construct that line, has it, Mr. Douglas?

A. No.

Q. You have never considered that it would be a profitable venture, have you?

A. Oh, I have considered it. I don't know whether it
1961 wouldn't be a profitable venture, but we never seriously thought to build it.

Q. You preferred that Mr. Murphy and his company should build to Benson, rather than to undertake to build yourself?

A. Well, I would sooner have somebody else build and that we make a connection at Benson and get that traffic.

Q. Under such an arrangement as suggested, it would be a feeder for your line?

A. Yes.

Q. Mr. Murphy testified here a few days ago, Mr. Douglas, that during or preceding his negotiations with your companies he had secured for his line right of way practically to Benson, and I believe certain terminal grounds in Benson. Now, there is an abundance of right-of-way in Arizona still, isn't there, Mr. Douglas?

A. Yes, there is an abundance of right of way, but it very often happens that in a narrow valley one right of way is a very great deal more favorable than another, and it may mean a very great difference in the cost of the road.

Q. But where the right of way is across private land, is it usually very expensive or not, in Arizona?

A. Not unless the private land occupies the whole valley.

Q. Well, how is it in the San Pedro Valley north of Benson? Is the right of way there expensive?

A. I should say south of Benson there are places where it would be very desirable to have the exclusive right of way, especially, in the lower reaches of the valley.

Q. Do you know whether the right of way is at all expensive?

A. Oh, no, land would not be expensive.

Q. The right of way for such a line as Mr. Murphy was proposing—a right of way into Benson—could not have cost very much, could it, Mr. Douglas?

1962 A. No, it wouldn't have cost very much.

Q. Do you know anything about his terminal grounds in Benson?

A. I know nothing whatever about that.

Q. That would not be a very expensive proposition at Benson, would it?

A. No, not—it might be made expensive, of course, if there were much opposition to getting in there, you know.

Q. But one could secure suitable terminals at Benson without much expense, couldn't he?

A. If the road was open and there was no opposition and the property was not bought up with a view of preventing him, why, of course he could get it very cheaply.

Q. How much would it be necessary to buy up there in order to prevent another company from getting in?

A. For yards?

Q. Yes.

A. Oh, if that was going to be the terminus of his road he would require a good many acres, and it would be quite expensive to buy that.

Q. But you didn't quite understand my question. I say if an opposition road should undertake to buy up all the available ground in the vicinity of Benson for yards, they would have a pretty big contract, wouldn't they?

A. Well, they would have a good big contract; at the same time there are certain desirable points where you want to make connections, and if you cannot get to those points where are you?

Q. What is the population of Benson?

A. Oh, the population of Benson is quite small. It has been a very stagnant place from the very beginning. I don't think the population of Benson ever exceeded a thousand people, or anything of that kind.

1963 Q. Isn't it in rather a wide valley?

A. No, not a very wide valley.

Q. Ten miles?

A. Of course, you know, if they were going to make connection with us they would have to make connection with us. Now the Southern Pacific at Benson has a very large area of ground. They received, of course, certain rights from the town of Benson, and their yards cover so much ground that any other railroad wanting to get in, distinctly into Benson, to make a connection with us, might have a little trouble.

Q. Couldn't they connect with you at many points at Benson?

A. No.

Q. Is there only one point of connection there?

A. Substantially only one point where they could very well connect at Benson.

Q. Only one point where they could connect with your line?

A. Yes, in Benson itself. There is probably only one point. In fact we make use of the Southern Pacific yards at present. We have substantially no termini in Benson at all.

Q. Why?

A. Well, one reason is because we cannot very easily get them.

Q. Why?

A. Because the Southern Pacific owns pretty nearly everything around there.

Q. Owns pretty nearly everything, eh? It is better off than I supposed it was. I was under the impression that there was a considerable area there that was not occupied by anybody.

A. Well, but not exactly where you want to be.

Q. What do you mean by the limits of Benson, in the town
1964 of Benson? About what area do you include in that?

A. Well, Benson consists of one or two streets, you know, parallel with the tracks of the Southern Pacific Railway; and then, again, you know the Santa Fe used to come in and their yards and their station were three-quarters of a mile, or nearly a mile, out of Benson. So all that territory that the Santa Fe originally owned, the Southern Pacific now owns. The result is that there is very little available space on the south side of the Southern Pacific tracks for anybody else. We come in over the Southern Pacific tracks, into the Southern Pacific yards.

Q. You mean that there is very little available space to get in on one of those two streets on each side of the Southern Pacific track; but do you mean to say that there is very little available space for another line to get terminals and yard room within a mile of the Southern Pacific station in Benson?

A. Oh, no, no; I do not mean to say to the north of the Southern Pacific tracks. There would not be plenty of space; but to get across the Southern Pacific tracks and make connection with us and get your yard to the south of the Southern Pacific tracks, it would be a difficult thing.

Q. Your line runs out of Benson, doesn't it?

A. Our line runs out of Benson to the south.

Q. It could connect with you anywhere off the ground of the Southern Pacific, couldn't it?

A. It could connect with us; I should suppose it would have to cross the San Pedro to the east in order really to connect with us.

Q. Across the San Pedro to the east?

1965 A. Yes; and then probably run for some distance up the San Pedro Valley beyond Benson in order to make a connection with us.

Q. You mean west of Benson?

A. I mean to the south of Benson.

Q. To the south of Benson?

A. Yes. Unless we crossed the Southern Pacific tracks to make connection with them to the north, I don't know where they intended to make any connection with us to the south.

Q. I am not speaking of where they intended, but where they could cross.

A. Well, I don't know where they could make connection with us as we enter Benson at the present time, unless, as I say, they followed the San Pedro to the south of Benson and got fairly outside the property owned by the Southern Pacific and which was originally owned by the Santa Fe.

Q. About how many acres does the Southern Pacific own there, do you understand?

A. Oh, I don't know exactly.

Q. Can't you approximate it?

A. No, I couldn't approximate it.

Q. A thousand acres?

A. I couldn't say, but it doesn't require a very large acreage, you know, to stand seriously in the way of your making a connection.

Q. And that, too, in a country where there is only one town of a thousand inhabitants?

A. Well, yes.

Q. What is the nearest town to Benson?

A. The nearest town to Benson used to be a place called Contention, but that is all wiped off the map.

Q. I am glad of that.

A. That used to be the next station. St. David's is a Mor-
1966 mon town but not directly on the line of the Sonora Railroad or our railroad.

Q. Was it on the line of the Southern Pacific?

A. No. No, it was on no line at all. It was on the other side of the San Pedro River, you know.

Q. When was Contention wiped off the map, Mr. Douglas?

A. Contention was wiped off the map when the Contention mills ceased to be productive. Contention was one of the Contention mills, one of the great mills in the early Tombstone days.

Q. Was that before your negotiations with Mr. Murphy, or after?

A. Oh, long before.

Q. Then, taking the situation existing at the time of your negotiations with Mr. Murphy and at this time, what is the nearest town to Benson?

Mr. SEVERANCE. You mean on the railroad, do you?

Mr. LOVETT. No; on or off.

WITNESS. St. David's is the nearest town, but it is off the railroad.

Q. How far from it?

A. Oh, about half a mile, I should say. It is on the other side of the river, on the other side of the valley altogether.

Q. What is the size of St. David's?

A. I should say St. David's was a small Mormon town, with five or six hundred inhabitants.

Q. Then the next nearest town?

A. Is Fairbank.

Q. How far is that?

A. Fairbank is 18 miles from Benson.

Q. What is the population of that?

A. Fairbank is in rather a decadent condition; I should suppose 400 or 500 people, perhaps.

1967 Q. In that territory for 18 miles, between Benson and St. David's, is it populous or not?

A. No.

Q. Is the country about Benson thickly populated?

A. No.

Q. Practically no population?

A. Not much population. The valley to the north of Benson, of course, has a few ranchers in it.

Q. How wide is the valley at Benson?

A. The arable land, do you mean?

Q. No, I mean where it is practicable to locate a railroad with reasonable expense.

A. At Benson? Oh, I should suppose about half a mile or three quarters of a mile.

Q. About half or three-quarters of a mile?

A. Yes; without getting up on to the slope of the hills.

Q. After getting up on the slope of the hills a hundred feet or more, how far could you go?

A. Oh, quite wide.

Q. How is that?

A. I should suppose it would be a mile or two.

Q. You still think that it would be impracticable for Mr. Murphy's road to get across, or under, or over the Southern Pacific to make a connection with the El Paso and Southwestern at Benson?

A. Oh, it would not be impossible by any means.

Q. Would it be a serious problem?

A. That depends entirely upon the action that the Southern Pacific might take there. If they opposed their crossing on grade it would be pretty serious, because they have got a great many tracks there which they would have to get across; build viaducts over those tracks.

Q. Can't they get across in that valley without crossing any
1968 of the Southern Pacific tracks except its main tracks?

A. No.

Q. Do the Southern Pacific's tracks extend entirely across the valley?

A. Oh, yes, entirely across the valley.

Q. And is that the reason your line never extended north of Benson—that you could not get across the Southern Pacific?

A. No, it is not the reason we never extended. The reason is that we had not any particular motive to extend north of Benson. Our railroad served a certain special purpose there—primarily to carry the coal and coke to the large smelting interests (our own and others), and there was no object to build north of Benson for any large volume of traffic that we felt sure of.

Q. Most of your people were interested in the mining business before they became interested in the railroad business, were they not?

A. Oh, yes.

Q. They are interested in most of the mines along the line, are they not—that is, the operating mines?

A. Well, the owners of the principal amount of stock in the railroad are likewise the owners of the majority interest in the mines.

Q. You spoke of other mines where the Copper Queen mine is located.

A. Yes; the C. & A.

Q. At Bisbee?

A. The Calumet & Arizona.

Q. Are those who are interested in your company interested in that mine?

A. No, none at all. We have no interest in them at all.

Q. And what other mine was there? You mentioned another.

A. I mentioned the Superior & Pittsburg—another group of
1969 mines owned by people who are in friendly relations; but we have no interest in them at all.

Q. You have no interest in their shares?

A. No.

Q. Then, at Douglas, the people interested in your railroad are also interested in mines there, are they not?

A. No; we are interested in smelters.

Q. Smelting, I mean.

A. We have got a large smelter there.

Q. The road you mentioned in Mexico to Nacozari that afforded some traffic to the El Paso & Southwestern, that is controlled by your people, too, is it not?

A. Yes, sir, that is controlled.

Q. Do you know of any mining operations in the San Pedro Valley east of Dudleyville?

A. Do you mean east, or do you mean north of Dudleyville?

Q. I mean between Dudleyville and Benson.

A. Between Dudleyville and Benson? Oh, yes, there is the famous old Mammoth gold mine which had been worked on and off for the last thirty years. And then, again, there were several copper properties within two or three miles of the valley, and there are very large low-grade lead deposits, known as the Arivaca lead deposits; and then not very far from Dudleyville are the mines to which I referred as once having had charge of. They were then known as the San Carlos mines, and now they are known as the Sadler Mountain, and there are a great number of other mines around there.

1970 Q. Those are the mines that you referred to in your direct testimony, as having low grade ore that could not be operated except with very cheap fuel and cheap transportation, are they?

A. Yes.

Q. Those mines are not being operated, are they?

A. Yes. They are now owned by the Sadler Mountain Mining Company.

Q. Are they taking out ore?

A. They have been until copper dropped a year ago. They took out a considerable quantity of ore; and they have got a smelter up there.

Q. And they took it out by wagon on the 70 miles haul?

A. Oh no; they did not work until Mr. Murphy's road was nearer than 70 miles by a great deal.

Q. You referred to a neighborhood where there was some population and industry in Arizona, near the A. & N. M.?

A. That is the Clifton district, yes.

Q. Yes, the Clifton district.

A. The Arizona & New Mexico Railroad runs up—that is a railroad owned by a Scotch company that owns some of the most important mines about Clifton. They built that road in the early eighties.

Q. Is that the Arizona & New Mexico Railroad?

A. Yes.

Q. Where does that run from?

A. That runs from a junction with our line at a place called Hachita, and it runs through Lordsburg and thence up to Clifton.

Q. Is Clifton north or south of the Southern Pacific Railroad?

A. Clifton is north of the Southern Pacific.

Q. And this road runs through Lordsburg and connects with your line where?

A. At Hachita.

1971 Redirect-examination by Mr. SEVERANCE.

Q. Mr. Douglas, you spoke of the Santa Fe formerly owning a line of road at Benson. Where did that run?

A. Down to Guaymas, on the Gulf of California. That was the Sonora Road.

Q. The Sonora Road?

A. Yes.

Q. Who built that?

A. It was built by the Santa Fe.

Q. And that ran from Guaymas up to Benson, did it?

A. To Benson, yes.

Q. Was that before your road was built into Benson?

A. Oh yes.

Q. How long ago——

A. Before our road was built to Fairbank.

Q. How long ago did the Santa Fe part with that line?

A. Some years ago.

Q. Do you remember how long ago?

A. You may recollect. I do not recollect. About six or seven years ago, I should think, five or six years ago.

Mr. SEVERANCE (addressing Mr. Lovett): Do you know when it was?

Mr. LOVETT. Yes. The Santa Fe leased that road, the New Mexico & Arizona Railroad, running from Benson to Nogales and thence on to Guaymas, including the Sonora Railroad, to the Southern Pacific, in 1898. Possibly it was leased before that; but the existing lease was made in 1898, at the same time, and covered by the same instrument that the Southern Pacific leased to the Atchison what is now part of the Atchison's main line from Needles to Mojave, California.

1972 Mr. SEVERANCE. I thought it was part of that deal.

Mr. LOVETT. I thought you had that in the record, but I can give you a copy of the instrument.

Mr. SEVERANCE. I thought that was what it was. That is all right—your statement.

WITNESS. The reason it is called the New Mexico & Arizona is because as originally surveyed it started in New Mexico. There was going to be an extension directly of their Deming road over very near the location that we subsequently built from Deming.

Q. You stated that the ability of Mr. Murphy's road to get into a connection with you at Benson would depend a good deal upon the disposition of the Southern Pacific owing to its terminals there; did I so understand you?

A. Yes, sir.

Q. In answer to Judge Lovett?

A. Yes.

Q. And you say that if they were not satisfied to allow it in, they could have made some delay?

A. Yes, it could naturally have made delay—easily.

Q. How is that?

A. Naturally they could have made delay, I say.

Q. Did you ever have any experience with them when you were building into El Paso?

A. Oh, yes.

Q. How long did they tie you up getting into El Paso?

A. They didn't tie us up very long, because we opened another gateway into El Paso as soon as we found the one gateway obstructed. But they might have tied us up.

Q. You had to get a new gateway into El Paso because the Southern Pacific got in your way there, did you?

1973 A. Yes. They got their maps filed ahead of us and stopped us going in.

Q. Did they have a line out of El Paso at that time?

A. Yes. They wanted to change their location and get a better location.

Q. I see. They concluded to change to the line where you were going in?

A. Well, they got their maps in ahead of us, somehow or other, and, getting their maps filed ahead of us, why, they got the first right of way.

Q. And then you went in another way?

A. Then we got in another way. That is all right.

Q. Mr. Douglas, Mr. Lovett was asking you something about the smelters at Douglas. The Copper Queen smelter at Douglas is one of the very largest in the United States, is it not?

A. Yes.

Q. What smelters are there larger than the Copper Queen?

A. Oh, the Washoe is a larger smelter, and I suppose the smelter at Great Falls, if it was pressed, perhaps, could turn out a little more copper than we can; but I doubt it.

Q. The Washoe is the only one that is commonly understood to be larger than the Copper Queen?

A. It is larger than ours.

Q. You have the second largest smelter in the country, at Douglas?

A. Yes.

Q. And there is another smelter at Douglas also, isn't there?

A. Yes, sir.

Q. The Calumet & Arizona?

A. The Calumet & Arizona, yes, sir.

Recross-examination by Mr. LOVETT:

Q. Mr. Douglas, what is the size of El Paso?

A. I am sure I don't know. I suppose El Paso has over
1974 100,000 inhabitants at the present time.

Q. And you were able to get your road into El Paso?

A. Yes, we got our road into El Paso.

Q. Notwithstanding the opposition of the Southern Pacific?

A. And we crossed the Southern Pacific tracks on grade—thanks to the decision of the Railroad Commission of Texas.

Q. But you could have gotten in there without the decision of the Railroad Commission of Texas, too, couldn't you?

A. I suppose we could have; but you wanted us to go to a good deal of expense, to avoid crossing your grade; but we were at last permitted to do so.

Q. We wanted you to cross over-head, didn't we?

A. Yes, you wanted us to cross over-head.

Q. You crossed the Southern Pacific at other points, didn't you?

A. Yes, we crossed the Southern Pacific at—let me see— at Deming we have to cross your tracks.

Q. You don't mean to be understood as saying, do you, Mr. Douglas, that if anybody really wanted to build a railroad from Dudleyville to a connection with your tracks, that the difficulty, or the power of the Southern Pacific, with respect to a crossing at or in the vicinity of Benson would seriously interfere with or discourage the enterprise, do you?

A. Oh, I do not mean to say it would prevent them, but I think that they could interfere.

Q. Don't you mean that whenever one railroad attempts to cross another's tracks that there is generally a controversy?

A. Yes.

Q. And that there would have been such a controversy at
1975 Benson?

A. Yes, there would have been a controversy, just as there was a controversy at Deming when we were crossing your track.

Q. Is that not generally the case?

A. That is generally the case, oh yes. I do not mean to say that the Southern Pacific would act very differently in the matter than we ourselves might act if a rival road were coming in to a point where we were.

Q. And even if it was not a rival road, you probably would not want them to cross your tracks at grade, if you thought you could make them cross over-head or under them?

A. No, we should not want them to cross at grade if we thought they could cross by an over-head crossing.

Q. And the Southern Pacific would probably have insisted upon something of that sort, at least at Benson. But you do not think the difficulty of crossing at Benson was such as to preclude or seriously interfere with the construction of Mr. Murphy's road, if he wanted to do it?

A. Oh, no. If he decided to build into Benson he could have gotten across somehow or other.

1976 Mr. SEVERANCE. I now offer in evidence, pursuant to our stipulation, portions of the testimony given by Otto H. Kahn, a witness before the Interstate Commerce Commission, who testified at New York, February 27, 1907. I understand it is agreed by all parties that this testimony may be written into the record and have the same force and effect as though Mr. Kahn were upon the stand giving the same testimony.

Mr. LOVETT. Yes.

## OTTO H. KAHN

testified:

Examined by Mr. SEVERANCE:

Q. Where do you live?

A. In Morristown, New Jersey.

Q. What is your business?

A. Banker.

Q. Of what firm of bankers are you a member?

A. Kuhn, Loeb & Co.

Q. How long have you been a member of Kuhn, Loeb & Co.?

A. About ten years.

Q. Is that a copartnership or corporation?

A. Copartnership.

Q. Who are the copartners?

A. Jacob H. Schiff, Felix M. Warburg, Paul M. Warburg, Mortimer Schiff, Louis A. Heinsheimer, and myself.

Q. For how many years has the firm been composed of those gentlemen?

A. Of these particular gentlemen since about three years.

Q. Who were the partners in Kuhn, Loeb & Co. at the time of the reorganization of the Union Pacific Railroad Company?

A. Of the Union Pacific Railroad Company?

Q. Yes.

A. Jacob H. Schiff, Abraham Wolf, Felix M. Warburg, Louis A. Heinsheimer, and myself.

1977 Q. At that time, Mr. Kahn, and prior to the reorganization, the firm of Kuhn, Loeb & Co., were quite largely interested in the Union Pacific, were they not?

A. At the time of the reorganization?

Q. Yes.

A. Undoubtedly.

Q. And who were the committee of reorganization, do you remember?

A. I don't remember exactly, no.

Q. Was any member of your firm a member of that committee?

A. That is ten years back; I don't remember it exactly, but the records would of course show it.

Q. I call your attention to the printed plan of reorganization to refresh your memory. After inspecting that, can you state, was any member of your firm a member of the committee?

A. Yes. Jacob H. Schiff was a member of the committee.

Q. And what relation did Kuhn, Loeb & Co. bear to the transaction?

A. They were bankers to the committee.

Q. In connection with the reorganization of the Union Pacific and its subsequent management, what particular member of Kuhn, Loeb & Co. was particularly interested more than the others?

A. I was a member of the Executive Committee and Mr. Schiff was on the Board, and as far as the details were concerned, I would be more conversant with them than Mr. Schiff would.

Q. Did that statement include the reorganization as well as the subsequent management?

A. Chiefly the subsequent management.

Q. Were you familiar with the method of reorganizing the company and with the properties at that time?

A. Fairly so, yes.

Q. Will you state whether, in the reorganization of the Union Pacific there was any scaling down of securities of the old
1978 company which it succeeded, or was there on the other hand an enlargement of the securities put out?

A. I should say there was both; that is, in lieu of the high interest-bearing bonds, the six per cent bonds, there were issued four per cent bonds and stock.

Q. But the aggregate of the face value of the securities was quite largely increased, was it not?

A. To the extent, I believe, of giving for the old six per cent bonds new four per cent bonds, and an appropriate proportion of stocks, and also giving in for the assessment which was furnished in cash, preferred stock and new common stock.

Q. Now at the time your firm, as bankers for the committee, and Mr. Schiff as member of the committee, took hold of the Union Pacific, it was in the hands of receivers, was it not?

A. Yes.

Q. And had been operated by receivers for several years?

A. Yes.

Q. Had the interest on the old bonds been paid during the receivership?

A. Not on all of them.

Q. Prior to the reorganization, did the Union Pacific have quite a number of branch lines which did not participate in the reorganization?

A. I believe so.

Q. Can you name them?

A. No; I could not be certain that I was naming them correctly.

Q. Do you remember the St. Joe & Grand Island was one, or don't you?

A. I believe so; I am not certain about that.

Q. You are not certain about that?

A. I don't believe anybody could be about the affairs of the
1979 company which date back ten years, except the records would show it.

Q. Well, you were connected with the reorganization as committeeman, and I thought possibly you might remember.

A. No.

Q. Now you spoke about the interest on the bonds being scaled down. Is it not a fact, sir, that you issued the six per cent bonds you have mentioned, new bonds dollar for dollar, bearing four per cent interest, and running for a long period of time, and also an amount equal to 50 per cent of the face of the bonds in preferred stock of the new corporation?

A. The records would show whether we did or not.

Q. Well, don't you know as a matter of fact that you did that?

A. I don't remember the details of the reorganization, but you have the plan of the reorganization before you, which shows exactly what was done.

Q. Then you don't remember whether that was done or not?

A. I don't remember the exact details of the transaction, which dates back ten years.

Q. I want this on the record, so I will show you that [handing paper]. Having inspected that, can you now answer whether I am correct in my statement?

A. Yes.

Q. What was the aggregate capitalization of the new Union Pacific Road under the reorganization, stock and bonds?

A. That also would show from the records.

Q. Well, it is right there in front of you. Let me ask you if this is correct. $100,000,000 of bonds, is that right?

A. Not all of which were issued at the reorganization.

1980 Q. Have not they been issued?

A. Since, but not at that time.

Q. How many of them were not issued at that time?

A. It does not appear quite clearly from this plan. It says for the actual purpose of re-organization, there were issued in round figures $51,000,000, and there were reserved to dispose of equipment obligations and re-organization, and corporate uses, $13,000,000, and the balance reserved for settlement of the debt to the United States and for extraordinary requirements, in round figures, $36,000,000.

Q. Those bonds were used, were they not, or the proceeds of them, to settle the debt to the United States?

A. I believe not. I believe that quite a considerable amount was turned over to the new company, and was later on sold for its corporate purposes.

Q. But you paid the Government in excess of the amount of those bonds, didn't you?

A. We did.

Q. Well, you finally got out $100,000,000 of the bonds of the new company, didn't you?

A. But not all at the reorganization.

Q. No, but can you tell me how many were not used for the purpose of reorganization, and to pay the Government debt?

A. This plan does not show, but I remember that a considerable amount was turned over to the new company and was sold later on by the new company, for its corporate purposes, equipment, improvement and so on.

Q. Mr. Harriman yesterday testified that it was his recollection that it was something in excess of $5,000,000, is that your recollection?

A. I could not recollect the exact amount; it may have been $5,000,000, it may have been $10,000,000.

1981 Q. How much preferred stock did the new company issue, $75,000,000?

A. It issued in the reorganization in round figures $47,000,000, reserved to dispose of equipment obligations and reorganization and corporate uses $7,000,000, and balance reserved for settlement of the debt to the United States, and for extraordinary requirements, in round figures $21,000,000.

Q. You eventually got out the $75,000,000.

A. That makes a total of $75,000,000?

Q. You think you got out the $75,000,000?

A. That makes a total of $75,000,000—it was approximately that.

Q. Then, Mr. Kahn, how much did you pay the Government in settlement of that debt—it was in excess of $50,000,000, wasn't it—you recall it was over $50,000,000 finally paid?

A. I think so.

Q. There was first, a contract or arrangement to pay less than $50,000,000, and that was disapproved of by the president, and it was increased to something over $50,000,000.

A. I think so.

Q. You issued also $61,000,000 of common stock, did you not?

A. Yes.

Q. What was that common stock issued for?

A. According to the plan of reorganization, that common stock was issued in exchange for common stock of the Union Pacific Railway Company on which assessments were paid under the plan.

Q. How much was the assessment that was called on common stock—$10 a share, wasn't it?

A. I think it was $15.

1982 Q. Or $15—which was it?

A. The common stock, the plan says will be assessed at the rate of $15 a share.

Q. Now, what did the subscribers to that $15 a share get for it?

A. They got the amount of the assessment in new preferred stock at par and also received par of common stock in common stock of the new company. I am quoting from the plan.

Q. So that in a nutshell, the plan of reorganization contemplated the issuance of $100,000,000 of bonds, $75,000,000 of preferred stock, a portion of which was used to pay the common stockholders of the old corporation for their assessment of $15 a share, and $61,000,000 of common stock which was exchanged dollar for dollar for the common stock of the bankrupt road?

A. That is right.

Q. Making a total capitalization of $236,000,000. Now the old corporation had outstanding a capital stock and funded debt of only $201,294,882, did it not?

A. I don't see that the plan shows. Of course I don't remember the exact figures.

Q. You could not tell without figuring up. That is correct, however, Mr. Kahn.

A. Yes, here it is—the total funded debt, $140,425,682.

Q. What was the capital stock?

A. $60,868,500.

Q. That makes a total of $201,294,882?

A. Correct.

Q. As against a total issue of securities by the new company of $236,000,000—an increase of $34,705,818.

A. The comparison is not quite correct, because part of the new capitalization was used later on for additional equipment and other improvements, it was not all used to take up the
1983 $201,000,000 of old capitalization.

Q. How much of it was so used?

A. I don't know the exact figure. I should say common and preferred together, probably somewheres in the neighborhood of $20,000,000, but I am not positive.

Q. You say the common and preferred together?

A. I did not mean common; I meant bonds and preferred stock together.

Q. Now, every share of the common stock of the present Union Pacific, so far as it was issued at the time of the reorganization, was issued in exchange for common stock of the old road, wasn't it?

A. So fas as it was issued in the reorganization—yes.

Q. $61,000,000?

A. Yes.

Q. That is correct, and do you know anything about what that old stock represented?

A. No, I do not.

Q. You know at that time it was worth very little, don't you—I mean in the market?

A. I know it had been worth 150 and more.

Q. Yes, I know; but at the time of the reorganization, it was worth very little?

A. Of course, it was stock of a bankrupt road.

Q. And still it went in at par, and that is the same class of stock that is now selling at 170 or 180—whatever it is—the common stock of the new road.

A. It is the same character of stock.

Q. Part of the same stock?

A. Part of the same stock.

Q. Now, the preferred stock of the Union Pacific which was then issued, was issued as a bonus upon the exchange of the bonds of the old corporation for the bonds of the new corporation, was
1984 it not?

A. I do not think as a bonus. It was issued as a fair trade, refunding a six per cent bond for a four per cent bond and for fifty per cent of preferred stock; in other words, getting an old six per cent bond—interest at the rate of four per cent on the new bond, and at the rate of two per cent on the new preferred stock.

Q. So that it is your opinion, then, is it, that in capitalizing a railroad, it is immaterial what the par value of the securities may be; you look only to the rate of interest or dividends that are to be paid on the securities; is that your view?

A. I am not competent to express opinions on railroad questions.

Q. You just expressed one; you said it was a fair trade because it was an exchange of six per cent bonds for new four per cent bonds and half that amount of stock.

A. I referred to this particular case; but I am not prepared to answer a general, theoretical question as to capitalization of railroads; I am not competent to answer.

Q. You say it was a perfectly fair way to consider the capitalization of the Union Pacific?

A. In that particular instance, yes.

Q. So that you think the capitalization so far as the Union Pacific is concerned, not giving any opinion on any other road, is fair if based on the amount that is to be paid out as interest and dividends, without reference to the face value of the stock?

A. I am not prepared to say that. I am only saying that this particular scheme of reorganization was the best that at that time it was possible to carry through, and was a fair and reasonable one.

Q. The net result was there and so scaling down of se-
1985 curities as far as the par value, but on the other hand, there was an increase to some extent.

A. There was a very heavy scaling down of the fixed obligations.

Q. You draw a distinction then, between the dividends on the preferred stock, and the fixed interest charge on the bonds?

A. In this particular case, yes.

Q. You draw it just the opposite way Mr. Harriman did yesterday, on the Alton.

A. I am not comparing the Alton with Union Pacific. I am simply referring to this particular reorganization plan.

Q. In this particular, he took in dividends, and you left them out?

A. In this particular instance, I do not leave them out; I am simply explaining they were substituting for six per cent bonds a four per cent bond, and fifty per cent in preferred stock, making the same return; and that, in this particular reorganization, those were the best terms that were obtainable in order to carry through the reorganization, which had been attempted by others before, and which had not been carried through, because no terms could be arrived at as between the old bondholders and old stockholders and the reorganization committee.

Q. That is, you mean those were the best terms you could make with the stockholders?

A. Best terms possible to make with the stockholders and old bondholders.

Q. Now, after the reorganization of the company, did you go on the Board?

A. Yes, Mr. Schiff and myself went on the Board.

Q. Both Mr. Schiff and yourself?

A. Yes.

Q. And up to what time did you continue on the Board?

A. We continued on the Board until about a year ago; and perhaps I might say in this connection, that we went on the
1986 Board of the Union Pacific because we recognized that the reorganization of the Union Pacific devolved a considerable more responsibility upon us, towards the public which had bought

the bonds, and for that reason we went on the Board; but in going on the Board, of course, we did not cease to be bankers.

Q. Oh, I found that by going through the records.

A. Nor did we give up our rights to do business with the company; but we did feel it incumbent on us in dealing with the company, to deal at arms' length. In each instance where we had any contracts with the company, our interests were fully disclosed, it was entered on the record, and we declined to vote on that particular transaction. In no case in dealing with the Union Pacific——

Q. Now, Mr. Kahn, I have not asked you for this statement, but if you want to make your statement now, go ahead and make it. I asked if you went on the Board and how long.

A. I want to add that in no case in dealing with the Union Pacific, did our profits exceed a fair and usual banking compensation or commission, and in more than one instance, did we render services to the Union Pacific without any compensation whatever; and about a year ago we reached the conclusion that the Union Pacific—that, firstly, because of great claims upon our own kind, which our own business made upon our time, we were not in a position to give the necessary time and attention to the affairs of the Union Pacific, and being bankers and not railroad men, and the Union Pacific credit and standing being established beyond peradventure, we thought that we would retire from the Board of the Union Pacific, and we did so retire.

Q. Have you finished your statement, Mr. Kahn? Now,
1987 during the time that Mr. Schiff and yourself were directors of the Union Pacific, were you also directors of other roads in the west?

A. We were directors—I was a director of the Oregon Short Line, became one shortly afterwards, and a director of the Oregon Railroad and Navigation. I think that is all.

Q. Were either of you directors of the Great Northern or Northern Pacific?

A. Mr. Schiff was director of the Great Northern for a time, and I believe a director of Northern Pacific for a time. I am not sure about the latter.

Q. When?

A. I don't remember the exact date, but I think he was a director of the Great Northern, and remained a director of the Great Northern until 1901.

Q. Was that the last year that he was in the Great Northern?

A. I am not sure about it.

Q. Did he go into that Board for the purpose of establishing the credit of the Great Northern, and did he leave it as soon as he had accomplished that?

A. He had been in the Board of the Great Northern a great many years. I don't know for what reason he went in and I don't know for what reason he left.

Q. You don't think he stayed in the Great Northern because of any sense of duty to put the road on its feet, do you?

A. I beg your pardon——

Q. He did not stay in the Great Northern from any sense of duty he owed it to put it on its feet?

A. He had not reorganized the Great Northern Railroad, and the cases were totally different.

Q. The Great Northern never has been reorganized?

A. Exactly.

Q. Well, now, you say you were both members of the Board
1988 of the Union Pacific from the organization of the company down to about a year ago?

A. Yes.

Q. In addition to being a member of the Board, what position did you occupy with reference to the road?

A. I was a member of the Executive Committee.

Mr. CRAVATH. When you retired from the Union Pacific Board in particular, you and Mr. Schiff retired from all other boards at the same time?

A. Yes.

Q. For the same reason?

A. For the reason that we were bankers and not railroad men, and we found the demands of our business were such we could not give proper attention to both our banking business and directors.

Q. Well, now, Mr. Kahn, you had been bankers all the time, hadn't you?

A. We had.

Q. And you had been busy bankers all the time?

A. Yes.

Q. And had done a large business?

A. Yes.

Q. And had done a large business with those various roads for which you were directors?

A. Yes.

Q. Hadn't you?

A. Yes.

Q. Then what was it that suddenly came over your minds that induced you to depart from your old practice of being bankers and directors at the same time?

A. As far as Union Pacific is concerned, the Union Pacific, as I have said, was established, and its standing and its credit was fixed beyond peradventure.

Q. And that had been so for several years?

A. That is a question of degree. Every banker feels that when he reorganizes a company, that he owes it a duty for a number of years to stay by it. As far as the Union Pacific is concerned,
1989 that, to a certain extent, determined our remaining on the Board, and besides that, our business increased from year to

year, and we simply found we were not able to keep pace with our business in both offices.

Q. The Union Pacific had established its credit in 1901, so that it was able to sell $100,000,000 of bonds, without considerable trouble?

A. The Union Pacific in 1901, was in the midst of great financial operations, because its credit was good from the beginning, but at the same time, if I say its credit and standing were established beyond peradventure, it is simply a question of degree.

Q. You say in the midst of great financial operations in 1901. You mean the financial operation of getting out these new securities, do you?

A. Yes.

Q. And buying these other stocks?

A. Yes.

Q. And until that operation was concluded, you felt it your duty to remain on the Executive Committee?

A. I can only repeat in a general sense, in slightly different words, what I have said before. I cannot add anything new to it.

Q. At that time you had not thought of getting off the Board?

A. No.

Q. And you did not think of it until about a year ago?

A. Until about a year ago—yes, we thought of it a very long time before.

Q. But you did not carry out your thoughts.

A. That plan of retiring from the Board of the railroad company was not a sudden conclusion, but was one that had been maturing in our minds for a long time.

Q. By the way, in passing, let me ask you, who is Mr. S. Sigman?

1990 A. He is one of the clerks in our office.

Q. And has been for several years, hasn't he?

A. Yes.

Q. Who is E. S. Steiner?

A. Also a clerk in our office.

Q. And has been for several years, hasn't he?

A. Yes.

Q. Who is Charles Ess? Do you know him? Do you know such a man?

A. I don't know him.

Q. Now, from the time of the reorganization of the Union Pacific, down, I might say, to the present time, your bank has been the fiscal agent of the Union Pacific, has it not?

A. Yes.

Q. And still is?

A. Still is.

Q. That is, when they want to sell securities, they sell them through you, and when they want to buy securities, they buy them through you, as a rule?

A. Provided that we offer as good or better terms than anybody else.

Q. Well, we will come to that a little later. But, as a matter of fact, whatever may have been the inducements to do it, practically all the securities that have been purchased by—or a very large percentage of the securities purchased by the Union Pacific, and a very large percentage of securities sold by the Union Pacific, have passed through your hands, haven't they?

A. Yes. That is the practice in the case of all large railroad companies, that they deal with one particular banker.

Q. Yes; and you have been the particular banker of the Union Pacific?

A. Yes.

Q. In passing, I will ask you, you were one of the incorporators, one of the first directors—not incorporators—one of the first Board of Directors of the Union Pacific named in the articles?

A. Named in the articles?

1991 Q. Of incorporation?

A. Of incorporation—I believe so, yes.

Q. When did the Union Pacific commence paying dividends on its preferred stock?

A. I don't remember the exact date, it is matter of record.

Q. Can you remember about how long after it commenced business?

A. Not exactly.

Q. You don't remember when. Can you remember when it commenced paying on its common stock?

A. Not exactly.

Q. We will get that from somebody. I did not know but you might recollect. The first large financial transaction which the Union Pacific embarked in after its reorganization was the acquisition of the Southern Pacific stock, was it not?

A. Correct.

Q. Who conducted the negotiations for the acquisition of that stock?

A. These negotiations were conducted by us as fiscal agents for the company, and Mr. Harriman.

Q. With whom were the negotiations had?

A. With Huntington.

Q. A. G. Huntington?

A. A. G. Huntington and Speyer & Co.

Q. That is, it was with those two parties. They represented a large block of Southern Pacific stock which controlled the property?

A. Yes.

Q. That is right.

A. That is right.

Q. At whose instance did you undertake those negotiations?

A. Largely at our own instance and of course in conference with Mr. Harriman.

Q. Well, you did not undertake the purchase of those securities as an investment for your house, but you undertook the purchase with

the intention of turning them over to the Union Pacific, didn't you, after conversation with Mr. Harriman?

1992 A. If the Union Pacific wanted them, after mature deliberation by its Board. If they did not want them, we would have been perfectly willing to keep and sell them to somebody else, and it would have been very easy to sell them to somebody else.

Q. Now, Mr. Kahn, before you bought these securities or entered into any contract to buy them, didn't you have a thorough understanding with Mr. Harriman that the Union Pacific would take them, practically of course, subject to the approval of the Board?

A. We had this understanding, that we were bound to offer to the Union Pacific. If the Union Pacific did not want them or for any reason could not buy them, then we were stuck with them.

Q. Didn't you have an understanding with Mr. Harriman that he would take them?

A. Mr. Harriman certainly was in favor of taking them provided they could legally be bought, and providing the remaining members of the Board were of the same opinion.

Q. Did you not consult other members of the Board prior to the acquisition, or to the contract for the acquisition of the securities, besides Mr. Harriman?

A. Prior to the contract for the acquisition, I don't believe so.

Q. You don't think you talked to any other member of the Union Pacific Board?

A. I don't believe so.

Q. Are you sure of that?

A. I say I don't believe so. It is a matter of seven years back and I can not remember every single step that was taken in that connection, but in a general way we undertook to take the risk of buying that stock. I remember the executors of the Hunting-

1993 ton estate wanted a banker's obligation, and were not satisfied with a corporation obligation; they wanted a banker's obligation to protect them, and there was a question when a certain amount of cash down had to be paid at once, before the Union Pacific or any other railroad company could act or get together, and we simply stood in the breach and took the risk.

Q. Well, Mr. Kahn, you would not undertake to say now, would you, that you consulted with no one other than Mr. Harriman, on the Union Pacific Board, before you undertook to take over these securities?

A. I would not affirm it and would not deny it. It is a matter of seven or eight years back and I can not remember each single step that was taken in connection with the negotiation at the time, or each single person with whom I talked or did not talk.

Q. But you had a thorough understanding in the matter with Mr. Harriman, and he participated in the negotiation?

A. He participated in the negotiation.

Q. And you had a thorough understanding with him so far as he was concerned, the Union Pacific would take the stock?

A. The understanding with him was, that so far as he was concerned, we were bound to offer that stock to the Union Pacific at cost, plus a reasonable commission for our services in the matter, which we did.

Q. You wrote a communication to the Board, didn't you?

A. Yes.

Q. In which you said: "We have purchased 432,700 shares of the Southern Pacific Company of Kentucky, to be paid for as follows: 144,233 shares on February 11th; 268,467 shares on, or
1994 at our option before July 10th, with interest at 4% per annum from February 11th, all said shares to be deposited with a Trust Company until entire payment is completed.

"We have further purchased the following shares:

"200,000 shares to be paid for on, or at our option before March 4th.

"45,000 shares to be paid for, one-half on February 5th, and one-half on February 8th.

"The average price at which we have made the above purchases, exclusive of interest accruing, is $50.6146 per share."

That is an accurate statement, isn't it?

A. Certainly.

Q. That is stock you bought from Speyer & Company, and had arranged to buy from Speyer & Company and Mr. Huntington?

A. Yes.

Q. And then you further add:

"In order that your holdings of Southern Pacific stock may aggregate 750,000 shares, we agree to sell to you on March 4, 1901, 72,300 additional shares at the same price, viz: $50.6146 per share, plus interest at the rate of 4% from February 11, 190—." From whom did you buy that stock?

A. From whom did we buy that stock? We undertook to deliver that stock; we bought it in the market.

Q. You bought that in the market and bought that for whatever price you could get it, and made whatever profit you could on it?

A. Or whatever loss.

Q. Had you not already bought it when you addressed this communication to the Board?

A. I don't remember. I don't believe we had.

1995 Q. You know perfectly well, Mr. Kahn, do you not, that you had already bought that stock?

A. I know perfectly well that we had not, now that I think back.

Q. This communication is dated the 4th of February; you say you had not bought it?

A. I know perfectly well, now that I think back, that we had not bought it.

Q. What were the ruling prices of Southern Pacific stock at that time?

A. At the time that letter was written, I believe about 49—between 48 and 49.

Q. So you took the chance of its going up above $50 a share?

A. Which it did.

Q. And you lost money then on it, did you?

A. I am not saying that.

Q. Oh, you are not? I misunderstand you.

A. I didn't say that.

Q. Upon that purchase price, you say you were "also to be paid by the company $2.50 a share upon said 750,000 shares, of profit to us for the risk assumed in making these purchases"?

A. That is right.

Q. The risk you assumed was the risk that the Union Pacific Board would not approve of Mr. Harriman's provision relative to the acquirement of this stock, was it?

A. No; that was only one of the risks. There was an additional risk.

Q. What was it?

A. The other risk, to which our attention was called by our counsel, was a legal risk. At that time it was not certain whether the Union Pacific or the Oregon Short Line could legally acquire the Southern Pacific stock.

Q. Why?

1996 A. Because the Southern Pacific Company was a holding company and not a railroad company, and that defect, if it existed, was later on cured by appropriate legislation, I believe. But that time, that risk existed and was forcibly called to our attention by our counsel, and we were told that we were incurring a very substantial risk in standing in the breach.

Q. You thought you were incurring a substantial risk.

A. Yes, sir.

Q. But you were willing to accept the risk in view of the fact, as you said, that that stock went up above 50.61 a share?

A. We could not have known that at the time we undertook the risk. It might just as well have gone down. It varied, as all stocks do.

Q. You were a member of the Executive Committee at that time. What was the purpose of the Union Pacific in acquiring this stock?

A. As I said to you before, I am a pretty poor witness on railroad questions, and whilst I was a director of the Union Pacific, of course I am not an expert on railroad matters; but I understand in a general way that the main purpose of the Union Pacific in acquiring the Southern Pacific was to be certain of not being shut off at Ogden from reaching San Francisco. At that time it had become quite apparent that the Southern Pacific would not remain an independent line, that one or another of the——

Q. Would not what?

A. Would not remain an independent line, and that one or the other of the large systems would buy it, would get control of it. Reports had come to all of us of negotiations which were being carried

on by other large systems to acquire the Southern Pacific. It
1997 was, as I understood it, of vital importance to the Union Pacific not to be shut off at Ogden, and to continue to be able to use the line from Ogden to San Francisco. Naturally I also understood that the north and south lines in California were valuable feeders. I always understood also—as I say, I am not competent to pass on these questions very well.

Q. Go on. It is very interesting.

A. I always understood that the Southern Pacific was bought by the Union Pacific for advantages which it afforded as a connecting line, and it never entered our minds at that time that it could be in any sense considered a competing line.

Q. That never entered your head?

A. That never entered our heads at the time.

Q. You did not think of such a thing as that?

A. Never.

Q. You did not know that traffic moved to California both ways, both over the Union Pacific and over the Southern Pacific, Sunset Route?

A. I was not generally posted on these questions. I only know we bought the Southern Pacific because it was represented to us that it was a necessary supplement to the Union Pacific, and if we did not buy it the Union Pacific would be bottled up at Ogden.

Q. The Union Pacific owned the line to Portland.

A. The Union Pacific owned the line to Portland, to Northern California, yes.

Q. So that they could not shut you off from access to the Pacific Ocean?

A. But they could have shut us off from access to San Francisco by the Southern Pacific, which we had always used theretofore, I believe.

1998 Q. And so, for the sake of getting a line 800 miles long, which you regarded as essential to the Union Pacific, you bought six or seven thousand miles. Is that the idea?

A. No; I said the lines in California were doubtless an additional inducement.

Q. Was not the Southern Pacific any inducement, the Sunset Route?

A. I don't believe it was. I understood at that time that it was a nuisance. It certainly was not an inducement at that time.

Q. You regarded it as a nuisance?

A. As a nuisance.

Q. Do you still regard it as a nuisance?

A. I don't know.

Q. I do not think there is any question, from what we have learned in the examination in the West, that Mr. Stubbs had made that quite a nuisance to the Union Pacific.

A. I don't know.

Q. I think you are right. That had been made a nuisance. And because it was a nuisance, and because you wanted a connection into the San Francisco for the other reasons you have given——

A. Excuse me. You put it just the other way on. I said that the necessity of acquiring with the Southern Pacific the line which you call the Sunset route was the very opposite to an inducement. The Union Pacific did not buy the Southern Pacific because the Southern Pacific contained that southern line, but it bought it in spite of that.

Q. That is, the southern line was forced on to you?

A. I think if at that time the southern line could have been cut off from the Southern Pacific, it would have been preferable to all of us.

Q. Are you still of the same mind?

A. I am no longer a railroad director, and I have not followed its affairs since then.

Q. Up to a year ago, when you retired from the Board, were you still of the same mind that you would be glad to have the Southern Pacific Sunset Route cut off from the rest of your system?

1999

A. I believe under the present management that it had been much improved and made valuable.

Q. Then as I understand it, there is something that transpired in the four years from 1901 to 1905, when you retired from the Board, that made you change your mind about the desirability of divorcing the Sunset Route from the rest of the Southern Pacific system?

A. I never had any opinion about it.

Q. Do you know whether the balance of your Executive Committee, so long as you were a member of that committee were of the opinion that it would be a good thing for the Union Pacific to lop off the Sunset Route?

A. That question never came up, because it was not a practical question.

Q. You do not remember any gossip about that after the time you bought the Southern Pacific stock?

A. I do not.

Q. That feeling that the Sunset Route was a nuisance was never discussed after that time?

A. I want to make clear that it was not a nuisance to the Southern Pacific, but I want to bring out again that in my mind, and from what I then heard from those more competent to judge than I, the Southern Pacific was acquired because of its connecting features, and not because of that Sunset Route, which at that time was, I believe, not a profitable part of the system.

Q. And that situation changed, did it, after the new management came into control, so that you ceased to regret having to take in the competing line to the south?

A. I have no doubt the new management greatly improved that road.

2000 Q. And your regrets over that vanished?

A. I never referred back to those regrets, nor were there any regrets. I simply stated the fact that it was not an inducement.

Q. What provision did you make to pay yourself for this road? I mean what provision did the Executive Committee or Board of Directors make to pay Kuhn, Loeb & Co. for this stock?

A. They paid Kuhn, Loeb & Co. cash for this stock.

Q. How is that?

A. They paid the cash under the offer.

Q. How did they get that cash?

A. I think by the issue of convertible bonds, which were sold.

Q. Now, calling your attention to that matter, it appears by the minutes of the meeting at which your proposition was in form laid before the board, namely, a meeting of the Board of Directors of February 20, 1901, that resolutions were adopted accepting your proposition and providing for the issuance of $100,000,000 of convertible bonds. That is right, is it?

A. That is right.

Q. You were familiar with that at the time?

A. Yes.

Q. Now, those bonds, according to this resolution, were to be offered to the holders of the common and preferred stock of the company for subscription at par?

A. $40,000,000 of it.

Q. I mean $40,000,000. I will get to that in a moment. $40,000,000?

A. Yes, sir.

Q. Was that done?

A. That was done.

Q. What amount of the bonds was taken by the stockholders, all of them?

A. No; I don't believe all of them. I forget exactly how many, but not all of them.

Q. Give us your best recollection.

2001 A. I don't want to state anything off-hand which I am not positive about.

Q. Were over half of them?

A. I think so; yes.

Q. Were over three-quarters of them?

A. I doubt it, but I am not sure.

Q. You would not deny that at least $30,000,000 of the $40,000,000 were taken by the stockholders, would you?

A. I wouldn't deny it and I wouldn't affirm it.

Q. But you would be willing to say that in excess of $25,000,000 were taken by the stockholders, would you not?

A. I believe so.

Q. It appears further on in the same resolution, as follows:

"Whereas, it is important to the company to insure at once funds "for present commitments and future requirements, that the said "sale of $40,000,000 of bonds be definitely assured, and attending the "necessary proceedings for the creation of said bonds, such funds

"as may be necessary to meet such commitments and requirements "be available, Messrs. Kuhn, Loeb & Co., be and they are hereby "requested and authorized to agree to underwrite the subscription "by the stockholders of this company of said $40,000,000 of the First "Lien Convertible Four Per Cent. Gold Bonds of this Company, and "this Company hereby undertakes that it will pay to Messrs. Kuhn, "Loeb & Co., or such syndicate as they may form, a commission of "two and one-half per cent. upon said $40,000,000 of bonds, and to "said Kuhn, Loeb & Co. for their individual services a further com-"mission equal to two and one-half per cent. upon said $40,000,000 "of bonds." Now, that money was paid over and the stock was acquired by the Union Pacific. A little later on, as I under-
2002 stand it, the Union Pacific bought some more of this stock. That was the next year, was it not?

A. It was in 1902; yes.

Q. From whom did they buy that stock?

A. They bought that stock from Kuhn, Loeb & Co.

Q. What did they pay Kuhn, Loeb & Co. for that?

A. I think the price as shown on the record is 65.

Q. Was that stock that was acquired by Kuhn, Loeb & Co. for the Union Pacific, or was it stock that Kuhn, Loeb & Co. happened to own, and sold to the Union Pacific?

A. That was stock which Kuhn, Loeb & Co. held individually, and without any reference to the Union Pacific of any kind.

Q. That is, it was not stock you had bought for the Union Pacific the way you did the other?

A. Not at all.

Q. Mr. Harriman did not participate in those negotiations?

A. In the negotiation for the purchase?

Q. In the negotiations by which you acquired the $15,000,000 of additional stock?

A. No.

Q. Nobody except Kuhn, Loeb & Co. And that you turned over to the company at 65, $9,750,000. Now, will you state what the inducement was to the Union Pacific to acquire that additional stock. They were already in possession of the management of the road.

A. Yes. At that time, I believe—I think Mr. Harriman is a better man to ask about that than I, because we did not take part in any transactions which involved dealing with ourselves, and therefore, as I say, I am not a good witness to speak for the Union Pacific side of the case.

Q. I suppose, though, you and Mr. Harriman spoke as you passed by—talked things over?

A. Certainly we talked things over, but we were not a de-
2003 termining factor in any negotiations with ourselves. Therefore I say I am not a good witness to examine on the Union Pacific side of the case.

Q. But you were present at the discussions on the subject?

A. Yes. My recollection is that at that time efforts became apparent, which later on crystallized, to form a strong combination against the Union Pacific control of the Southern Pacific, and the Union Pacific directors felt that the holdings of the Union Pacific had better be increased to what Mr. Harriman called yesterday an unquestionable dominating interest. Negotiations were opened with us for the purpose of our holdings of stock, and we sold them at the market price of the day.

Q. With whom did you conduct the negotiations for the sale of that $15,000,000 of stock to the Union Pacific?

A. Probably with Mr. Harriman.

Q. And you agreed on that sale with Mr. Harriman and turned the stock over to the road at $65 a share?

A. He made us an offer, I believe, to sell that stock at that price to the Executive Committee or the Board, and the Executive Committee or the Board accepted the offer.

Q. Previous to that, however, you had agreed on the sale with Mr. Harriman, subject to the ratification of the committee?

A. Doubtless.

Q. Outside of this $40,000,000 of bonds that were issued in 1901, for the purpose of acquiring or paying for the Southern Pacific stock, there were some more of those bonds, were there not?

A. Yes.

Q. And some other stocks were acquired: is that true?

A. That is true.

2004 Q. What were the stocks acquired?

A. There were acquired about $78,000,000 of Northern Pacific common and preferred stock.

Q. Mr. Kahn, when was the idea of acquiring Northern Pacific stock first taken up by the Union Pacific or any of its officers or directors or committees?

A. That idea started with the purchase by the Northern Pacific and Great Northern of the Burlington.

Q. And that was prior to 1901, was it not?

A. No: I believe that was in March, 1901.

Q. I did not mean prior to 1901, but I mean it was prior to April, 1901.

A. Prior to April, 1901; yes.

Q. Now, with what officials of the Union Pacific did you discuss the advisability of acquiring the Northern Pacific for the Union Pacific?

A. We discussed the advisability of doing that in April, I believe, with Mr. Harriman.

Q. With Mr. Harriman.

A. Yes.

Q. There was no action taken, was there, by the Board of Directors, authorizing that acquisition?

A. No; there was no such action taken, nor was it at that time at all certain that the Union Pacific would finally acquire it or not. It was a very big transaction to undertake for the Union Pacific. The Union Pacific had, as I said before, only a couple of years before emerged from bankruptcy.

Q. Yes, I heard you say that.

A. It was very questionable whether the Union Pacific would finally conclude to undertake that transaction or not.

Q. Mr. Kahn, am I to understand then that the matter of acquiring the stock of the Northern Pacific was a simple matter of
2005 negotiation between Mr. Harriman and yourself, or your firm, and that it was not taken up by the Board of Directors or the Executive Committee of the Union Pacific? I want to be sure I understand you.

A. I said nothing of the kind.

Q. That is what I want to know.

A. Oh, no, Mr. Harriman and we, in April, 1901, owing to the acquisition by the Northern Pacific and Great Northern of the Burlington, became convinced that it was very desirable that a controlling interest, or at least an influential holding of Northern Pacific, should be concentrated in friendly hands, pending decision of the question. It was not a matter that could be decided in a day or a week, or four weeks, or six weeks, pending the decision of the question of the action, if any, the Union Pacific intended to take in the matter; and it was in pursuance of that idea, and in pursuance of the necessity which we saw for having such a concentrated holding, and knowing also at the same time that the Northern Pacific was a very excellent proposition and was selling at a very cheap price; knowing also, as we did, of certain plans which were on foot for increasing the value of Northern Pacific; being certain that the purchase of Northern Pacific at the then prevailing prices was an advantageous purchase under any circumstances; being perfectly willing to hold the stock for ourselves if the Union Pacific did not want it; in fact, preferring to hold the stock for ourselves if the Union Pacific did not want it, but at the same time feeling morally bound to give the Union Pacific opportunity to buy it from us if they wanted it;—taking all those things into consideration, we started buying Northern Pacific stock.

2006 Q. You made that start after you had talked with Mr. Harriman, and Mr. Harriman had agreed with you that it was advisable for the Union Pacific to get it?

A. No; Mr. Harriman had agreed with us that it was desirable that a compact holding the Northern Pacific should be in friendly hands.

Q. When was that talk?

A. That talk, I should say, was during probably the first fortnight in April.

Q. How is that?

A. During the first few weeks in April.

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Q. During the first two weeks in April?
A. The first few weeks in April.
Q. 1901?
A. Yes.
Q. I call your attention to a letter you wrote to Mr. Harriman as chairman of the Executive Committee of the Union Pacific on April 15, 1901, which reads as follows:

"We are the owners and holders of 100,000 shares of preferred "stock and 150,000 shares of common stock of the Northern Pacific "Railway Company. As in our opinion the acquisition of these "shares by the Union Pacific Railroad Company would be of great "value to its system, we offer to sell these shares to your company "at the price of 101 per share of preferred stock and 102½ per share "of common stock."

What advantage to the system did you think it would be to acquire that 250,000 shares of stock?
A. That is again a railroad question.
Q. But I am quoting from Kuhn, Loeb & Co's. letter to Mr. Harriman.
A. I know. You are quoting from a letter which was written six or seven years ago, and you are quoting a reference in this
2007 letter to a railroad question. In a general way it is quite apparent that it was of great importance and great weight to the Union Pacific to acquire a holding in Northern Pacific, so as to enable it to get its connection into Idaho, Washington and those other states and territories that Mr. Harriman yesterday referred to. I am not prepared to go into detail in explaining its advantages. I would rather have a railroad expert explain that.
Q. I am merely asking what you meant when you wrote this letter, that is all.
A. I have just explained to you that I considered at the time that the acquisition of the Burlington by the Northern Pacific and the Great Northern, tended, as I understood it, to shut out the Union Pacific from those territories in the Northwest, and we considered that if it were possible for the Union Pacific to have a substantial holding and possibly a controlling holding, in Northern Pacific, the Northern Pacific in its turn having half of the control of the Burlington, it would be a very beneficial thing for the Union Pacific. At the same time we were convinced that the stock was selling far below its real value, and the result has shown that our judgment was correct.
Q. I think I understand your position now. You and Mr. Harriman had had a talk, and you had agreed that it was advisable in view of the purchase of the Burlington by the Great Northern and Northern Pacific, that the Union Pacific should buy the stock of the Northern Pacific, and, if possible, get a control of it for the Union Pacific.
A. Yes.
Q. That is right?

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A. Yes.

Q. In pursuance of that talk, Kuhn, Loeb & Co. went into the market?

A. Yes.

2008 Q. And you bought this amount of stock, and immediately upon buying it you offered it to the Union Pacific at the prices stated, this first block? I am coming to the additional block in a moment.

A. Yes; that is so, in a general way, except that you stated that we had agreed with Mr. Harriman that the Union Pacific would buy the stock, whilst I have stated the opposite.

Q. I misunderstood you, then. I did not intend to misquote you.

A. I said the opposite. I said to you that we agreed with Mr. Harriman that it was very desirable that a substantial holding of Northern Pacific stock should be in friendly hands, and that it was very questionable at that time whether the Union Pacific would finally determine to buy that stock or not, but that we felt committed in any event, morally committed, as soon as we had a substantial holding, to offer it to the Union Pacific, which we did.

Q. If there was no understanding that you were acquiring this stock for the Union Pacific how did it happen that you wrote this letter to Mr. Harriman on the 15th of April, 1901?

A. I think this letter is the best evidence that we had no such understanding.

Q. You think it is?

A. I think it is.

Q. Mr. Harriman, on the same day, answered your letter, and said, among other things:

"I beg to acknowledge receipt of your letter of to-day, offering to "sell to this Company 100,000 shares of the preferred stock and "150,000 shares of the common stock of the Northern Pacific Rail-
"way Company, at 101 per cent per share of preferred and
2029 "102½ per cent per share of common stock, the latter *ex divi-*
"*dend*—for which books close to-morrow. I have authority "from this company to purchase any such stock, and I believe with "you that the acquisition of this stock will be of great benefit to this "company."

When did Mr. Harriman get that authority? After his talk with you about the advisability of somebody getting control of the Northern Pacific?

A. Mr. Harriman signed that letter, and he is responsible for the statements contained in it. I don't know when he got the authority.

Q. You were on the Executive Committee, from where the power would naturally flow, and on the Board, were you not?

A. Yes; and in pursuance of our general line of policy, I would take a very unsubstantial part in the determination of the Union Pacific side of this case, because we were interested on the other side.

A. Oh, no. I am speaking about the power that was given to Mr.

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Harriman, which I assumed, perhaps incorrectly, was prior to your acquisition of the stock?

A. Our acquisition?

Q. Yes, prior to your talk which resulted in your buying the stock.

A. There is nothing here to show it.

Q. You do not know about that? You do not know when he got that authority?

A. No.

Q. Or how he got it?

A. No.

Q. Or from whom he got it?

A. No. If he had any such formal authority, the books, the records, would show it.

Q. You did not doubt his authority? You regarded the transaction as closed, did you not?

A. He signed the letter as chairman of the Executive Committee of the Union Pacific Railroad.

2010 Q. Yes; of which you were a member?

A. Yes.

Q. Now, I call your attention to a letter of the next day, the 16th—you have copies there of all the letters—in which you state you are "prepared to make delivery against payment for the same, which "we calculate to be $25,475,000." Was that paid?

A. That would be the purchase price?

Q. I say, was it paid? Did you get the money?

A. So I assume. It does not show here. I have no doubt we did.

Q. You turned over the shares and got the money, did you not?

A. I have no doubt we did.

Q. Then I call your attention to a letter of the 29th of April, 1901, written by Kuhn, Loeb & Co. to Mr. Harriman, in which you offer to sell to the Union Pacific 160,000 shares of preferred, at 102.50 and 120,000 shares of common at 112 per share, that offer to remain open until the next morning.

A. Yes.

Q. Am I to understand, then that between the time you turned over this first lot to the Union Pacific and then, you had gone on and purchased additional shares?

A. It does not appear from this that when we offered to the Union Pacific the block of $25,000,000, that was all we had. I don't know if we did or did not. It doesn't show here whether we did or did not, but we went on, in exactly the same way I have previously described. For the Union Pacific, the assumption or purchase of all this Northern Pacific stock involved a heavy financial commitment, and I suppose it was determined from instance to instance how far the Union Pacific was prepared to go, whether it wished to go any further than the preferred, $25,000,000. Our method of proceeding was on our own risk and responsibility to go ahead and buy

2011 the stock as best we could, feeling certain, as we did, that it

IN CENTER

was a most advantageous purchase, in any event, and being perfectly prepared to keep it ourselves if the Union Pacific didn't want it, and preferring to keep it ourselves if the Union Pacific didn't want it, and at the same time feeling morally bound to offer it to the Union Pacific from time to time, as we had a substantial amount, at a very slight increase on the price we had paid, I don't believe in any instance exceeding 2½ per cent. upon the amount we had paid. We offered the stock to the Union Pacific at very much lower prices, taking it all through, than it sold for on the day on which our offers were made. In one instance I remember we offered the Union Pacific our holdings of stock at 7 or 8 percent below the market price of that day. We did it simply because we considered ourselves morally committed to do that, and we did it in spite of the fact that if we had kept the stock we would have obtained 7 or 8 or 10 or 12 per cent more for it, and on the same day, at that.

Q. What is that? I did not catch that last.

A. I said we made the offer to the Union Pacific after we had accumulated a substantial amount, in each instance at what we paid for it plus a very slight commission, and we did that notwithstanding the fact that on the day we made that offer, on the respective days when we made that offer—the market price was very substantially in excess of the price at which we gave to the Union Pacific an option, an opportunity to buy from us.

Q. As I understand then, Mr. Kahn, you went on buying Northern Pacific stock?

A. Yes.

Q. And you went on buying it with the intention of turning it over to the Union Pacific?

A. We did not.

2012 Q. You did not?

A. No; we went on buying it, being perfectly willing, and preferring, to hold it for ourselves, because we knew we were buying something at a price very much below its intrinsic value; but we bought it with the determination to give the Union Pacific the benefit of our skill in purchasing it, and of our responsibility and risk incurred in purchasing it, and offering it to the Union Pacific at the price at which we bought it, plus a very small commission.

Q. But, Mr. Kahn, however strongly you felt that you were getting this stock for much less than its intrinsic value, it had not occurred to Kuhn, Loeb & Co. to get into the market and buy Northern Pacific stock until the time you thought the Union Pacific ought to have it, and after you had had this talk with Mr. Harriman whatever the talk was?

A. Oh no, the value of the Northern Pacific was very much increased by their obtaining control of the Burlington, and we went into the market the moment the Northern Pacific obtained control of the Burlington.

Q. That was the latter part of March?

A. That was the latter part of March.

Q. Whatever may have been your intentions, it is a fact, is it not, that as fast as you acquired a substantial block of the Northern Pacific stock that spring, you turned it over to the Union Pacific?

A. We offered it to the Union Pacific.

Q. You turned it over to them. They got it, did they not.

A. Yes, sir.

Q. You were not very much astonished when they accepted your offers, were you?

A. We were not very much astonished, but we were rather
2013 distressed, because we would much rather have kept the stock.

Q. But you survived that distress.

A. We survived it, and let a profit of $63,000,000 go to the Union Pacific out of those transactions.

Q. It was on the 29th you made this offer, of 160,000 shares of preferred and 120,000 shares of common, and that was accepted by Mr. Harriman, on the same day, as chairman of the Executive Committee of the Union Pacific? He states the letter will constitute a contract. That stock was taken and paid for, was it not?

A. Yes, sir.

Q. I call your attention to another letter of Mr. Harriman, written on that same day, the 29th of April, stating:

"The Union Pacific desires to purchase additional shares to the amount of at least 250,000 shares."

And he desires to know whether they can be procured from or through yourselves, and upon what terms. I do not find any letter in these files in answer to that. What answer did you return to that?

A. I believe in answer to that letter we offered him all we had, which was, I think, about $16,000,000 of the stock, if I remember rightly. I am not sure. Anyhow, we offered him all we had.

Q. On the 30th of April, Mr. Harriman addressed you a letter, as follows:

The Union Pacific Railroad Company, for the purpose of financing corporate requirements, desires to sell $25,000,000, face value, of its First Lien Convertible Four Per Cent. Gold bonds. In com-
pliance with the agreement between this Company and your-
2014 selves, evidenced by your letter of February 5, 1901, to the undersigned, I am authorized to offer on behalf of the Railroad Company to sell these bonds to you upon the terms mentioned in your letter. I shall be glad to hear promptly whether you will purchase the same.

Upon payment by you or your assigns for these bonds at their face value, less interest to May 1st, when the interest on the bonds begins to run, the Company will be prepared to pay you the 5% commissions as agreed upon February 5, 1901.

Now, there was no arrangement made, was there, in this letter of yours of February, by which you were to have anything to do with any of the bonds other than $40,000,000?

A. Yes, there was.

Q. Was there? What was it?

A. I think you will find it in the letter.

Q. The only letter put into the files is the letter with reference to the sale of the stock. There is the resolution following that for the sale of the bonds to you or to your syndicate. Just a moment, Mr. Cravath, and I will look it over and see if we can find it.

A. I think I can save some time, because I know what it is.

Q. It is not here; just state what it was.

A. It must have been overlooked, because we put it in there.

Q. It may have been overlooked.

A. I mean it is in the records, it must have been overlooked, to furnish it to you.

Q. We have here a copy of the records relating to the transaction.

A. Yes.

Q. Certified by the secretary, Mr. Millar.

A. Yes.

Q. And Judge Lovett and Mr. Cravath and I have all looked it over, and we do not find anything there providing that you shall have the right to take the other $60,000,000.

2015 A. If you send for the record of our correspondence with the company, which is the only record we have of that, you will find that we have that right. You will find we have the correspondence with the company.

Q. Suppose you bring it up here at two o'clock.

A. I will try to get it—I think you should address that inquiry to the company and not to us.

Q. It appears in evidence of the $40,000,000 in bonds were to be offered to the stockholders.

A. Yes.

Q. And the stockholders took some $25,000,000 in round numbers, you don't know exactly.

A. Yes.

Q. Now there does not seem to be any offer made to the stockholders of this additional $25,000,000.

A. No.

Q. Do you mean that there was an agreement in force at that time between the Union Pacific and Kuhn, Loeb & Company, by which you were to have the right to take the additional $60,000,000, at a discount of five per cent.

A. Certainly.

Q. You do?

A. I do. We consider that no more than fair. At the time we took a very great responsibility which you do not appreciate, but which existed, and existed to a very great extent. At the time we became responsible for the issue of the Union Pacific four per cent. convertible bonds, the Union Pacific credit was not yet such as to insure the sale of new bonds on a four per cent basis at par, and by our efforts we placed those bonds and obtained the money for the company, whether it came from the stockholders or from us makes no difference. If the stockholders subscribed it was because we guar-

anteed the security to a certain extent, anyhow. I mean our
2016 pressure and our efforts had a great deal to do with the success of that issue, and if we undertook to become responsible for that issue we considered it ourselves perfectly justifiable, and the railroad company considered it perfectly justifiable to stipulate that any further issue of those bonds should be offered to us at the same price.

Q. Then, as I understand it, in consideration—take the whole transaction together—in consideration of your purchasing the Southern Pacific stock, you got a commission on that?

A. Yes.

Q. And in consideration of organizing a syndicate to underwrite the $40,000,000 you got a commission on that?

A. Yes.

Q. Although $25,000,000 were taken by the stockholders?

A. It was not known and could not have been known at the time we agreed to do that.

Q. Let me finish my question. I have been patient with you and trust you will allow me to place my question on the record. Then, as an additional compensation for what you have done, outside of these commissions, you also got the privilege of taking other $60,000,000 with a five per cent commission. Is that correct?

A. That is correct.

Mr. Lovett. I think, in order that the record may be intelligible it would be well to file that correspondence as an exhibit, because you have been referring to it.

Mr. Severance. I will do that.

Q. Well, at any rate, Mr. Harriman, whether it had been agreed that you should have that right or not, did offer you the $25,000,000 of face value of the bonds.

A. Yes.

Q. At five per cent. discount?

A. Yes.

2017 Q. And you took them, didn't you?

A. We did.

Q. And the proceeds were used to pay you for the Northern Pacific stock you were buying?

A. Yes.

Q. Then on the 7th of May Mr. Harriman addresses you another letter, stating that "the Union Pacific desired to make additional "purchases of the stock, common and preferred, of the Northern "Pacific Railway Company to an amount up to but not exceeding "$24,500,000 par value, in the aggregate of both stocks. On behalf "of the Executive Committee and with its authority, I desire you to "make purchases for account of the Union Pacific Railroad Company "and shall be glad to hear promptly your views as to the prices at "which the stock can be obtained so far as you can judge."

A. Yes.

Q. Then you answered that letter, stating "We ourselves own and "control 80,000 shares of preferred and 86,000 shares of common

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"stock of the Northern Pacific Railway Company, and we offer to "sell these shares to the Union Pacific Railroad Company at the rate "of $109.00 per share of preferred stock, ex-dividend for which "books close May 10th, and $131.50 per share of common stock. We "must ask you to advise us before four o'clock today, if practicable, "whether the company will accept this offer, in order that we may "govern ourselves accordingly."

Then you pointed out in a foot note, that the prevailing prices were several points in excess of the prices quoted by you.

A. We quoted that the closing price for common stock was 143½ when we offered it at 131½ and the preferred closed at 110 when we offered it at 109.

Q. And on the same day, Mr. Harriman, as chairman of the Executive Committee, answered your letter, in which you offered to
2018 sell the stock at that price, and he accepts the offer and then gives you additional authority to make additional purchases in the market for account of the Union Pacific Railroad Company of preferred stock in the aggregate a total cash expenditure of $9,200,000, using your discretion as to price and times of purchase, but not to exceed the average rate of $115.00 per share ex-dividend for which books close May 10th. Did you make any purchase under that authority?

A. Yes; we purchased some preferred stock and turned it in at cost.

Q. What is that?

A. We purchased preferred stock on the order of the company and of course turned it in for what we paid for it.

Q. You turned it in without any commission?

A. Certainly. We might have received the ordinary bankers' commission, but we simply turned it over at cost.

Q. And all the commission you got was the commission of 1/8 per cent upon that?

A. It may have been 1/4 or 1/8, but from that time on we acted as agent.

Q. Well, there is a regular broker's commission of 1/8, isn't there?

A. Yes, but we are not brokers, we are bankers; we do not accept orders from clients to purchase stocks in the market, we have not a commission business. We do accept from railroad companies and other large corporations large and discretionary orders requiring particular skill and particular ability to execute orders, but only as I say, if they involve special objects, and if they involve large amounts, and for those we do not charge 1/8 per cent but we do charge a commission commensurate with the object at stake. We usually charge from 1/2 to one per cent. As a rule we charge one per cent for handling that kind of an order.

2019 Q. Then as I understand it, when stocks are purchased by a member of the Stock Exchange in rather small quantities, the individual who does that is a broker, but when it is done in large quantities, he is a banker, is that it?

A. No; that depends very much upon the circumstances of the case. A railroad company is not qualified and has not got the facili-

ties to go to half a dozen brokers, and they could not get one broker, but to half a dozen and tell them, "I want to buy ten million, twenty, thirty or forty million dollars of stock," and give them exact orders. What they would do would be to go to a banker in whose ability and skill they have confidence and who they know will not take advantage of the order, and they would say "take such means as you deem desirable, and pay as little as possible," and for that the banker would not require the ordinary brokerage commission, which he might have to pay out half a dozen times over, but would require an appropriate commission, which is usually from one-half to one per cent, as a rule one per cent.

Q. That ordinarily your charge against the Union Pacific or any one you are acting for would be one per cent?

A. We have acted for a great number of railroad companies in similar circumstances and our charge has been uniformly one per cent on the par value.

Q. But in the case of the Union Pacific your charge was uniformly two and one-half per cent.

A. Our charge was one per cent or less for the Union Pacific. Whenever we acted for the Union Pacific, generally less.

Q. I thought you got two and a half on the Southern Pacific, and that was a large purchase requiring ability and skill.

A. We did not acquire that stock in the market or on the commission, but at our own risk, and a very substantial risk, and
2020 the Union Pacific had the right to take it, as they saw fit..

Q. And that same condition applies to the Northern Pacific, does it?

A. To a much greater degree, because our responsibility in the Northern Pacific was a very heavy one indeed, and the amount involved was extremely large.

Q. You knew at the time you bought this stock of the Northern Pacific and turned it over to the Union Pacific, of which you were an executive committeeman, that the Northern Pacific and Great Northern had jointly acquired the Burlington?

A. Yes.

Q. You knew that for a large part of the distance traversed by the Union Pacific, it was an active competitor, with the Burlington, didn't you?

A. The Northern Pacific?

Q. The Union Pacific was an active competitor with the Burlington?

A. Yes.

Q. You knew that on trans-continental business, the Northern Pacific was a competitor with the Union Pacific, didn't you?

A. Yes.

Q. You knew that?

A. Yes.

Q. Will you explain to me, then, why knowing those facts, and of course knowing the law, being a banker, you sought to acquire the control of a competing line in violation of law?

A. To begin with, knowing the law being a banker; there is a difference between a banker and a lawyer, and a difference between a banker's understanding of the law and a lawyer's understanding of the law, sometimes. I mean that in this sense, that the banker is not competent to judge of the niceties of the interstate commerce and anti-trust laws.

Q. Did that occur to you in connection with the matter?

2021 A. It did to such an extent that it was a factor in determining the risk we ran. We bought the Northern Pacific stock at a very great risk, legal and otherwise, and we offered it to the Union Pacific, and I was one of the fifteen who determined that the Union Pacific should buy that stock, but when we finally came to determine whether it should buy it or not, I declined to vote on the question, therefore I am the last person you should ask in regard to that matter.

Q. Well, you were turning it over in large bundles day by day?

A. Not every day, but on three instances.

Q. Well every few days.

A. No, not every few days.

Q. At that time you bought that stock and turned it over to the Union Pacific for the purpose of enabling the Union Pacific to control the Northern Pacific and through it, the Burlington?

A. Yes.

Q. Or to have a half interest in controlling the Burlington?

A. Yes.

Q. You did that, knowing they were competitive lines?

A. We did that knowing that we were advised that the Oregon Short Line would have the right to hold the Northern Pacific stock.

Q. Why didn't you sell it to the Oregon Short Line?

A It was sold to the Union Pacific or through the Union Pacific to the Oregon Short Line, the Union Pacific being simply the financial intermediary, because the Oregon Short Line did not have the cash or the means of raising the money, except through the Union Pacific.

Q. You sold it to a company which you realized had no right to handle it, as an intermediary, to get it into the hands of an-

2022 other company that had the right?

A. No, I did not say that. I was not advised that the Union Pacific had not the right, but I was advised they had a clear right to hold it.

Q. And were similarly advised of the physical situation, that they were competing lines.

A. In a certain sense.

Q. But as to whether or not one competing line could buy another, you did not know anything about it?

A. The Union Pacific was not buying the Burlington.

Q. It was buying the Northern Pacific, which you said was competing with the Union Pacific.

A. But I was not told and I did not see it, and I am not sure in my mind now that the Union Pacific and Northern Pacific, taken by themselves, are competing lines in the meaning of the law. I don't know whether they may or may not be.

Q. You don't know about that?

A. I do not know, no.

Q. Well the Supreme Court of the United States says that they are.

Mr. CRAVATH. Five judges out of the nine did.

Mr. SEVERANCE. Yes, I know; that is a majority; that is quite enough.

Mr. CRAVATH. It shows at least a room for doubt in the mind of a layman. They were divided five to four.

Mr. SEVERANCE. They did not divide five to four on that proposition; there was not anything in the dissenting opinion which disagreed with that proposition. Well, so much for the Northern Pacific.

Q. Now you held that stock as has been testified here, I mean the Union Pacific and afterwards the Short Line held that, as has
2023 been testified by Mr. Harriman, for a number of years.

A. Yes.

Q. Now, coming down to the disposition of that stock did you have anything to do with selling it?

A. Yes, I think we sold nearly all of it.

Q. That is, the Northern Pacific stock or its successors, the Northern Securities and afterwards, the Great Northern and Northern Pacific, which you got for the Northern Pacific, is that right?

A. Yes.

Q. That was sold through Kuhn, Loeb & Co.

A. Yes, that was sold through Kuhn, Loeb & Co.

Q. Wasn't it sold by Kuhn, Loeb & Co. for the Union Pacific or the Short Line, or was it sold by Kuhn, Loeb & Co. for their own benefit?

A. It was sold up to—let me put it this way. It was sold by Kuhn, Loeb & Co. on direct order of the company, for the company, up to some time in, I think it was, June 1906, when we were no longer directors and a different transaction took place.

Q. That is, as long as you were directors in the selling of that, you acted for the company?

A. We acted for the company.

Mr. CRAVATH. By directors, you mean—

Mr. SEVERANCE. Directors of the Union Pacific.

A. Well, we acted simply as brokers in selling it.

Q. What is that?

A. We acted simply as agents of the company in effecting sales to the best of our ability, and I think I may say that we did pretty well, and that we worked off a huge amount of stock practically
without depressing the market price, just as I may say we did
2024 pretty well in buying the Northern Pacific stock, because we bought about $70,000,000 of it, before anybody had any idea we were doing it.

Q. I am glad to have you hand these bouquets to yourself, Mr. Kahn; I think perhaps you did.

A. I think to a certain extent, these bouquets are displayed to show we were earning our commission and a good deal more, I think.

Q. Later on, I see by this report, that a large amount of the Great Northern and Northern Pacific was sold through Kuhn, Loeb & Co.?

A. Yes.

2025 Q. Was that sold under a contract?

A. May I ask under what date?

Q. It begins on the 17th day of last July and runs down to the 1st of February, 1907, the 17th of last July. I mean 1906.

A. There were direct purchases made from the company by us.

Q. What I wanted to get at, were these made pursuant to a single contract or were they various blocks sold from time to time?

A. They were in various blocks.

Q. And sold under the dates stated?

A. And sold under the dates stated.

Q. According to this there is a block of $2,800,000 of the capital stock of the Northern Pacific sold the 1st of February for $5,954,000 and odd dollars.

A. What, a block of how much?

Q. That is what made me think that it must have been under some contract. That is a pretty high market price for Northern Pacific.

A. A block of how much? $2,800,000 sold for $5,954,000? That is correct. We sold that at about 250. That would work out about right.

Q. For the Northern Pacific.

A. Yes.

Q. Are you not mixed up with the Great Northern?

A. No. We bought Great Northern from the company as high as 335.

Q. This is Northern Pacific.

A. And we bought Northern Pacific as high as 225.

Q. I am speaking about the 1st of February, 1907, this was only the other day.

A. The first of February, 1907?

Q. Yes, the 1st of February, 1907.

A. No.

2026 Q. You certainly could not have paid over 200 Northern Pacific stock then, could you?

A. No—yes, that is right.

Q. You paid 210 for it the 1st of February, did you, for Northern Pacific stock?

A. Yes.

Q. And that was an independent transaction and not pursuant to any contract?

A. Yes, an independent transaction.

Q. Just an offer made to you from time to time?

A. Yes.

Q. Then as I understand you, since last summer all of these sales that have been made to you were made in small or comparatively small blocks?

A. Yes.

Q. From time to time?

A. Yes—sales to us or the sales which were made through us?

Q. What?

A. Did you say the sales to us or through us?

Q. To you.

A. No, the sales to us were made in quite substantial blocks and the sales through us were smaller blocks.

Q. They are quite substantial blocks but they are smaller than some of the other blocks.

A. Well, but in the aggregate——

Q. They are in blocks of not less than 2800 shares or more than a million.

A. Yes.

Q. Some of the sales last summer went as high as seven million, in some of the other stocks.

A. Yes.

Q. How about the balance of that one hundred million dollars of convertible bonds, the $25,000,000 we accounted for. Did you get the others?

A. We got the others at the same price.

Q. So you got the whole $100,000,000 outside of what the stockholders took out of the first $40,000,000?

A. Yes, we bought $40,000,000 at that price.

Q. If you will try to find that correspondence in reference to the agreement—will you?

A. Yes.

2027 AFTER RECESS.

Q. While I think of it, Mr. Kahn, you have produced four copies of the letter that you wrote Mr. Harriman on the 5th of February, 1901, with reference to the bonds, convertible bonds, asked for this morning. That is it? [Showing letter to witness.]

A. Yes.

Q. That is a copy of the letter?

A. Yes.

Q. It may be marked in evidence as Mr. Kahn's Exhibit 1.

A. I have not brought the answer to it. It was a simple acceptance of our terms.

Letter marked Exhibit 1 and attached to Mr. Kahn's testimony.

Q. Now, this letter is dated the 5th of February, 1901, and starts out:

"Referring to our letter of even date herewith we beg to say that "in financing an issue of this class of bonds and in thus inviting the

"confidence of our clients in the securities, it is of serious concern to "us that we assure ourselves (*a*) that the future financial policy of "the Union Pacific," &c., &c. Then you say "In the foregoing view "we write to say that our undertaking to purchase the $40,000,000 "Convertible Bonds of a total authorized issue of $100,000,000, is "subject to the following further conditions, namely:

"1. That so long as any such issue of bonds are unissued the Rail- "road Company will, until May 1st, 1906 (unless we otherwise con- "sent) raise such additional capital as it shall from time to time "require exclusively by the issue of such Convertible Bonds, namely: "The bonds of said issue convertible into the common stock of the "Company at par at any time within five years after their respective "dates of issue.

2028 "2. That we are to have the right and privilege with respect "to any additional bonds of said issue which the Union Pacific "Railroad Company may decide to sell prior to May 1, 1906, to pur- "chase them at the same price as the initial issue of 40,000,000 of "such bonds will net the Company after the payment of the Syndi- "cate commissions and our own.

"Yours truly,

"(Signed) KUHN, LOEB & Co."

Why didn't you embody that in your other proposition, if that was a condition?

A. I know of no particular reason why. Those letters were framed by counsel, and we simply adopted their form, without giving it any further thought.

Q. Do you know any reason why those conditions were not laid before the Board of Directors of the Union Pacific road?

A. They were laid before the Board of Directors and embodied in a resolution, of which you have or can have a copy.

Q. Is there any other resolution?

A. I don't know what resolutions you have? There is a resolution of the Board of Directors embodying this.

Q. I have the resolution in which the Board of Directors passed on the $40,000,000 proposition.

A. Yes.

Q. I don't find any reference to the balance of the bonds.

A. If you have the full text of the resolution, you will find reference to this letter in it.

Q. You think there is a resolution?

A. I know there is.

Commissioner LANE. Was it in contemplation of the fact that you were going to purchase or intended to purchase large quantities of stock for the Union Pacific that you left the directorate of the Union Pacific?

2029 WITNESS. I don't think I quite grasp your question.

Commissioner LANE. Did you go out of the Union Pacific, did you leave it as a director in order to become its broker?

WITNESS. No; certainly not. Our relations with the Union Pacific, financially speaking, were in no way changed after we left it from what they were before. We were their fiscal agent before, and we continued to be their fiscal agent afterwards.

Commissioner LANE. Your relations were in no way changed?

WITNESS. Were in no way changed.

Q. I asked you this morning, Mr. Kahn, as to who S. Siegman and E. S. Steinman were. You said they were both employed in your office?

A. Yes.

Q. They have appeared for several years on the books of the Southern Pacific Railroad Company, quite large holdings of stock in the name of E. S. Steinman and S. Seigman?

A. Yes.

Q. Is that your stock?

A. The fact that that stock is in the name of those gentlemen does not necessarily mean so, and I won't say whether it is or is not; but a great deal of stock is left in the name of bankers, as a matter of convenience—bankers or their nominees.

Q. You do not know whether that stock belonged to you or not?

A. I am sure that not all of it belongs to us.

Q. There is a good deal of stock standing in your name?

A. It is the same way. A great deal of stock is left standing in our name, just as a great deal of stock is left in the name of other bankers, as a matter of convenience.

Q. Mr. Harriman testified yesterday there was a considerable amount of Southern Pacific stock that was held by himself and
2030 his immediate friends? You are among them, are you not? I am not asking as to the amount of your holdings, but you have at all times been interested in Southern Pacific stock?

A. We have at times been holders of Southern Pacific stock, and at times we have not.

Q. At the time of the annual meetings you have been, as a rule, holders of Southern Pacific stock?

A. Sometimes we have and sometimes we have not. It varies.

Q. Mr. Kahn, during the time you were on the Executive Committee of the Union Pacific, were there any branch lines constructed?

A. I have no doubt there were. I don't remember.

Q. Did you have anything to do with constructing any of them?

A. Nothing.

Q. Do you know how they were constructed, whether directly by the road, or through the organization of auxiliary companies?

A. To the best of my knowledge, they were always built directly by the road.

Q. That is the best of your recollection?

A. Yes; I feel quite certain of it.

Q. And the money paid directly out of the treasury of the road?

A. Yes.

Q. And built by the road itself?

A. Built by the road itself. What I meant to convey was, that a compact or large holding in a railroad like the Illinois Central, where the stock is very much scattered and hard to get, and can only be accumulated very slowly and cautiously, that such a compact holding has a value of its own over and above the market value, and that from what I knew at the time and know now as to the in-
2031 tentions of theirs in regard to Illinois Central, I have no doubt we could have disposed of our stock if we had attempted it, and if we had entered negotiations and played our hand at a higher price than we gave it to the Union Pacific for. The instance I have just mentioned, and I might mention as an instance, although we did not feel free in that case, I might mention as an instance the Southern Pacific acquisition, which of course, immediately upon getting together a compact block like $75,000,000, acquired very much higher value than it has as it was held formerly, as market stock. Compact holdings are always worth more than scattered holdings.

Commissioner CLEMENTS. Why are they?

WITNESS. Because they are very difficult to accumulate. It takes a long time, and takes——

Commissioner CLEMENTS. Well, for what purposes are they made more valuable and more desirable than small holdings?

WITNESS. It takes a long time, and takes more skill, and large experience, and a great deal of money and effort to accumulate a compact holding of stock of any property, and if a railroad wishes to invest in a compact holding in a property, that would naturally put a higher value on it.

Commissioner CLEMENTS. That would commend itself to one railroad that wanted to obtain control of another railroad. That is the principal reason, is it not, why a large block like that, that approaches control, would be of more value than stock in smaller quantities?

WITNESS. To other railroads or to groups of individuals acting together.

2032 Commissioner CLEMENTS. You say you were not quite so free in regard to the Southern Pacific. That is, I understand by that, that you were under some sort of obligation to let the Union Pacific have it at the price at which you did.

WITNESS. Yes, we felt morally committed to turn it over to them at cost, less a commission to ourselves.

Commissioner CLEMENTS. In regard to the Northern Pacific and Illinois Central, do we understand you to say, and still adhere to it, that you were absolutely free from any contract or obligation, moral or otherwise, and that you could sell it to one person, as well as to another?

WITNESS. In the case of the Northern Pacific, we felt equally morally compelled to give the Union Pacific every opportunity, the

first opportunity and an opportunity to buy it at practically what it cost us.

Commissioner CLEMENTS. Why did you have that feeling?

WITNESS. Because at that time we were directors of the Union Pacific, and we naturally had to maintain due allegiance to them, and we felt that every opportunity we could consistently give to any railroad must first be given to the Union Pacific. Secondly, because in starting on our Northern Pacific purchases, we had it in mind that we would and should offer it to the Union Pacific. Mr. Harriman had to a certain extent encouraged us in the start of those purchases and thought it should be a good thing to do it, and we felt morally bound to offer it to the Union Pacific. But in the Illinois Central we were absolutely free.

Commissioner CLEMENTS. In the Northern Pacific case you were to a certain extent on both sides of the question?

2033 WITNESS. To a certain extent, although we did not vote on the matter when it came before the Union Pacific Board.

Commissioner CLEMENTS. Well, that was a mere matter of form; there were enough votes without yours, and you approved it. You co-operated with the others, didn't you?

WITNESS. But those boards might have been unfavorable, and we might have had that stock left on our hands.

Commissioner CLEMENTS. But as a matter of fact there was no such difficulty?

WITNESS. No, and in fact the Union Pacific made over $60,000,000 out of it.

Commissioner CLEMENTS. You say in that way you were under no obligation to let the Union Pacific have it for what you paid for it.

WITNESS. Yes.

Commissioner CLEMENTS. And to that extent you modify what you said before about it.

WITNESS. Yes.

Commissioner CLEMENTS. And in the case of the Southern Pacific you were under certain obligations?

WITNESS. In both cases, a moral obligation.

Commissioner CLEMENTS. And you now say it was only in the case of the Illinois Central that you were absolutely free from any obligation, and were free to obtain the highest price you could from anybody?

WITNESS. If you put it absolute obligation, yes.

Commissioner CLEMENTS. Well, take out the word "absolute." What inducement was there in that case?

2034 WITNESS. In the case of the Illinois Central none whatever. Mr. Harriman came to me and wished to obtain our stock, and thought that the Union Pacific ought to have first choice, and we simply thought that we should be fair and liberal when we sold it to him.

Commissioner CLEMENTS. So in all those matters that is the only one in which your foregoing this greater profit that you could have

made—and which is rather an unusual thing for banks to do, where they are simply banks, pure and simple and are not railroading, as you say your house is not doing now——

WITNESS. I don't believe that. I think that any bank which has been for years connected with a railroad and practically stood by it at its birth and helped it, and has great pride in its development, and has all along done all he could in an official capacity to help it, I think every such banker would give any such railroad in all cases the first choice, and would restrict his profits to what he considers a fair basis.

Commissioner CLEMENTS. Ordinarily, he would give it first choice, and I can see there might be good reasons why that you should sell for less to one man than to another, and we are trying to find what those reasons were.

WITNESS. I think he would go beyond that; I think a banker bearing such relations to a company as we had to the Union Pacific, and having had such transactions with it, I think he would go further and would decline to make large profits out of it. I know he would.

Commissioner CLEMENTS. In all these three matters, the last one you spoke of, the Illinois Central is the only one in which you
2035 were influenced by pure love and affection to foregoing your own profits?

WITNESS. In all of them, I don't think love and affection are the proper words, but I think loyalty and proper allegiance and pride and a proper feeling of delicacy, not to make money out of a corporation where we had the relations we had to Union Pacific—I think those are the motives.

The CHAIRMAN. Do I understand that all the stock of the Southern Pacific which has been acquired by the Union Pacific was procured from and through your firm?

WITNESS. All of it.

The CHAIRMAN. And amounting in the aggregate to how many shares?

WITNESS. Amounting in the aggregate to $90,000,000, excepting the preferred stock, which was directly subscribed by the Union Pacific as a stockholder.

The CHAIRMAN. I do not recall the detail which has already appeared, but how many shares of common stock had been acquired?

WITNESS. $90,000,000 par value.

The CHAIRMAN. And the par value was $50?

WITNESS. $100 a share.

The CHAIRMAN. The Southern Pacific?

WITNESS. Yes.

The CHAIRMAN. At some time the Union Pacific issued $100,000,000 of bonds?

WITNESS. Yes.

The CHAIRMAN. In order to pay for this Southern Pacific stock and for other purposes?

2036 WITNESS. Yes.

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The CHAIRMAN. If I recollect, you first arranged to float $40,000,000 of those bonds?

WITNESS. Yes.

The CHAIRMAN. That $40,000,000 was offered to all the stockholders of the Union Pacific at par?

WITNESS. Yes.

The CHAIRMAN. And about $25,000,000, as you recollect was in fact taken by stockholders other than yourself?

WITNESS. It may have been more or may have been less.

The CHAIRMAN. What commission did you get for selling that $40,000,000?

WITNESS. We undertook to underwrite that $40,000,000——

The CHAIRMAN. And you did underwrite it?

WITNESS. Yes—and no, the stockholders underwrote it, of course, and sixty days intervened before the issue could be issued to the stockholders——

The CHAIRMAN. Never mind about that. How much did you get, in fact, for underwriting the $40,000,000?

WITNESS. We did in fact get a commission of 5 per cent for underwriting the $40,000,000 of bonds.

The CHAIRMAN. So you had 5 per cent——

WITNESS. Yes.

The CHAIRMAN. On the $25,000,000 which was taken by the other stockholders?

WITNESS. We had 5 per cent on the whole $40,000,000, which
2037 was only fair. We guaranteed the company that it would get its $40,000,000 for which we received this commission.

The CHAIRMAN. What was there about 5 per cent allowed to the syndicate that bought the bonds?

WITNESS. I say out of the 5 per cent which we received, we gave the syndicate one-half, and one-half we kept for ourselves.

The CHAIRMAN. So when you speak of a 5 per cent., that includes the 2½ per cent. paid directly to your firm?

WITNESS. Yes.

The CHAIRMAN. And 2½ per cent paid to the purchaser of the bonds, or the syndicate which purchased the bonds, of which your firm was a member?

WITNESS. Yes, that is right.

The CHAIRMAN. And what had you to do, and what was your compensation, in floating the other $60,000,000?

WITNESS. The other $60,000,000 we had to take practically alone and unaided at that time——

The CHAIRMAN. I was simply asking you——

WITNESS. I am getting to the circumstances of the case. The Northern Pacific transactions at that time necessarily had to be handled with great secrecy. It could not be allowed to come out until it was ready to come out, and the company needed this money, $60,000,000, to pay for it. We could not even have formed a syndicate, because that would attract attention. We had to take the whole

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responsibility alone and unaided, of guaranteeing to the company $60,000,000 at once——

The CHAIRMAN. I am not asking you about your reasons or questioning the reasonableness of your compensation. I just wanted to know how much in fact you got.

WITNESS. The company paid us the same commission as we
2038 got before, that is, paid 5 per cent on the $60,000,000 which we guaranteed to furnish.

The CHAIRMAN. And which you had a perfect right to divide with those to whom you sold the bonds?

WITNESS. Yes.

The CHAIRMAN. So then, the 5 per cent, or $5,000,000 in round numbers, was received by you and those associated with you?

WITNESS. Yes.

The CHAIRMAN. For selling $100,000,000 of bonds?

WITNESS. Yes, the $100,000,000 of a new and untried issue of bonds.

Mr. SEVERANCE. Complainant now offers in evidence the following testimony, given by the defendant, Otto H. Kahn, before the Interstate Commerce Commission, at New York, February 27, 1907, as a declaration of said Kahn with reference to a matter which is involved in the issues raised in the pleadings herein, that is, an admission as to the effect in dominating or controlling a railroad corporation of the ownership of thirty per cent of its stock being in one individual or corporation:

By Mr. SEVERANCE:

Q. Then you desire the record to show that you sold this Illinois Central stock (amounting to about 29 or 30 per cent of the total outstanding Illinois Central stock), at a loss to yourselves of above two million and a half dollars, below what you could have obtained from some other person whose name you have declined to
2039 disclose, and you let the Union Pacific have it because of your loyalty and affection for that road?

A. I mean to say that the control of what practically amounts to a dominating interest in Illinois Central was worth and could have been made worth to others, 200.

Q. What others?

A. That I don't think it is my business to state.

Q. I want to ask you one other question about the Illinois Central. You considered, did you, when you sold this 105,000 shares, and these other gentlemen sold the 90,000 shares, to the Union Pacific, that that gave the Union Pacific a dominating interest in the Illinois Central?

A. I thought it gave them an interest, which, if it wanted to, would practically amount to a dominating interest, yes.

Q. What you mean by that is this, considering the fact that at stockholders' meetings of a corporation like the Illinois Central, it is never possible to get a full vote.

A. Yes.

Q. And in consideration of the fact that the management can get any proxies, through brokers and others, anyone owning thirty per cent of the stock as the Union Pacific now does, is in a position to control the election?

A. Unless——

Q. Under ordinary, normal conditions?

A. Well, yes; if he can count upon the entire support or neutral attitude of the remaining seventy per cent, if there is nothing to put that remaining seventy per cent into an attitude where they will combine against them.

Q. I understand.

A. Naturally, I think you are right.

Q. Taking things as they ordinarily go, anyone who has thirty per cent of the stock of a large railroad corporation, has control for all practical purposes, in the absence of a fight, or an
2040 organized effort to discharge him.

A. In the absence of any reason which would cause the remaining seventy percent to organize to actively oppose him. Under normal conditions I think you are fairly correct.

Q. So that you figure that the Union Pacific, by the acquisition of this thirty percent was placed in substantially dominating control of the Illinois Central?

A. I wouldn't say control, but I say it would, under ordinary circumstances, give a dominating influence.

Q. What is the difference between them. You mean, dominating influence in the sense that they elect their Board of Directors under ordinary conditions.

A. Under ordinary conditions. That interest would have very substantial influence with the management, and those responsible for the property. Now, dominating influence is not controlled, in my opinion.

Q. But you mean by that, do you not, that having that much stock as a nucleus, in the absence of a very strong organization of the other stockholders, it would always be possible to procure a majority at a stockholders' meeting? Is that what you mean?

Mr. Milburn. Now, your Honor, is that a fact, that is being asked from the witness? Is it evidence as to a fact? Is not that argument? It refers to the position of a railroad with a certain percentage of the stock. It seems to me to be an argument, a legal question.

Mr. Severance. Not at all. It is a matter of experience.

The Chairman. He is asked whether he and those associated with him did not understand that that amount of stock would practically control the Illinois Central?

2041 Mr. Milburn. I did not understand it that way.

The Chairman. I think that is the question.

Mr. Milburn. I did not know what the understanding of it was, but the inquiry, as I understood the questions, was as to a matter of fact. I say that is not a matter of fact, but a matter of argument.

Mr. SEVERANCE. I want to make myself right with Mr. Milburn. I think in the case of a gentleman who is as familiar with corporate transactions, with railroad meetings, as Mr. Kahn is, it is quite proper to ask him, whether in view of his experience, the holder of thirty percent of the stock of a railroad corporation of large dimensions, like this company, is not in a position to control it, as a rule. Under ordinary conditions, I refer to. That is a fact.

The CHAIRMAN. We have understood Mr. Kahn to say that under ordinary circumstances, in the absence of somebody leading the other stockholders, to organize and combine, those who held thirty percent of the stock would ordinarily control an election?

Mr. SEVERANCE. That is right.

The CHAIRMAN. I suppose that would be particularly true, Mr. Kahn, where the stock was a good deal scattered, where there was a large number of stockholders.

WITNESS. I don't think I would like to say "control an election," but I would say "exercise a dominating influence," and it would certainly be more so in the case where the stock is very much scattered.

Q. The Illinois Central was scattered?

A. Yes.

Q. They have a great number of stockholders through the west, have they not?

A. Yes, sir.

2042 Q. People with small holdings?

A. Yes.

Mr. LOVETT. In order to dispense with the necessity for proof that Mr. Kahn testified as above set forth, the defendants admit that he did so testify, but that all defendants, except Otto H. Kahn, object to such testimony upon the ground that it was not given in any suit or proceeding to which they were parties, and that it is hearsay and irrelevant.

Mr. SEVERANCE. It is admitted by all parties that, pursuant to a resolution of the Interstate Commerce Commission, passed on the 15th day of November, 1906, at a session thereof in Washington, which resolution reads as follows:

"Whereas the act to regulate commerce provides that the Commission 'shall have authority to inquire into the management of the business of all common carriers subject to the provisions of this act, and shall keep itself informed as to the manner and method in which the same is conducted,' and also requires the Commission 'to execute and enforce the provisions' of said act;

"And whereas it appears to the Commission that consolidations and combinations of carriers subject to the act, and the relations now and heretofore existing between such carriers, including community of interests therein, and the practices and methods of such carriers affecting the movement of interstate commerce, the rates received and facilities furnished therefor should be made the subject of investigation by the Commission to the end that it may be fully in-

formed in respect thereof, and to the further end that it may be ascertained whether such considerations, combinations, relations, community of interests, practices, or methods result in violations of said act or tend to defeat its purposes;

"It is ordered that a proceeding of investigation and inquiry into and concerning the matters above stated be, and the same is hereby, instituted, and that the same be set for hearing at United States court rooms in the city of New York, N. Y., on the 28th day of December, 1906, at 11 o'clock a. m., the further hearing to be continued at such times and places as may be required."

the Commission was engaged in taking testimony at the City of New York on the 27th day of February, 1907, and that the said testimony of Otto H. Kahn was given under oath at said hearing
2043 and that said Kahn and the defendants Union Pacific Railroad Company, Southern Pacific Company, and Edward H. Harriman were each represented by counsel before the Commission at the time said testimony was given, and that said counsel took part in the proceedings before said Commission, this stipulation being made subject to the objection on the part of the defendants, and each of them, that the facts therein stated are immaterial.

An adjournment was then taken until the afternoon of Tuesday, January 19, 1909, at 2 o'clock.

ROOM 508, CUSTOM HOUSE, NEW YORK CITY,
*Tuesday, January 19, 1909, 2 P. M.*

By consent of parties, a further adjournment was taken until the morning of Monday, January 25, 1909, at 10.30 A. M., at Room 511, Federal Building, Pittsburg, Pa.

2044 ROOM 511, FEDERAL BUILDING, PITTSBURG, PA.,
*Monday, January 25, 1909, 10:30 A. M.*

Present: The Special Examiner, Hon. Sylvester G. Williams, and Mr. G. E. Husted.

The EXAMINER. Are you ready to proceed, gentlemen?

Mr. HUSTED. Mr. Examiner, I wish to announce that Mr. Severance, the leading counsel for the Government, is unable to be here this morning. Mrs. Severance was on board the vessel "Republic," which was in a collision outside of New York Harbor, and at last account the passengers had not yet reached New York, and, of course, Mr. Severance has not been able to leave. Judge Lovett, counsel for the defendant, has been advised, and I understand there is no objection to an adjournment until to-morrow morning at this hour. I therefore ask that such an adjournment be taken and the witnesses be excused until that time. I will also state that Judge Buffington has kindly offered us the use of his court room, which is a much

better room for our purposes than this, and I therefore ask that the adjournment when taken be to that room, to-morrow morning.

The EXAMINER. The number of that room is 312, is it?

Mr. HUSTED. The number is 312, yes, sir.

The EXAMINER. We will take an adjournment until 10:30 to-morrow morning, to room 312, the Circuit Court room in this building. All witnesses who have been subpoenaed for this morning will return to-morrow morning at 10:30, at the room designated, without further notice. You will be excused until that time.

The hearing was accordingly adjourned until January 26, 1909, at 10:30 A. M.

2045 ROOM 312 FEDERAL BUILDING, PITTSBURG, PENN.,
*Tuesday, January 26, 1909, 10:30 A. M.*

Present: The Special Examiner, Hon. Sylvester G. Williams, and Mr. Husted.

The EXAMINER. Mr. Husted, have you some statement to make?

Mr. HUSTED. Yes, sir. Mr. Examiner, I have to state that Mr. Severance is not here this morning. He has been unable to leave New York because of Mrs. Severance being in the collision of the "Republic." I had a telegram from him, in which he states that he and Judge Lovett had agreed to an adjournment until to-morrow morning at this hour. Under the circumstances I wish to ask that such an adjournment be taken and the witnesses be excused until to-morrow morning, at this place.

The EXAMINER. Counsel will leave New York to-night?

Mr. HUSTED. Will leave New York to-night, yes, sir.

The EXAMINER. Very well. Under the circumstances we will take an adjournment until to-morrow morning at 10:30 o'clock, the hearing to be resumed in this room.

I would say to the witnesses present that, while it may be a matter of considerable inconvenience and disappointment to you who have responded to the subpoenas to be under the necessity of returning, the occasion is one of those caused by extraordinary matters which could not be avoided by counsel, and it is to be trusted that you will endure this disappointment. It will be necessary for you to return to-mor-
row morning at 10:30 o'clock, at which time the case will
2046 be taken up for hearing.

Mr. B. H. THOMPSON (a witness). I would like to say to you that it puts the witnesses at a very great disadvantage to come around here. Now, there are several of them who have to go to Chicago to-night. How will you take the witness' testimony?

The EXAMINER. It will be necessary for the witnesses to return. They are under the subpoena of the court, you know.

Mr. THOMPSON. I know; that is all right; but then we have got business to transact, and it is an outrage on the part of the business people to have the postponement right along.

The EXAMINER. Just a moment, sir. I have already expressed myself upon that subject and said all that there is to be said.

Mr. THOMPSON. I believe you, too; but, at the same time, I want to express my views.

The EXAMINER. It is very unfortunate, sir; but you will understand that it is not through any fault of counsel that the accident occurred.

Mr. THOMPSON. I know that; but then the Government has plenty of counsel to take the testimony. You can not controvert that.

The EXAMINER. No. We will accept your remarks in the spirit in which they are intended, and will ask you to return to-morrow morning at 10:30.

Mr. THOMPSON. I do think, with all due respect to the court, that at the same time the counsel and the Government must
2047 remember one thing—that business people in Pittsburg have something to do besides attending court.

The EXAMINER. I think, sir, from my remarks you will understand that I appreciate that.

Mr. THOMPSON. I believe that, too. I want you to distinctly understand how I feel if I leave here to-night to go to Chicago.

The EXAMINER. Of course the witnesses must understand that they are under subpoena and it will be necessary for them to return.

Mr. THOMPSON. I realize that, too. But you can not expect a man to be subpoenaed on the 25th and stay here for three or four days to await the convenience of the court. We have other business to transact besides the court's.

The EXAMINER. Unfortunate as it may seem, you will understand, of course, that it will be necessary to respect the orders of the court.

Mr. THOMPSON. I understand that, too, with all due respect to the court. But, as I said before, we have special business to attend to besides the court's business.

The EXAMINER. For which we are very sorry indeed, sir.

Mr. THOMPSON. As I understand, we are supposed to be here to-morrow morning at 10:30?

The EXAMINER. To-morrow morning at 10:30, yes.

Mr. THOMPSON. All right, sir.

Adjourned until Wednesday, January 27, 1909, at 10:30 A. M.

2048 CIRCUIT COURT ROOM, PITTSBURG, PA.,
*Wednesday, January 27, 1909, 10:30 A. M.*

The hearing was resumed pursuant to adjournment before the Special Examiner, Hon. Sylvester G. Williams, at the above time and place.

Present: On behalf of the Complainant: Mr. C. A. Severance, Mr. G. E. Husted. On behalf of the Defendants: Mr. R. S. Lovett, Mr. D. T. Watson.

## C. O. JOHNSON,

called on behalf of the Complainant, being duly sworn, testified as follows:

Direct examination by Mr. SEVERANCE:

Q. Mr. Johnson, where do you live?
A. Pittsburg.
Q. What is your business?
A. Traffic manager of the H. G. Heinz Company.
Q. How long have you been in that position?
A. A little over three years.
Q. What is the business of the H. G. Heinz Company? Of course, I know, but I want the record to show.
A. Manufacturers of table sauces, catsups, pickles; 57 varieties.
Q. Still making 57 varieties, are you?
A. We are making more than that, sir.
Q. To what part of the country do you send traffic?
2049 A. To all parts of the United States; all parts of the world.
Q. Do you ship to the Pacific coast?
A. Yes, sir.
Q. Over what lines is your business routed, and has it been routed, since you have been here, to Pacific coast points?
A. We use nearly all of the lines—Southern Pacific, Union Pacific, Santa Fe, Rock Island, Northern Pacific, Great Northern, Canadian Pacific.
Q. Are you brought in contact with freight solicitors?
A. Yes, sir.
Q. Who represents the Union Pacific and the Southern Pacific here?
A. Mr. Herring.
Q. Has he employees under him?
A. I beg pardon?
Q. Has he assistants under him?
A. I understand he has, yes, sir.
Q. Do they call on you?
A. I do not know that they do. Mr. Herring is——
Q. Does Mr. Herring call on you?
A. Mr. Herring calls on me, yes.
Q. For what purpose?
A. Soliciting business for his lines.
Q. For which lines?
A. For the Union Pacific and Southern Pacific.
Q. Does he solicit for one as against the other, or how does he solicit the business? Take the coast business, the transcontinental business.
A. I do not know that he has ever——
Q. Does he make any endeavor to route it either one way or the other, I mean?

A. No; never in our case—that is, so far as the distinction between the Southern Pacific lines is concerned.

2050 Q. Yes; that is what I mean.

A. No.

Q. What was your business before you came to Pittsburg?

A. I was assistant general freight agent of the Chicago Great Western Railway; resident in Chicago.

Q. And previous to that, Mr. Johnson?

A. Previous to that I was general agent and superintendent of terminals of the same road, at Kansas City, Missouri.

Q. And before that?

A. General agent of the same line; resident at San Francisco.

Q. How long ago were you at San Francisco?

A. Prior to 8 years ago.

Q. And for how long?

A. About two years and a half in San Francisco.

Q. As general agent of this road out there?

A. Yes, sir.

Q. Before that what were you doing?

A. I was general superintendent of the Pacific Coast Railway Company.

Q. Where does that run?

A. From Port Harford to Los Olivos, in California.

Q. During the time you were living in San Francisco was any traffic moved from the east into San Francisco by boat lines?

A. Yes.

Q. What route?

A. In connection with the Canadian Pacific, via Vancouver and the Pacific Coast Steamship Company's line, from Tacoma and Seattle, in connection with the Northern Pacific and the Pacific Coast Steamship Company's line.

Q. What lines from the South? Panama route?

A. And the Panama route, Pacific coast.

2051 Q. How was the Panama route made up?

A. It was made up of shipments of the Pacific Mail and the Isthmus of Panama Railway.

Q. The Isthmus of Panama Railway had their own ships to New York, on the east, had they?

A. On the eastern side?

Q. Yes.

A. I am not familiar with that.

Q. You do not know. Was any traffic moved to California in those days around the Horn or through the Straits of Magellan?

A. Yes; I understand there was.

Q. At the time you were living in San Francisco, which you say was prior to eight years ago, did the Union Pacific and Southern Pacific maintain separate organizations for soliciting business to the east?

A. Yes.

Q. In connection with which one did you work chiefly?

A. With the line via Ogden, in order to connect with our line either at Kansas City or St. Joseph, Missouri.

Q. Was the Union Pacific agency working that line exclusively?

A. The Union Pacific?

Q. Yes.

A. So far as I knew. I never knew of their working any other line.

Q. You had some experience in soliciting traffic, and you are having some experience now in having traffic solicited. What are the principal efforts that are put forth, and what are the advantages that are offered by freight solicitors, in endeavoring to get business generally?

A. The expediting of shipments; prompt care of the same; tracing, in case of delays; advising dates of delivery.

2052 Q. Is anything done in reference to claims for damages?

A. Yes. The prompt settlement of claims is a very important item.

Q. There is no competition now in rates, is there?

A. None that I know of, sir.

Q. So that the competition is otherwise than in rates?

A. Yes.

Q. Does your business move all-rail from here over these various lines that you have mentioned, or do you send some by the Morgan line?

A. To the California coast?

Q. To the coast, yes.

A. We forward only all-rail.

Q. What is your reason for preferring all-rail?

A. The question of the breaking of bulk, and despatch.

Q. And that is a matter of quicker service for you?

A. Yes, sir.

Cross-examination by Mr. LOVETT:

Q. From what point do you ship now, Mr. Johnson?

A. We have a number of factories all through the United States; Pittsburg being the principal one.

Q. But your shipments to the Pacific coast, are they principally from Pittsburg?

A. Principally from Pittsburg.

Q. You say that you are solicited by Mr. Herring as the representative of both the Union Pacific and the Southern Pacific?

A. Yes, sir.

Q. Does he indicate any preference as to routes?

A. Not that I know of, sir. I do not remember of his ever having done so.

2053 Q. When you ship over the lines that he represents, which way does the traffic move out of Pittsburg?

A. Out of Pittsburg?

Q. Yes.

A. We use various lines out of Pittsburg; via the Chicago route; sometimes via St. Louis. It is according to what line we want to route to beyond either of those points.

Q. The Union Pacific has no lines east of the Missouri River, has it?

A. None that I know of, sir.

Q. And the Southern Pacific has none east or north of New Orleans?

A. None that I know of.

Q. And your shipments move over other lines not controlled by either of those companies, either to New Orleans or the Missouri River, do they not?

A. That is, east of their eastern termini?

Q. Yes, sir.

A. Yes, sir.

Q. Will you name some of the principal lines over which your traffic moves from Pittsburg and other points to a connection with the Union Pacific or Southern Pacific?

A. The Baltimore & Ohio——

Q. At what point?

A. From Pittsburg. Speaking of Pittsburg shipments?

Q. Yes.

A. The Baltimore & Ohio to Chicago; and various lines between Chicago and the Missouri River—for instance, the Northwestern, Milwaukee, Rock Island, Illinois Central, Great Western——

Q. Burlington?

A. And Burlington. There are several lines in there—to Omaha. The Union Pacific from there to Ogden; and the Southern
2054 Pacific from there to the Pacific Coast. Or, we may use the lines via Chicago to Kansas City, and give to lines there that can deliver to the Southern Pacific at Ogden.

Q. There are also the Pennsylvania lines out of Pittsburg, too?

A. The Pennsylvania lines. The Pittsburg & Lake Erie, in connection with the Lake Shore & Michigan Southern.

Q. Then the lines to New Orleans.

A. We never use that route, sir, on account of the time.

Q. Then when you ship via the Southern Pacific, where do you reach the Southern Pacific lines? At El Paso?

A. At El Paso, if it were for Southern California. We rarely use that route. We use chiefly the Southern Pacific in connection with the middle California business, delivering to them at Ogden.

Q. You do not use the New Orleans route at all, I believe?

A. We do not use that route at all.

Q. Have these lines that you use in reaching the Missouri River solicitors in this territory?

A. They have.

Q. All of those that you have named have solicitors here, have they?

A. They have.

Q. And they solicit your business?

A. They do.

Q. And all shipments that you send by way of the Union Pacific pass also over the Southern Pacific, do they not, from Ogden, to the California points?

A. Going to California points, yes; that is, unless it were to Southern California; then we would deliver to the San Pedro line at Salt Lake City.

2055 Q. But all shipments to California, that pass over the Union Pacific, go either over the Southern Pacific or the San Pedro line?

A. Yes.

Q. When you were located on the Pacific coast, soliciting for the Chicago Great Western, I believe you stated that you worked via the Ogden Route?

A. Yes.

Q. That is, the Southern Pacific from California to Ogden?

A. Yes.

Q. And then either the Union Pacific or Rio Grande east of that point?

A. Yes.

Q. So, in either event, whichever way your traffic moves to California (unless it goes by way of the Atchison), it must pass over some Southern Pacific line, must it not, or the San Pedro?

A. Yes.

Q. You spoke of some water transportation from Puget Sound and Portland to California. You mentioned in that connection the Pacific Coast Steamship Company, I believe.

A. Yes.

Q. The volume of traffic moving from the east that way was not very large, was it?

A. The volume was quite large during the time of the differential in connection with the Canadian Pacific via Vancouver.

Q. Yes, at the time the Canadian Pacific was making the fight for the differential there was considerable traffic moved that way?

A. Yes.

Q. But before and after that time the volume was very small, was it not?

A. I don't remember the conditions before or after, because at the time I was working for the Great Western Railway in San Francisco, the differential was on, my recollection is, all the time.

2056 Q. Do you have personal knowledge of that situation?

A. As to what?

Q. As to the volume of the traffic that moved that way.

A. No, except so far as it might be in connection with the business over our own line. I know that a great deal of dead freight was routed that way.

Mr. SEVERANCE. I didn't hear that.

WITNESS. A great deal of dead freight, that is, freight on which it was not necessary to have particularly good time, the difference in rate justifying the using of the differential route.

Q. How would your line handle that?

A. From Chicago to Minnesota Transfer.

Q. Do you know anything about the volume of that?

A. Would I have to speak comparatively, or just guess at the number of cars?

Q. In your own way, so as to convey a correct idea of it.

A. Yes, I have known of, for instance, lots of four or five hundred cars of certain commodities.

Q. What commodities?

A. Tin-plate, for instance.

Q. That would move which way?

A. In connection with the Canadian Pacific via Vancouver and the Pacific Coast Steamship Company.

Q. Wasn't that only during the period when the differential fight was on?

A. I am not familiar with the conditions before or after, because the differential was in effect all the time that I represented the Great Western Railway there, if I am correct.

2057 Q. How long was that?

A. About two years and a half.

Q. Do you mean that there were lots of five hundred cars moving practically at one time, or a single lot, or do you mean——

A. No, I mean during the season. Certain commodities have certain seasons in which to move, and we draw the comparison between seasons.

Q. Take it as an average, during the time you were there, do you think it would average ten cars a month?

A. In connection with the Canadian Pacific?

Q. Yes.

A. Oh, yes. I would say a good deal more than that.

Q. Can you approximate it?

A. At a rough guess I would say 50 to 60 cars a month.

Q. During the entire period, or a portion of it?

A. I would say during the entire period.

Q. And that was what you term dead freight?

A. Principally dead freight, yes.

Q. Where the time was not of importance?

A. Yes.

Q. During what period was this? You spoke of a period of two years and a half that you were there.

A. My recollection is that it was prior to 1901; 1900 to 1901. I am not positive as to that.

Q. Can you not mention the years? "Prior to 1901" is a good long time.

A. By that I mean ending with 1901 or 1900. My recollection is that I have been away from California seven or eight years—say eight years; so the period to which I have reference would end, then, with 1901.

2058 Q. You spoke of some of the duties of soliciting agents of railroad lines. Is it not also a very important duty of representatives, commercial agents of railroad lines, to work with connecting lines?

A. Very important; very important.

Q. Where the traffic originates in this territory, for instance, the importance of working with connecting lines is a very important duty, is it not?

A. Very.

Q. Wouldn't you say that it was about the most important duty of the soliciting agent, generally?

A. Working with——

Q. With connecting lines on which traffic originates.

A. No, it would seem to me that the principal duty of the representative would be to solicit business for his own lines, retaining a neutral position so far as he possibly could; then after that, would come the importance of working in connection with connecting lines.

Q. In securing traffic for his own line, is not the cooperation of the line on which the traffic originates of vast importance?

A. Very important; very important.

Redirect examination by Mr. SEVERANCE:

Q. Judge Lovett brought out the fact that there were very considerable shipments by Vancouver during the time there was a differential in by the Canadian Pacific, and you mentioned 50 or 60 cars a month. What did you mean by that—that 50 or 60 cars moved over the Great Western in connection with these other lines, or 50 or 60 cars all together?

2059 A. I would mean that the movement over our line (the Great Western line) in connection with the Canadian Pacific, would average from 50 to 60 cars per month.

Q. Well, you did not state that. That is what I was trying to bring out—whether you meant over your line.

A. Yes.

Q. Was traffic moving over the other lines from Chicago to St. Paul in the same way?

A. Yes.

Q. So this 50 or 60 cars a month was merely the traffic that went over one of the lines?

A. The Great Western Railway.

Q. What lines are there between St. Paul and Chicago that participate in the business between those points?

A. The C., M. & St. P.; the C., B. & Q.—I don't think the Rock Island then had its Minnesota Transfer connection——

Q. Of course I am addressing my question to that time.

A. ——the Wisconsin Central, the Iowa Central in connection with the M. & St. L.; the Chicago & North Western, and the Chicago Great Western.

Q. This traffic was delivered, at the Minnesota Transfer, to the Soo, was it not?

A. Yes.

Q. Which is a Canadian Pacific line?

A. Yes.

Q. And then moved from there into Canada and Vancouver, and by the long steamship line, down to San Francisco?

A. Yes.

Q. What would be the comparative distance that way, from Chicago, as nearly as you can estimate it, as compared with the line to Omaha, the Union Pacific, the Short Line, and the Oregon Railroad & Navigation to Portland and a boat line down from there?

2060 A. As a rough guess, I would say there ought to be a difference of between 800 and 1,000 miles.

Q. In favor of Portland? The Portland line would be shorter?

A. No, the Ogden line.

Q. No—you didn't understand my question. I say what would be the difference between the line which you said this traffic moved over, made up of some line between Chicago and St. Paul, then the Soo and the Canadian Pacific to Vancouver, thence by boat line to San Francisco, as against a line from Chicago to Omaha, and thence by the Union Pacific, Oregon Short Line and Oregon Railroad & Navigation to Portland, and boat from Portland to San Francisco?

A. As a rough guess, I would say between 400 and 500 miles.

Q. That is, the Canadian line is that much longer?

A. Yes.

Q. Where did this traffic of 50 or 60 cars a month, that you were personally familiar with, originate?

A. In Chicago and the territory east.

Q. You were speaking, in answer to Judge Lovett, about the business moving out of San Francisco—solicited out of there. Did the Southern Pacific solicitors solicit business by the Sunset Route out of San Francisco?

A. They had solicitors for both routes.

Q. For both routes?

A. Yes. There were Sunset solicitors and the Ogden route solicitors.

Q. Working separately?

A. Working separately.

Q. Do you recall what that differential over the Canadian Pacific was?

A. No, I do not.

By Mr. LOVETT:

Q. Of course you do not mean to convey the impression that
2061 any traffic for San Francisco originating in the Chicago Great Western territory would ever move by the route you have described—around by way of the Canadian Pacific and the steamships down to San Francisco, at equal and open rates, do you?

A. I do not know why it should, unless through the personality of the solicitor.

Q. Do you think that the personality of the solicitor would take freight that way?

A. Possibly. Possibly there might——

Q. At equal and open rates?

A. There might be some question of settlement of claims, or something of that kind, by which——

Q. What would be the difference in distance and in time, do you think, that way, as against the direct all-rail route?

A. I would say the difference in the distance was 800 to 1,000 miles, and the difference in time five or six days.

Q. Wouldn't it be more than that?

A. I am simply making a rough guess.

Q. Well, you think that the amount that could be controlled even by the personal considerations for the agent, at equal rates would be extremely small—wouldn't it?

A. It would be very small.

Q. You mentioned the settlement of claims. What kind of claims do you mean—lawful claims, valid claims, or——

A. Oh, yes. Of course they are the only claims that are in existence today.

Q. Is there enough difference in claims of that sort to make any substantial difference in the routing of traffic?

A. No, but I know of cases on the coast where a great differ-
2062 ence had arisen between the railway lines and the shippers as to the proper rate to be applied, or the question of weights, or a question of damage—a claim that would hold over for a year or two. Finally the line would say "It is uncertain as to who is right—whether you or we are; now, we will split the difference; we will do that to get the claim settled right away, if you will give us a little business."

Q. Those differences have largely disappeared, have they not, in recent years?

A. Oh yes; they have to-day.

Q. You spoke of this traffic as having originated on the Chicago Great Western, and in that connection mentioned traffic originating on the Burlington, the Rock Island, and others moving around that way.

Mr. SEVERANCE. No, he said originating at Chicago or east, moving over those lines.

Mr. LOVETT. The point I am trying to reach is this: I understood the witness to state that in addition to the 50 or 60 carloads a month

about which he testified, there was a traffic of the same character, moving the same way, originating east of Chicago and on the Burlington, Rock Island, and some other lines that he mentioned.

Q. Do you have any personal knowledge of that—as to what was done on the other lines?

A. No personal knowledge except so far as the statement of other people is concerned.

Q. Did the Rock Island, the St. Paul, the North Western, and the Burlington, so far as you know, ever work any business that way as against the all-rail route?

A. Oh, yes.

Q. Work it that way?

A. Yes.

2063 Q. As against the Denver and Ogden route?

A. Yes, oh, yes; simply because they would lose the business if they didn't get it, because the differential was in.

Q. The differential was in?

A. Yes.

Q. This business that you speak of, then, moved that way only during the period of the differential?

A. I said I was not familiar with the movement before or after, so I could not say as to that.

Q. So your whole testimony on that point relates to the period when the differential was in existence?

A. Yes, sir.

Q. Do you remember the arbitration of that differential?

A. I do not.

Q. Or the time of it?

A. I do not.

By Mr. SEVERANCE:

Q. Judge Lovett has gone into the question of distance with you. Do you know of traffic moving to California points, from around Pittsburg here, by rail to New York, then by the Morgan line around the coast of Florida to New Orleans, or Galveston, and thence to the coast over the Sunset Route of the Southern Pacific?

A. I have no personal knowledge of it. I know that the route can be used.

Q. You know that that is a route that can be used?

A. Yes.

Mr. LOVETT. Because of its extraordinary good character.

Q. And that route is somewhat longer than the direct all-rail routes, is it not?

A. I think it would be very much longer. My judgment would be that it would be very much longer.

Q. That route is as much longer than the all-rail routes
2064 from Pittsburg to San Francisco as the Canadian Pacific route is from Chicago around, is it not?

A. Yes, I would say that the route via New York is even longer than the Canadian Pacific route.

Q. Even longer in comparison?

A. That would be my judgment.

Q. Still that is a route that has been very largely used?

A. I understand so.

Q. Now, as a matter of fact, in the case of what you call dead freight, like tin-plate, that doesn't have to move in a great hurry, is the matter of distance very important?

A. I presume it depends entirely upon the dates of contract deliveries and the condition of stock at the far end, but we speak of dead freight as against perishable. Speaking comparatively, the dead freight in that case can take some longer time than perishable freight.

Q. Where did that tin-plate originate, do you know?

A. In the territory east of Chicago. There are a number of mills.

By Mr. LOVETT.

Q. Are you familiar with the Sunset Route from New Orleans?

A. To some extent.

Q. Is it not true that they have three or four sailings a week of their own ships, that go right to the docks of the Southern Pacific at New Orleans and Galveston and load this California freight right into the cars and send it through in special train-loads?

A. I don't know as to "special train-loads." I know the facilities for transferring it at Algiers.

Q. And at Galveston?

A. And at Galveston, yes.

2065 Q. Don't you know that they are about the best in the country, and that the freight is loaded right into the cars and that they are sent through in solid train-lots?

A. I do not know as to the "solid trains," but I know the facilities for transferring there are very good.

Q. And it is under the same management from New York to destination in California?

A. I understand so.

By Mr. SEVERANCE:

Q. It is that excellent service that can be performed and could be performed from the time the Morgan line was established, that enabled the Sunset Route to so successfully compete with the all-rail lines, is it not?

A. That would be my judgment.

Q. And because of that excellence of service, they are able to compete at the same rates?

A. Yes.

By Mr. LOVETT:

Q. The all-rail lines are soliciting business out of Pittsburg for Pacific coast points just as actively as they ever were, are they not?

A. I was not familiar with the conditions prior to three years ago in Pittsburg.

Q. Well, the Atchison, the Union Pacific and Southern Pacific and these intermediate lines—the Baltimore & Ohio, the Pennsylvania, the North-Western, the St. Paul, and various other lines lying between Pittsburg and the Missouri River, have been very actively soliciting business for the Pacific coast ever since you have been here?

A. They have ever since I have been here, yes.

2066 By Mr. SEVERANCE:

Q. You say that these various lines are all actively soliciting business. You don't mean by that that the Union Pacific and the Southern Pacific at this time are soliciting against each other?

A. No.

Q. Mr. Herring is not competing with himself?

A. Hardly.

By Mr. LOVETT:

Q. They could not very well solicit against each other, since they use the same line, could they?

A. Not unless he might solicit for the Sunset Route as against the Ogden route.

Q. But in either event it would go over the Southern Pacific, wouldn't it?

A. Certainly.

2067 L. C. BIHLER,

called on behalf of the Complainant, being duly sworn, testified as follows:

Direct examination by Mr. SEVERANCE:

Q. Mr. Bihler, where do you live?

A. At Pittsburg.

Q. What is your business?

A. My principal job is that of traffic manager of the Carnegie Steel Company.

Q. How long have you occupied that position?

A. Since January 1, 1904.

Q. Prior to that time what was your business?

A. Also with the Carnegie Steel Company, in the same department, as assistant to the former traffic manager, Mr. McCague.

Q. For how many years have you been in the traffic department of the Carnegie Steel Company?

A. Since the first of April, 1895.

Q. Where are the plants of the Carnegie Steel Company located?

A. In various parts. There are about twenty-nine or thirty, scattered all the way from Columbus, Ohio, on the west to Donora on the east and south.

Q. What place east and south?

A. Donora, Pennsylvania.

Q. How far is that from here?

A. About forty miles.

Q. Does that place take Pittsburg rates, or is it regarded——

A. It is a Pittsburg rate point on long-haul traffic.

Q. Do the Pittsburg rate points take the same rate to the Pacific coast by the way of the Morgan line from New York and the steamship line and the all-rail lines, or is there a difference?

A. I cannot answer that question off-hand; I don't know.

Q. Does traffic move, or has it moved, from Pittsburg common points by way of New York, or does that go all-rail?

2068 A. From our company, all-rail.

Q. And do all these points that you have mentioned, at which the Carnegie Steel Company has plants, beginning at Columbus on the west and going down to this other town in Pennsylvania, take the same rate to the coast?

A. On the commodities that we ship, there is a blanket rate which I believe is the same from each of the plants from which we would ship to the coast.

Q. And has that always been the case, that this blanket rate has been in force?

A. As far as I can recall.

Q. Do you make shipments to the Pacific coast?

A. Yes, sir.

Q. Have you, during all the time you have been connected with the company?

A. We have had more or less tenders for the coast, each year since I have been with them.

Q. What part of the coast?

A. Usually the principal cities, ranging from Portland and Seattle down to Los Angeles and Southern California.

Q. How have you divided your business during these years that you have been connected with the Carnegie Steel Company?

A. Arbitrarily; trying to give each road what we considered a fair and equitable share of the traffic.

Q. You have divided it equally between what transcontinental lines?

A. We might not perhaps divide it equally——

Q. I don't mean equally, but fairly.

A. We would divide it between all routes into California—combination routes.

Q. All the combination routes?

A. There are any number of combination routes that can be
2069 worked—take a composite route consisting of seven or eight lines.

Q. You spoke of business into the Puget Sound country as well as into California. How does your traffic move to Puget Sound points?

A. In various ways; some via Ogden and the Oregon Short Line, and via the Great Northern or Northern Pacific. It is divided between the more direct routes.

Q. And as to California points, what lines does it move over, west of the Missouri River?

A. Various routes; some via the Iron Mountain, Texas & Pacific, the El Paso, the Southern Pacific, or via the M. K. & T. and Texas & Pacific via El Paso or via the various roads; there are numerous ones which cross the Rockies, like the Colorado Midland, Denver & Rio Grande, to Salt Lake; some via the Santa Fe; some via the San Pedro route.

Q. I suppose before the San Pedro road was constructed they moved over the routes that then existed?

A. Yes, sir.

Q. And the Santa Fe carries some of your traffic?

A. Yes, sir.

Q. Where do you deliver to the Santa Fe? At Chicago?

A. At various points. We do not always give them the long haul; sometimes the short haul—the tail-end haul.

Q. That is, deliver to them how far west?

A. As far west as Pueblo.

Q. Prior to 1901 do you remember whether the Union Pacific and the Southern Pacific had separate soliciting agencies here in Pittsburg?

A. As I recall, they had separate offices.

Q. Who was the head of the Southern Pacific office here?

A. I believe Mr. Herring.

2070 Q. And who was the head of the Union Pacific office, do you remember?

A. F. B. Choate.

Q. Where is Mr. Choate now?

A. To the best of my knowledge he is at Detroit.

Q. Do you remember when the Union Pacific agency in Pittsburg was taken out?

A. The amalgamation?

Q. Yes.

A. I have an indistinct recollection of that time; it is rather far back.

Q. You couldn't give the date?

A. I think it was some time in 1901.

Q. And since that time who has represented the two lines here—the Union Pacific and Southern Pacific, since the amalgamation?

A. For a short time after the amalgamation, Mr. Choate; later Mr. Herring—he at present.

Q. During the time that you have been with the traffic department of the Carnegie Steel Company, have you had the pleasure of calls from traffic solicitors?

A. Daily—hourly.

Q. And that applies to the agents of transcontinental as well as other lines?

A. Foreign roads as well as home roads.

Q. Prior to this amalgamation of the Union Pacific and Southern Pacific agencies in Pittsburg, were you called upon by those separate agencies or their representatives in soliciting business?

A. We were.

Q. Frequently?

A. Yes.

Q. How was the Southern Pacific at that time endeavoring to route its traffic?

A. For California?

Q. Yes.

A. As I recall it then, they were glad to get it either via the New Orleans gateway or via the Ogden gateway.

2071 Q. In soliciting business did they give any preference one over the other?

A. Not that I recall. They were glad to get it any way that we chose to give it to them.

Q. You don't remember that they were trying to route their business via New Orleans, to get the long haul?

A. I can't state that as a fact from recollection. I know that they solicited business by both gateways.

Q. And you don't remember about that?

A. Not that detail.

Q. You simply remember that they tried to get it both ways?

A. Yes, sir.

Q. And the Union Pacific of course merely tried to get it via Ogden?

A. Via Ogden or via Kansas City, or Omaha and Ogden.

Q. Do you remember of any solicitation of business by the Southern Pacific into Portland, Oregon?

A. Via New Orleans?

Q. Either way.

A. I should say that they solicited Oregon business, but we never gave them any via New Orleans.

Q. That is what I mean. They solicited the Oregon business?

A. Yes, sir.

Q. The Southern Pacific agency solicited the Oregon business?

A. I believe at that time they had a line to Oregon via the coast from San Francisco up, and solicited that among other classes of traffic.

Q. The Union Pacific likewise solicited Oregon business, did it not, in connection with their own sublines—the Oregon Short Line and the Oregon Railroad & Navigation?

A. They did.

Q. How does your Oriental business move, if you have any?

A. Our company itself does not have any at the present time. We sell to the U. S. Steel Products Export Company. They market the foreign material.

2072 Q. Do they route it?

A. Yes, sir.

Q. Are you familiar with the way it is routed?

A. Yes, sir.

Q. Which way does it move to the Orient?

A. At the present time it moves via the Suez route, via the Atlantic seaboard.

Q. Has it at other times moved the other way?

A. I believe so. Some has moved via the Pacific coast.

Q. Do you remember what steamship lines it moved over from the Pacific coast?

A. The business I have in mind moved, I think, via Tacoma or Portland—part of it—and the steamship line allied to the Great Northern Railway and the Northern Pacific Railway; I think it was the Nippon Yusen Kaisha.

Q. That is the Japanese line?

A. The Japanese Mail Steamship Company.

Q. Over what transcontinental lines would that move to the coast?

A. I believe the traffic was divided equally between the Northern Pacific and the Great Northern, as near as I can recall it. It is now some years since. I think it was prior to 1901.

Q. Do you remember of any shipments by San Francisco to the Orient?

A. I don't recall any.

Q. Nor by Portland?

A. The shipments that I have just referred to went via Portland and Seattle both, I think, some of the steamers loading at each port.

Cross-examination, by Mr. LOVETT:

Q. The Union Pacific has no lines east of the Missouri River, has it?

A. No, sir.

2073 Q. Nor the Southern Pacific any east of New Orleans?

A. No rail lines; no.

Q. Well, no lines except the Morgan line of steamers to New York?

A. That is all.

Q. Traffic shipped from this territory to the Pacific coast, going over either the Union Pacific or the Southern Pacific, would be carried about how far by other lines, before reaching the Union Pacific or Southern Pacific?

A. Various distances. Some business we would give to the Union Pacific at the Missouri River; other business we would give them further west; some routed via the Southern Pacific we would give them at New Orleans, although a minimum portion; other proportions via El Paso.

Q. About what is the distance from Pittsburg to Omaha and Kansas City, approximately?

A. About 970 miles to Omaha.

Q. And to New Orleans?

A. The short line distance, about 1,140 miles.

Q. And to Kansas City?

A. About 900 odd miles, depending on which line you choose between the Mississippi and the Missouri.

Q. So that traffic from this territory to either of those connections could be handled by any one of a great many lines, could it not?

A. Yes.

Q. How many routes do you suppose, roughly speaking, are in existence from Pittsburg to the Pacific coast? 40 or 50?

A. I should say that I could figure out 40 lawful routes by which rates are published—combination routes; probably more.

Q. Which have established rates to the Pacific coast?

A. Yes, sir; all the participating lines concurring in the 2074 California tariff.

Q. Practically all of the carriers interested in either of these routes have solicitors in this territory, haven't they?

A. Yes, sir.

Q. Actively soliciting the business?

A. Yes, sir.

Q. But ultimately it must go either over the Southern Pacific or the Atchison in order to reach Pacific coast points south of Portland, must it not?

A. With the exception that we might use the San Pedro route.

Q. And the San Pedro was opened when, do you remember? 1905, was it not?

A. I should say about that time.

Q. Prior to that time it had to go over either the Southern Pacific or the Atchison?

A. Yes, sir.

Q. The Atchison and its connections are actively soliciting business from this territory, are they not?

A. Yes, sir.

Q. You are familiar with the location of the lines of the Union Pacific?

A. In a general way.

Q. You know the western terminus is at Ogden?

A. Yes, sir.

Q. And it has no outlet to California except the Southern Pacific or the San Pedro?

A. That is my understanding.

Q. And whatever freight is secured by it from this territory to any point south of Portland must go over the Southern Pacific or San Pedro?

A. Yes, sir.

Q. I think you said that you had never shipped any freight, so far as you could recall, over the Southern Pacific, to Portland, but that you usually took the shorter lines?

A. That is correct. It was not a satisfactory route.

Q. You never shipped any to California points by way of
2075 Portland, either, did you?

A. No, sir.

Q. Did you ever know of any shipped that way?

A. I am not familiar with the business of the others; I can only speak regarding our own.

Redirect examination, by Mr. SEVERANCE:

Q. Mr. Bihler, you testified in answer to Judge Lovett, a moment ago, that the only way traffic could reach the coast south of Portland was over the Southern Pacific or the Atchison. It can also reach the coast, can it not, by boat lines down from Portland or Puget Sound points?

A. It can. I was answering the question on the basis of all-rail.

Q. I supposed you were. But the question was not put that way; it was put generally.

A. I will modify my testimony to that extent, if you will permit me.

Mr. LOVETT. I intended "all-rail," because I know the sea is open the other way.

Mr. SEVERANCE. And the boats are running.

WITNESS. Yes, sir; but we don't use them.

Q. You also stated in answer to Judge Lovett that the Southern Pacific route to Portland was not a satisfactory route. What route do you mean by the "Southern Pacific?" The Sunset?

A. I mean the all-rail route from here to New Orleans and Southern Pacific lines thence to Portland—which is three sides of an oblong, and you only need to go one side.

Q. You don't mean the Ogden route to Portland?

A. No, sir. We gave them business via the Ogden route.

Q. That is what I thought. So that your business into
2076 Portland, in the old days, moved both by the Southern Pacific and by the Oregon Short Line, and the Oregon Railroad and Navigation?

A. As I recall it; yes.

By Mr. LOVETT:

Q. I believe you stated that you never had shipped any by the boat line down from Puget Sound or Portland to California points?
A. Correct.
Q. Even if freight were to go that way, it would reach only the coast cities; it could not reach the interior without going over either the Southern Pacific or the Atchison, could it?
A. That is my understanding.

By Mr. SEVERANCE:

Q. There are also boat lines up the river from San Francisco to Sacramento and in that region, are there not, doing a large business?
A. I can not answer from my own knowledge. I have never been out there, and we have never had occasion to use it.
Q. I wondered if you were familiar with the situation—from Judge Lovett's question and your answer.
(No response.)

2077 WILLIAM J. BOGERT

called on behalf of the Complainant, being duly sworn, testified as follows:

Direct examination by Mr. SEVERANCE:

Q. Mr. Bogert, where do you live?
A. Over in Allegheny.
Q. How long have you lived here?
A. Since the 10th of May.
Q. Previous to that where did you live?
A. New York City.
Q. For how many years?
A. All my life.
Q. What business are you in here?
A. I am with the San Pedro road.
Q. That is the road running from Salt Lake City to San Pedro via Los Angeles?
A. Yes.
Q. How long have you been with the San Pedro road?
A. Since then; only since the 10th of May.
Q. Previous to that you say you lived in New York. What was your business in New York?
A. I was with the Chicago & Alton Railroad.
Q. How long?
A. About 21 years.
Q. Were you ever with any other line of road?
A. The Pennsylvania Railroad.
Q. How long?

A. About 23 years.

Q. So you have had a matter of 46 years in the railroad business, have you?

A. Pretty nearly.

Q. Also the time from May to the present. In what capacity were you engaged by the Alton?

A. General Eastern Agent.

Q. What were your duties as General Eastern Agent—soliciting traffic?

A. Yes, sir.

2078 Q. Are you acquainted with Mr. Edwin Hawley?

A. Slightly.

Q. Do you remember when he was the General Eastern Agent of the Southern Pacific?

A. Yes, sir.

Q. Was he competing with you at that time for business with other lines?

A. Yes, sir.

Q. How did Mr. Hawley endeavor to route his traffic?

A. By way of New Orleans.

Q. By boat and rail? or both all-rail and boat and rail?

A. I should say both ways, but principally by boat, I think.

Q. From New York. Do you remember who was the General Eastern Agent of the Union Pacific prior to 1901?

A. In New York City?

Q. Yes.

A. Mr. Tenbroeck.

Q. For how many years did he occupy that position?

A. I think about 20 or 22 years.

Q. Did you know him?

A. Quite well.

Q. What was he trying to do there as General Eastern Agent of the Union Pacific?

A. He tried to work everything by way of Omaha, I should judge, and lines north.

Q. He was trying to route all the business he could to the Coast over the Union Pacific, I suppose, was he not? You mean north of the Sunset Route?

A. I mean north of the Sunset Route.

Q. So that General Hawley and Mr. Tenbroeck were in competition with each other for Coast business?

A. They were.

Q. And for how long a period of time did that extend?

A. Mr. Hawley went there, I think, about 23 or 24 years ago. Prior to that he was with the California Fast Freight Line, you know.

2079 Q. Hawley was?

A. Yes.

Q. Who has represented the Union Pacific and Southern Pacific here since you came here?

A. Mr. Herring.

Q. Do you come in contact with Mr. Herring and his assistants in the solicitation of business?

A. Yes, sir.

Q. How is that?

A. We ask his assistance. We don't need it entirely, you know.

Q. You ask his assistance in routing business?

A. Yes, sir.

Q. That is, you ask his assistance as the agent of the Union Pacific?

A. That is all.

Q. And you endeavor to get Mr. Herring to forget for the time being that he is agent of the Southern Pacific?

A. That is the idea.

Q. And simply be agent of the Union Pacific with you; is that right?

A. Well, he acts quite neutral.

Q. He is quite neutral?

A. Yes.

Q. That is, as I understand it, Mr. Herring routes, we will say, Union Pacific business out of here, and he is quite neutral between you and the Southern Pacific beyond Ogden and Salt Lake?

A. I think so.

Q. Who is there here, then, that is looking after the business that Hawley used to try to send by New Orleans and the South?

A. I assume it is being done in Mr. Herring's office.

Q. Oh, that is by Mr. Herring's office. They are not neutral as to that?

A. No; I don't know.

Q. I want to find out, if I can, Mr. Bogert, because you are in the business and sort of associated with these people, just how they
2080 divide themselves up between their different routes. Now who is there that represents the Sunset Route here for business all rail and——

A. I presume the same party that represents the Union Pacific.

Q. And this neutrality which they observe as between the San Pedro and the Southern Pacific applies only to the Southern Pacific-Ogden route?

A. That is all.

Q. Do they also show neutrality as between your route and the Sunset?

A. As far as I know.

Q. They don't try to get business away from you?

A. I don't think so.

Q. What are the duties of soliciting agents, and how do they perform those duties? What do they do to get business?

A. Well, to-day they can't do very much but look after the business they do get.

Q. That is it. That is, they cannot offer reduction of rates?

A. No.

Q. Or rebates or anything of that sort. But what are the elements that aid them in competing with each other for business?

A. I think the shippers like to see as many people in the field as it is possible to get there.

Q. For what purpose?

A. To keep competition rife; to make time.

Q. And insure good facilities—quick time?

A. Yes, sir; make quick time.

Q. Prompt settlement of damages?

A. That is the idea.

Q. And those are the representations that you make to shippers——

A. Yes, sir.

Q. That you will give them good service?

2081 A. Perfectly satisfy them in regard to their claims—settle them right away.

Q. When you were living in New York, prior to 1901, what did you know about the competition for passenger business to the coast?

A. I could not say very much about that.

Q. Were you in the freight business yourself?

A. Principally in the freight business. We had a passenger man in New York then.

Q. You had another man—passenger man?

A. Yes, at that time.

Q. Did the different transcontinental lines maintain passenger departments in New York?

A. I think they did, yes, sir. I know they did.

Q. And what were those passenger agents doing—trying to work business by their lines?

A. I think so, yes, sir.

Cross-examination by Mr. LOVETT:

Q. Whatever business the Union Pacific secured either in New York when you were located there or from this territory, for the Pacific coast south of Portland, had to go over the Southern Pacific ultimately, had it not, prior to the opening of the San Pedro line?

A. Yes, sir.

Q. The Southern Pacific was the only connection of the Union Pacific for the Pacific coast prior to that time?

A. That was my understanding.

Q. When was the San Pedro line opened for business?

A. I should say about three or four years ago.

Q. About May, 1905, wasn't it?

A. Possibly that time. I don't remember exactly when.

2082 Q. You don't remember the exact date?

A. No.

Q. In this neutrality that was referred to, is it not true that Mr. Herring tries to secure the business either for the Union Pacific or the Southern Pacific by the route that will give them the longest haul? Doesn't he work both the Ogden, the Omaha, and the New Orleans routes, or does he—and the El Paso?

A. I should judge they would be obliged to.

Q. He works all of those routes?

A. Yes.

Q. All of those gateways, does he not?

A. I should judge so, yes, sir.

Q. With his various connections?

A. Yes, sir.

Q. He does not attempt to interfere with any business that you control, to divert it from your line, does he?

A. No, sir, he does not.

Q. You understand that the Union Pacific owns a half interest in the San Pedro?

A. I have heard that, but they don't help us any at all.

Q. Do they prefer the Southern Pacific?

A. I can't say about that.

Q. There are a great many lines that have established rates from this territory to the Pacific Coast, are there not?

A. Oh, yes.

Q. Neither the Union Pacific nor the Southern Pacific extends east of the Missouri and Mississippi rivers?

A. Not that I know of.

Q. And there are a great many lines between Pittsburg and the Missouri and Mississippi rivers that unite in establishing rates to the Pacific Coast?

A. There are.

2083 Q. All of those lines have solicitors in this territory, have they not?

A. Yes, sir.

Q. Actively soliciting the business?

A. They are.

Q. Has not the service to the Pacific coast been very much improved since 1900?

A. I should say it had.

Q. You understand the railroads have been very much improved, don't you?

A. Yes, sir. Competition has forced that.

Q. Both the Union Pacific and the Southern Pacific, as well as other lines?

A. And the Santa Fe.

Q. Yes; the Santa Fe. The Santa Fe is a very active competitor for that business, is it not?

A. Very much so.
Q. And its connections east of Chicago and the Missouri river?
A. Yes, sir.

Redirect examination by Mr. SEVERANCE:

Q. Judge Lovett was asking you about the improvements in the railroads since 1901. Have not all the railroads in the country been very largely built over, since 1901, east as well as west?
A. I assume they have. I did not speak of the re-building of the railroads so much as I did of the fact that competition has forced the time on us all.
Q. Take the railroads east of Chicago. Their ability to handle business quickly and satisfactorily has been largely
2084 increased by expenditures since 1901, has it not?
A. I should judge so.
Q. Take the Pennsylvania road running through this state; they have spent enormous sums since then in bettering their roads, haven't they?
A. Yes, sir.
Q. So the Union Pacific and Southern Pacific have no monopoly on the bettering of railroad facilities since 1901?
A. No, sir.
Q. Judge Lovett called your attention to the fact that the Union Pacific has a half interest in the San Pedro. You said you understood that was the fact.
A. I have heard that; I don't know it to be true.
Q. He brought that out in connection with this neutrality of Mr. Herring. You never heard that the Southern Pacific had any interest in the San Pedro?
A. No, I never did.
Q. So that Mr. Herring's neutrality as the agent of the Southern Pacific would not be produced by any stock ownership?
A. No.
Q. There must be some other explanation of that. You were also asked by counsel if it was not a fact that neither the Union Pacific nor Southern Pacific had any lines east of the Mississippi or Missouri rivers, and you stated that was the fact. You did not intend to testify that the Southern Pacific had no boat line east?
A. No, I did not.
Q. They have a boat line from New York to Galveston that does a very large traffic?
A. Yes, sir.
Q. Do you know how often these boats have been in the habit of sailing out of New York?
A. Three or four times a week, possibly.
Q. Good sized boats too, are they not?
A. I should judge so.
2085 Q. For where is the traffic bound that they take out of New York?

A. I should say all the way up the Pacific Coast.

Q. Beginning with their first landing at New Orleans and thence on to the Coast?

A. Yes, sir.

Q. Also take traffic into Colorado common points and Utah common points, do they not?

A. Yes, sir.

Q. In connection with the rail lines?

A. Yes, sir.

Q. And the Union Pacific also reaches those points in connection with the lines to the east?

A. Slightly; only to a slight extent, I think.

Q. When you were with the Alton, your western terminus was where?

A. Kansas City.

Q. Did you handle business into Colorado common points over the Alton in connection with the Union Pacific?

A. We did.

Q. Both the Union Pacific and your road were actively soliciting that business, were they not?

A. Yes, sir.

By Mr. LOVETT:

Q. Did the Alton participate in the carriage of California business when you were connected with it, Mr. Bogert?

A. I beg your pardon? I could not hear what you said.

Q. Did the Alton participate in the carriage of Pacific Coast business during the time you were connected with it?

A. Oh, yes.

Q. As all other lines east of the Mississippi and Missouri rivers did?

A. Yes.

Q. Do you know of any other railroads in the country that have spent more or made more improvements on their railroads than the Union Pacific and the Southern Pacific?

2086 A. I think the Pennsylvania has done pretty well.

Q. Since 1901?

A. I do not know what has been done in the west.

Q. You have not been over those lines?

A. No, sir, I have not.

2087 A. B. EWER,

called on behalf of the Complainant, being duly sworn, testified as follows:

Direct examination by Mr. SEVERANCE:

Q. Mr. Ewer, where do you live?

A. Pittsburg.

Q. What is your business?

A. General freight agent of the Harbison-Walker Refractories Company.

Q. What do they make?

A. They make fire brick; refractory materials.

Q. Is that a large concern, Mr. Ewer?

A. Well, it is considered so, I believe.

Q. I mean it would be considered large anywhere but in Pittsburg, I suppose?

A. Oh, it would be considered large right in Pittsburg.

Q. And where do you do business?

A. All over the country.

Q. Do you do business at the Pacific coast?

A. Some, yes; not a large amount.

Q. You say you make what? I didn't quite catch it.

A. Fire brick, used in the lining of furnaces and cupolas and smelting—anything that comes in contact with heat.

Q. So it goes into the mining country where the smelters are in the West?

A. Yes.

Q. And California?

A. Well, not so far. More around in through the central section of the country. More to the big steel mills and propositions of that sort.

Q. Prior to your connection with that company what was
2088 your business?

A. Contracting freight agent of the Central States Despatch, in Philadelphia.

Q. Central States Despatch?

A. Yes.

Q. What was that, and who controlled it?

A. That is controlled by the B. & O. and the Philadelphia & Reading and their allied interests.

Q. And to what part of the country did you send freight?

A. All over the United States; Pittsburg and the west; anything based beyond 60 per cent points.

Q. Then how would your freight move to the coast over beyond the Missouri River?

A. Any way we could get it.

Q. And from whom did you solicit that business?

A. If it was controlled by consignees we solicited it through the western lines; if by shippers, from the shipper direct.

Q. Suppose the business was controlled by the shipper in the east; how did you endeavor to route it, or were you impartial between the coast lines?

A. It was a question there of a trade-off. If one man had a pointer, and I had one, we would trade it off. If he would give me a pointer, I would give him one.

Q. That is, it was what one of the traffic men called "reciprocity"?

A. Yes. Swapping pointers, as we call it.

Q. Swapping business?

A. Yes.

Q. How many years were you with that freight line?

A. I really cannot recall, but I think about eight or nine years.

Q. You were actively engaged in soliciting business during that time, were you?

A. Yes.

2089 Q. What classes of traffic?

A. All kinds. My principal business was what is known as package freight. I was put on the street for that purpose.

Q. That was in Philadelphia?

A. Yes; but I did not confine myself to that.

Q. At the time you were soliciting business for that line did the Sunset Route of the Southern Pacific have an agency in Philadelphia?

A. They had.

Q. And how were they trying to route coast business?

A. My recollection is that if they found the business going all-rail they left it alone; if they did not, they would take it any way they could get it.

Q. Did they have agents there working their boat and rail line?

A. Oh, yes.

Q. Via New Orleans, or Galveston?

A. That I do not recall. My recollection of that is that it would be more between New York or directly through Chicago.

Q. That is, you do not know where the western terminus of their boat line was—whether it was New Orleans or Galveston?

A. No; I did not pay any attention to it; I did not have any interest in it.

Q. Of course you had no interest in it, because you could not participate in that business.

A. That is it. I did not pay any attention to it.

Q. But they were competing with you? They were trying to get business that you were trying to get, to the coast?

A. Oh, yes.

Q. How was that business that they were able to take that way by their boat line handled out of Philadelphia? Where did

2090 it go—to New York?

A. My recollection is that some times it either went all-rail to New York and sometimes Clyde Line to New York.

Q. But it went to New York?

A. Oh, yes.

Q. And there took the Morgan Line ships to the Gulf ports?

A. Yes.

Q. At the present time, occupying the position you do, are you called on at times by freight solicitors?

A. Regularly.

Q. What route to the coast does Mr. Herring work now—if you know him—do you know Mr. Herring?

A. Oh, yes.

Q. Does he sometimes call on you?

A. Quite regularly.

Q. And what route is he working to the coast?

A. Any business that comes up he generally says he would be glad to get it anywhere he can get it.

Q. He is not particular, so long as it is over one of the lines that he represents?

A. No, because we generally do not go into it that far. He says, "Have you any business going West?" I say, "Yes. Well, we will give it to you where we can."

Q. And he comes to you that way and tries to get the business?

A. Oh, yes.

Q. Representing the Union Pacific and the Southern Pacific roads?

A. Yes.

Q. He is a very pleasant gentleman, is he not?

A. He certainly is.

Q. Does any of your freight go to the coast by boat and rail?

A. It is not the kind that could.

Q. That is what I was going to ask you. Why is it that you
2091 have to send it all-rail?

A. Well, we do not like to break bulk; and then it is liable to be chipped in rehandling.

Q. So that with you the matter of shipment all-rail, as against boat and rail, is governed by the character of the stuff to be shipped and the service that can be rendered?

A. Yes.

Q. And in your opinion it is better service to load it into a car and take it off to its destination?

A. Yes. That is the only way that—No, except as far as long-haul business is concerned, that is the only way it does go. We occasionally ship into Cleveland by rail and lake, but very seldom.

Q. Into Cleveland?

A. Yes. Of course not into the territory that you are referring to now.

Q. But you do not use the boat-and-rail to the coast at all?

A. Not at all.

Cross-examination by Mr. LOVETT:

Q. How far is it necessary for your freight to move before it reaches the Union Pacific or Southern Pacific lines, Mr. Ewer?

A. To the Missouri River, I should say.

Q. About how far?

A. I could not give you the mileage. I never thought of it.

Q. There are a great many carriers engaged in this Pacific coast business between the points of origin and the Missouri River, are there not, Mr. Ewer?

A. A great many of them.

Q. And they all have solicitors?

A. All of them.

Q. Actively working for the business?

A. Very actively.

Q. Both in connection with the Union Pacific, the Southern
2092 Pacific, and the Atchison?

A. All lines.

Q. Whatever business you send to California that goes over the Union Pacific must also go over the Southern Pacific, must it not?

A. I think so.

Q. Or the San Pedro line?

A. Yes. There are no other connections there.

Q. I believe you testified that when you were soliciting freight in Philadelphia for the fast-freight line that you mentioned, the Southern Pacific agents were then working the freight by several different routes, did you not?

A. I did.

2093 JAMES E. HENRY,

called on behalf of the Complainant, being duly sworn, testified as follows:

Direct examination by Mr. SEVERANCE:

Q. Mr. Henry, where do you live?

A. My residence is in Butler County, about 32 miles from here; but practically all my time is spent in Pittsburg.

Q. What is your business?

A. Traffic manager for the Standard Sanitary Manufacturing Company.

Q. How long have you been occupying that position, Mr. Henry?

A. I have been traffic manager for a little over a year.

Q. Previous to that what were you doing?

A. I was in the traffic department of the same company.

Q. For how long?

A. Little over two years.

Q. And previous to that what were you doing?

A. I had been with the Pressed Steel Car Company for about four years.

Q. And previous to that?

A. I was with the American Window Glass Company for two years.

Q. All the time in charge of traffic for these—

A. Working in the traffic department and minor positions.

Q. And then before that were you ever with any railroads?

A. For quite a number of years I was with the Pennsylvania system, in different capacities, from messenger boy, rate clerk, claim clerk, and so forth.

Q. Were you also with the B. & O. for awhile?

A. I was with them for about two years.

Q. In what capacity?

2094 A. I was rate clerk in their commercial freight agent's office.

Q. Then, for quite a good many years last past you have been engaged in one way and another in the railroad service, in the traffic end of the service?

A. Practically since I was a small boy.

Q. Since you were a boy?

A. Yes.

Q. Never had anything to do with operation?

A. No; always in the traffic.

Q. Previous to 1901 do you remember anything about competition here for Pacific coast business between the Union Pacific and the Southern Pacific, previous to the time that Mr. Herring was made the agent of both lines, we will say?

A. Just in a general way.

Q. Do you know how Mr. Herring was at that time endeavoring to route his California business?

A. He took it either via New Orleans or Ogden.

Q. Yes, I understand. But do you know how the business was solicited by the Southern Pacific people? Did they try to get the long haul or the short haul?

A. I judge naturally they would take the long haul; if they could not get that, they took the short haul.

Q. The long haul was via New Orleans, was it not?

A. Yes.

Q. The Union Pacific was represented here at that time by whom?

A. A party named Lothrop was, I believe, about that time agent here for some time.

Q. How was Mr. Lothrop trying to route traffic to the coast?

A. Via Kansas City or Omaha.

Q. And the Union Pacific?

A. Yes.

2095 Q. Was the Southern Pacific at that time soliciting Portland business by Sunset Route?

A. My recollection is they did to some extent.

Q. How does the business that you have to route now for the Standard Sanitary Manufacturing Company move to the coast?

A. For California terminals, via the Union and Southern Pacifics, via the Santa Fe, and via the San Pedro route, in connection with the different lines leading up to those lines.

Q. How does your Portland business go?

A. To a great extent via the Northern Pacific and Great Northern roads. Some via the Union Pacific and O. R. & N.

Q. Do those different transcontinental lines—that is, the Northern Pacific, the Great Northern, the Santa Fe, the Union Pacific—each maintain soliciting agencies here?

A. Yes, sir.

Q. They call on you and solicit business?

A. Yes, sir.

Q. Do you find any competition at the present time between the Union Pacific and the Southern Pacific?

A. I do not understand your question exactly.

Q. I say is there any competition in the solicitation of business here at the present time between the Union Pacific and the Southern Pacific?

A. Mr. Herring and his assistants solicit freight for each line, and they never intimate to me that they have any preference.

Q. They are not violent, at least, in soliciting against themselves?

A. No, sir.

Q. Is there any traffic moving to the coast by the Lakes?

A. Yes, sir.

2096 Q. In summer?

A. That is, to north coast points we have quite a large movement that way.

Q. How do you send it?

A. Mostly via Cleveland or Erie, in connection with the Mutual Transit; also the Anchor Line; some via Buffalo and the New York Central's boat line in connection with the various rail lines leading west from the Lake terminals.

Q. Where does it go—to Chicago or to Duluth?

A. The large percentage of it goes to Duluth, although occasionally we send cars via Chicago.

Q. Suppose it goes via Duluth; how does it move to the coast?

A. Either Northern Pacific, or Great Northern, or C., St. P., M. & O., and Union Pacific, and their connections.

Q. That is, the Chicago, St. Paul, Minneapolis & Omaha have a line leading from Duluth down to Omaha?

A. Yes.

Q. Where they turn over business to the Union Pacific?

A. Yes, sir.

Q. And does that route, made up of the boat lines to Duluth, and the Omaha road to Omaha, then the Union Pacific and its connections, compete with the Northern Pacific and Great Northern into Portland?

A. Yes, sir.

Q. Your business, I am speaking of?

A. Yes, sir.

Q. That is, from Pittsburg?

A. Yes, sir.

Q. How was that during the time that you were with the American Window Glass Company? Did they ship that way at all?

A. I do not recall that we did to any extent. Quite a number of the factories are located out in Indiana, and I do not just recall whether we had a differential from there at that time or not.

2097 Q. This summer lake route has a differential, has it not?

A. Yes, sir.

Q. As against the all-rail lines?

A. Yes, sir.

Q. In fact, the lake route always has a differential?

A. Yes. They would not get the business unless they had—at least not on our class of goods.

Q. That did not apply simply to your class of business, but on all classes of business there is a differential, is there not?

A. I should judge so. Of course, I can only testify as to our own.

Q. Has this company that you are with—the Standard Sanitary Manufacturing Company—more than one factory?

A. Yes, sir; they have three factories.

Q. Where are they?

A. Pittsburg north side, New Brighton—about thirty miles below the city here, on the Pennsylvania lines—and at Louisville, Kentucky. They also had a large factory at Detroit, Michigan, but it was closed up about a year ago.

Q. What does this company manufacture?

A. All kinds of sanitary goods; bathroom fixtures, principally bathtubs and lavatories, and closets of different kinds.

Q. Could you give any idea of the volume of that business; or as compared with any other companies in that line of business what is its volume?

A. Why, their advertisement says they are the largest manufacturers in the world.

Q. Well, you believe any advertisement displayed by your own company, do you not?

A. Yes, sir.

Q. Do your shipments go to all parts of the country?

2098 A. All parts of the world; wherever we can sell goods.

Q. How does your stuff move to the Orient?

A. Different ways. It was moving via Pacific coast points; but lately it is moving via Suez.

Q. When it went via Pacific coast points, how did it move?

A. Our export business, I believe, moved principally Union Pacific, although some of it probably Santa Fe. Some of it did move Santa Fe.

Q. And sailed by boat out of San Francisco?

A. Yes, sir.

Q. You never shipped by any other lines on the Pacific except the lines coming to San Francisco?

A. No; we never exported any by the northern ports.

Q. What boat lines, if you remember, took the traffic out of San Francisco?

A. The Pacific Mail and the American Hawaiian Line, I believe.

Q. Do you ship any goods to the coast by the American Line of steamships?

A. No, sir; we do not ship via ocean vessels where we can avoid it—on account of the liability of our goods to be damaged from being handled in and out of the holds of the ship. Most of our goods by way of lake are handled on the decks, and do not go into the holds of the ships.

Q. Then the question that determines you in shipping by all-rail rather than by boat-and-rail is the relative service of the two ways?

A. Yes, sir.

Q. I suppose the solicitors that come around and talk to you do not hesitate to speak of that, do they?

A. Oh, no. Of course each man works everything he can to influence business for his line.

2099 Q. And what are the principal inducements that they are able to offer?

A. Superior service.

Q. Or at least the promise of it?

A. Yes.

Q. And if you ship over a certain line and get good service you are apt to continue with that line?

A. Yes, sir; everything else being equal.

Q. Well, in your opinion, that is the largest factor in competition, is it not—the superiority of service?

A. At the present time that is practically the only factor.

Cross-examination by Mr. LOVETT:

Q. Have you ever found any better service to California points than the Union Pacific-Southern Pacific, Mr. Henry?

A. No; I cannot say that I have, to California points.

Q. Have the Louisville & Nashville soliciting agents here?

A. Yes, sir.

Q. The Illinois Central?

A. Yes, sir.

Q. The Queen & Crescent?

A. Yes, sir.

Q. The Southern?

A. Yes, sir.

Q. They all try to work the California business by way of New Orleans, do they not?

A. Yes, sir. We give them some business that way on account of our friendly feeling toward the representatives here.

Q. The Rock Island has representatives?

A. Yes, sir.

Q. The Burlington?

A. Yes, sir.

Q. And the North Western?
A. Yes, sir.
Q. The St. Paul?
A. Yes, sir.

Q. And practically all of the lines lying between Pittsburg
2100 and the Missouri and Mississippi rivers have representatives here?

A. Yes, sir.
Q. They all work actively for the business to the Pacific coast?
A. Yes, sir; each man is trying to make a showing for his office.
Q. All business going over the Union Pacific that the Union Pacific gets for the Pacific coast south of Portland has always moved over the Southern Pacific from Ogden, has it not, except that which goes over the San Pedro road? That is to say, the Southern Pacific line from Ogden to the Pacific coast is the only outlet for the Union Pacific on the Pacific coast business south of Portland, is it not?
A. Yes, sir, as far as our business is concerned.
Q. The oriental business that you spoke of, you said, I believe, that most of it went by the Union Pacific?
A. Yes, sir.
Q. You mean by the Union Pacific and Southern Pacific?
A. Yes, sir, certainly.
Q. I think you also testified—or I understood you to testify—that even prior to 1901 the Southern Pacific agent here worked both routes—that is, by Ogden and by way of New Orleans and El Paso?
A. Yes, sir.
Q. He never indicated any decided preference for those routes, did he, Mr. Henry? Didn't he take it either way he could get it?
A. Yes, sir.
Q. Naturally, as you said, taking the long haul where he could get it, and if not, taking the other?
A. Yes. Of course he never missed any business, though, on account of that.

2101 Redirect examination by Mr. SEVERANCE:

Q. You say that he took it as he could get it. Now, is not this about the fact: that the Southern Pacific agents were acting at that time under the orders of Mr. Hawley in New York (I will reduce him to the ranks and call him "Mr. Hawley"), solicited all the business and tried to get it moved by the long haul via New Orleans, and if they could not get it that way, they were glad to get it by the Ogden route, because they would participate in the haul, rather than to have some other line get it away from them entirely. Was not that about the situation?
A. To a certain extent, yes.
Q. You stated, in answer to Judge Lovett, that you routed some business via New Orleans because of your friendly feeling toward the representatives of some of the lines soliciting that business?

A. Yes, sir.

Q. That is an element that enters into getting business, always, is it not?

A. Yes, sir.

Q. If the roads are represented by men who are square and agreeable, they get business that way?

A. Yes, sir. The personality of a representative nowadays has considerable influence in securing business; that is, his activity in showing his disposition to do what he can to facilitate your shipments and your business in general, in small ways, which he can within the law.

Q. Yes; that is what I thought.

Recross-examination by Mr. LOVETT:

Q. You are familiar with the requirements of the Inter-
2102 state Commerce Act and the regulations about publishing tariffs, are you not, Mr. Henry?

A. Yes, sir.

Q. Don't you understand that the Union Pacific never could have made a rate to California, south of Portland, prior to the construction of the San Pedro, without the consent of the Southern Pacific? That is correct, is it not?

A. I do not understand how they would have any outlet for their goods all-rail.

Q. I beg your pardon?

A. I say I do not understand how they would have any other way of reaching it all-rail.

Q. And the concurrence of the Southern Pacific in that rate was necessary, was it not?

A. Yes, sir.

By Mr. SEVERANCE:

Q. They could route traffic to Portland over their own rails, and from there by boat to San Francisco, without asking the consent of the Southern Pacific, if they were independent of the Southern Pacific, could they not?

A. Yes, sir.

Q. The sea was open to the Union Pacific?

A. Yes, sir.

Q. And they had boats there, had they not?

A. I believe they had; although I do not recollect of using them.

By Mr. LOVETT:

Q. You never knew of them to send any that way, did you, Mr. Henry?

A. Of course, I don't know what they did of their own volition. Any concern I was with did not route in that way.

2103 L. T. FOWLER,

called on behalf of the Complainant, being duly sworn, testified as follows:

Direct examination by Mr. SEVERANCE:

Q. Mr. Fowler, where do you live?

A. Pittsburg.

Q. And what is your business?

A. Travelling freight agent for the Merchants & Miners Transportation Company.

Q. Just what is that company, Mr. Fowler?

A. It is a seacoast line running between Baltimore and Savannah, Norfolk, Newport News, running north to Boston, Providence and Fall River. We also have a line operating from Philadelphia to the same points.

Q. Do you work in connection with the rail lines?

A. Yes, sir.

Q. Between here and the coast?

A. Yes, sir.

Q. What class of business do you solicit for that route?

A. All classes.

Q. Well, to what points of destination, I mean?

A. Oh! North—Boston, Fall River and Providence are the only points.

Q. You do not participate in any Pacific coast business?

A. No, sir.

Q. Prior to the time you went with that concern, what road, if any, were you with?

A. How far back do you want me to go?

Q. Start in at the time you went with the Merchants & Miners, and work back. I will tell you when to stop.

A. I went with the Merchants & Miners in November, 1894.

2104 Prior to that I had represented the Union Pacific up to August 15, 1893—from February 1st, 1891.

Q. Where?

A. At Pittsburg. Prior to that time I was with the Union Pacific in Philadelphia, from about February 1st, 1888, up to the time I came to Pittsburg.

Q. Go on.

A. Back prior to that? For eighteen years prior to that I was with the Lehigh Valley.

Q. In what capacity?

A. As local agent at one time, and from that to chief clerk of the general freight agent.

Q. That takes you back to 1870?

A. That takes me back to 1870, yes, sir.

Q. Well, I think that is far enough. During all that time, Mr. Fowler, from 1870 on, you have been connected with the traffic department of railroads?

A. Yes, sir.

Q. Exclusively?

A. Yes, sir.

Q. That has been your business?

A. Yes, sir.

Q. For nearly forty years. You say that you were the agent of the Union Pacific in Pittsburg?

A. Yes, sir.

Q. From 1891 to 1893?

A. From February 1st, 1891, until August 15th, 1893.

Q. When were the two agencies here consolidated?

A. My recollection is along about 1901. I am not certain about that.

Q. Were you with the Union and the Southern both from 1893?

A. No; I never represented the Southern.

Q. You represented the Union?

A. The Union, yes, sir.

Q. Under the direction of Mr. Herring?

A. No, sir; under the direction——

Mr. LOVETT. You have got the dates mixed.

2105 Mr. SEVERANCE. Oh, 1893. I beg your pardon.

Q. This was 1893; not 1903?

A. Oh, no; 1893.

Q. I was mistaken about the year. So you were with the Union Pacific here from 1891 to 1893, and from 1888 to 1891 you were in Philadelphia with the Union Pacific?

A. Yes, sir.

Q. I understand. And since 1893 you have been with the Merchants & Miners Transportation Company?

A. With the Merchants & Miners Transportation Company, yes, sir.

Q. At the time that you were with the Union Pacific, what were the conditions as to competition between the Union Pacific and the Southern Pacific for coast business?

A. Very strong.

Q. How was the Southern Pacific attempting to route its business?

A. Well, naturally they would work for the long haul; but if I would succeed in getting a tip on a shipment, I would, of course, naturally, try to get it for the Union Pacific. In that case, Mr. Herring and I would work very close together.

Q. Yes; because he got the haul from Ogden?

A. Because he got the haul from Ogden.

Q. But the efforts of the Southern Pacific were to get it the other way?

A. Yes, of course; naturally so.

Q. Was business worked from here by way of the Morgan line?

A. Not to my knowledge.
Q. Not from Pittsburg?
A. Not from Pittsburg.
Q. How was it from Philadelphia?
A. It was.

Q. In Philadelphia what was the situation as to competition
2106 between the Union Pacific and the Southern Pacific?

A. Very strong indeed. They worked more particularly via New York and Morgan line.
Q. How did the stuff move from Philadelphia to New York?
A. It moved sometimes through the canal and sometimes rail.
Q. And the Morgan line absorbed the haul into New York?
A. The Morgan line, of course, naturally absorbed the haul.
Q. At that time when you were in Philadelphia, then, you were in active competition with them for coast business?
A. Yes, sir.
Q. As you were here in Pittsburg?
A. Yes, sir.
Q. How about business into Portland?
A. From where?
Q. From here, or from Philadelphia.
A. From here. I never knew the Southern Pacific to solicit any business to Portland, that I know of. I have no recollection of anything of that kind at all.
Q. By that you mean the Sunset Route?
A. By that I mean the Sunset Route, yes, sir.
Q. Did you know them to solicit business by the Ogden route to Portland?
A. By the Ogden route?
Q. Yes.
A. Not that I know of.
Q. How about to the coast from Philadelphia?
A. That, of course, they would naturally work via New Orleans.
Q. Did they solicit Portland business from Philadelphia?
A. Not that I know of.
Q. You do not know about that?
A. I do not know about that, no, sir.
Q. What did you know in 1888 and 1889, along there, when you were agent for the Union Pacific, either at Philadelphia or
2107 here, about the boat line from Portland to San Francisco?

A. At that time, in 1888 and the forepart of 1889, the business moved, to a large extent, for San Francisco via Portland and by boat from Portland down to San Francisco.
Q. That is, the Union Pacific business?
A. The Union Pacific business.
Q. Then, at that time you were actively soliciting business for San Francisco by that route, were you?
A. Yes, sir.

Q. And did you succeed in routing a good deal of business that way?

A. Yes, sir.

Q. What class of business?

A. Mostly dry goods.

Q. That was in 1888 and 1889?

A. Yes, sir.

Q. Where were you living then; in Philadelphia?

A. In Philadelphia, yes, sir.

Q. And the Sunset Route were actively soliciting that same traffic?

A. Sure thing.

Q. Judge Lovett has asked several of the witnesses if it was not necessary for the Union Pacific to get the consent of the Southern Pacific to make a rate into San Francisco or California points. You did not have to ask the consent of the Southern Pacific to make a rate on that rail and boat line, did you?

A. No, sir.

Q. You did not use the Southern Pacific line at all?

A. No, sir, not on that. We used the Southern Pacific on some other traffic.

Q. I understand. But this business I am speaking of that was moved by rail and boat, you did not?

A. No.

Q. Do you know of any competition in rates on Pacific coast business in the old days, some years prior to 1901—well, the time when you represented the Union Pacific, was there any competition in rates to the coast between the Union Pacific and the Southern Pacific?

2108

A. In the way of allowing concessions?

Q. Yes.

A. I do not know what the Southern Pacific did. I know I had no authority to do anything of the kind.

Q. Do you remember anything about a consignment of trolley poles shipped to San Francisco from Pittsburg in 1892, when there was some difference about the rate, between you and the Southern Pacific?

A. Yes; I remember that very distinctly.

Q. What was the circumstance?

A. The circumstance was the misreading of the classification by myself. Mr. Herring read the classification as iron pipe and I read the classification as trolley poles, because it was nothing more or less than iron pipe with three pieces. When it got to destination it was put together and made a trolley pole.

Q. Were you both trying to get that business?

A. We were both trying to get it, yes, sir.

Q. Who got it?

A. I did.

Q. Then, when you misread that tariff, you read it at a higher rate than did Mr. Herring, did you?

A. I read it at a higher rate, yes, sir.

Q. Mr. Herring managed to read the tariff at a lower rate?
A. Yes, sir.
Q. Then you read the tariff at the same rate he did and got the business?
A. I did.
Q. Take that shipment in question, where you and Mr. Herring had this competition in reading tariffs—how was Mr. Herring
2109 trying to route that business?
A. Naturally, I suppose, via the New Orleans route.
Q. Now, Mr. Fowler, all rates being equal to different points, what are the principal elements that enter into the solicitation of business?
A. Personality and service.
Q That is, the personality of the gentlemen who are soliciting the business?
A. Yes, sir.
Q. And the service they are able to render, or promise?
A. Yes, sir.
Q. And what elements are particularly in your mind in the way of service?
A. Well, through cars, close connections, and through trains on the different roads that carry the business.
Q. Time?
A. Time is an object nowadays.
Q. And what service do the soliciting agents perform for shippers?
A. They simply keep calling on the shippers and ascertain if they have any business moving in the direction they represent; and if so, why, of course, they must try to use all the personality they can to get the business on the line they represent.
Q. What service are you principally able to perform for the shippers?
A. Simply to keep track of the shipment in the way of tracing it and keeping them posted as to the movement from time to time.
Q. The soliciting agents also look up rates for the shippers, do they not?
A. Yes, sir; certainly.
Q. And examine the tariffs?
A. Yes, sir; certainly.
Q. Which are very complicated, I suppose, in cases?
A. Yes, sir.

2110 Cross-examination by Mr. LOVETT:

Q. Do you perceive any reason, Mr. Fowler, why the attitude of either the Union Pacific or the Southern Pacific in the matter of settling claims, or their treatment of shippers, should be any different now than what it was formerly?
A. Not that I can see.
Q. There is the same inducement for the Union Pacific to settle claims promptly and to treat the shipper nicely now as there was before, is there not?

A. Yes, sir; I should imagine so.

Q. And so with the Southern Pacific?

A. Yes, sir.

Q. Because there are a great many other lines actually competing for business to California?

A. Yes, sir.

Q. That could be diverted to the Atchison or other lines?

A. Yes, sir.

Q. So there is no reason for any change in their situation in that respect?

A. Not that I can see.

Q. Which way did those poles go when you got them, Mr. Fowler?

A. You mean from the time they left here?

Q. Till they reached destination.

A. My recollection is that they moved via the Baltimore & Ohio and the Chicago & Northwestern in connection with the Union Pacific at Omaha, and in care of the Southern Pacific at Ogden.

Q. So they went over the Southern Pacific at last.

A. Yes, sir.

Q. They went over the Union Pacific about a thousand miles and over the Southern Pacific line about 850 miles?

A. Yes, sir.

2111 Q. You testified, in answer to questions by Mr. Severance, that the competition between the Union Pacific and the Southern Pacific in those days was very strong. You mean the competition of the Sunset Route?

A. It was stronger then than it is now.

Q. Yes. You mean, though, that even then the competition was between the Sunset Route and the all-rail lines of which the Southern Pacific was a part?

A. Yes, sir.

Q. The Southern Pacific preferring the line where it would have the entire haul——

A. Certainly.

Q. ——from New York, or a longer haul from New Orleans?

A. Yes, sir.

Q. As against the shorter haul from Ogden?

A. Yes, sir.

Q. And that is the competition that you spoke of?

A. Yes; that was it exactly.

Q. You testified that it was in 1888 and during what time that you used the Portland route?

A. 1888 and the forepart of 1889, my recollection is.

Q. That you used the Portland route for San Francisco?

A. Yes, sir.

Q. How long did that last?

A. Oh, it lasted only a few months.

Q. It was due to some temporary disturbance, was it not?

A. That is all, yes, as I understood it.

Q. In 1891, 1892, and 1893 you did not solicit via that route, did you?

A. No, sir.

Q. You never knew any freight to move via the Portland route except during that short period?

A. No, sir.

Q. The company that you represent now is the fast freight
2112 line, is it?

A. No; it is the water line. It is the Mutual——

Q. Oh, the water line. Where does it operate?

A. It operates between Baltimore and Savannah, Norfolk and Newport News, on the south; on the north, Boston, Fall River, and Providence.

Q. You interjected just now, in answer to one of my questions, the suggestion that competition was stronger in those days when you were representing the Union Pacific here than it is now. Are not all of the rail lines which are represented in Pittsburg actively competing with each other——

A. Yes, sir.

Q. ——through their connections, for the Pacific coast business?

A. Yes, sir; I naturally understand so.

Q. Is there not just as much competition now as there ever was for that business, except in the matter of cutting rates?

A. I would take it so; yes, sir.

Q. The rates being established under the Interstate Commerce law, and open rates, why, then, they are all struggling for the business?

A. Yes, sir.

Q. And that is just as active as it ever was?

A. Yes, sir.

Q. Unless it be in the matter of concessions of rates, or something of that sort?

A. Yes, sir.

Redirect examination by Mr. SEVERANCE:

Q. You did not intend to include the Union Pacific and Southern Pacific competition in your answer to Judge Lovett's last question, did you? They are not competing as actively as they used to be?

A. I did not quite catch that last.

Q. His question was general. It did not exclude the North-
2113 ern Pacific and Southern Pacific. You did not mean to say that they are still competing with each other?

A. No, sir.

Q. In the person of Mr. Herring?

A. No. I thought he still had reference to lines leading up to the line of the Union Pacific. That is the way I took it.

Q. All that you meant to testify to is that there is the same competition between the lines from here to the Missouri or Mississippi river that there ever was?

A. That is the idea.

Q. But not that there is the same competition between the Union Pacific and the Southern Pacific that there formerly was?

A. Well, I did not understand that question.

Q. And you did not mean to so testify?

A. No, sir, I did not.

Q. And there is no such competition as there used to be?

A. Not that I know of.

Q. You say your business is that of a water-line?

A. Yes, sir.

Q. Where does your stuff that you get originate—here at Pittsburg?

A. Pittsburg, and what is called Pittsburg territory.

Q. Where do you load it onto the boats?

A. We load it onto the boats at Baltimore or Philadelphia, as the case might be.

Q. And to what points do you transport it from there?

A. If it is going, say, north to Boston, we transport it from Philadelphia or Baltimore to Boston.

Q. Are you in competition with the all-rail lines to Boston?

A. Sure thing.

Q. And are you able to successfully get business?

A. Yes, sir.

2114 Q. And are your rates the same?

A. No, sir.

Q. You have a differential?

A. Yes, sir.

Q. Because the cost of handling the business on the sea is cheaper than it is on land?

A. Yes, sir.

Q. And by maintaining that differential you are able to keep up and compete with the all-rail lines to these various points along the coast?

A. Yes, sir.

Q. You stated, in answer to Judge Lovett, that this lot of shipments that you worked via Portland and the boat line, was in 1888 and part of 1889; and Judge Lovett asked you if it was not due to some temporary disturbance, and you said you thought it was. What did you mean by that?

A. As I understood, at that time the temporary disturbance was something in regard to the handling of the traffic delivered to the Southern Pacific at Ogden by the Union Pacific.

Q. Then, it was a competitive measure on the part of the Union Pacific; and the traffic was worked that way as a competitive measure against the Southern Pacific, because of some difficulty about handling traffic at Ogden?

A. Yes, sir, certainly.

Q. So far as you know, the Willamette and Columbia rivers are still flowing into the sea, so that could be done at present?

A. Yes, sir; I understand so.

By Mr. LOVETT.

Q. And they were flowing after 1888, too, were they not, Mr. Fowler?

A. Flowing at that time? I believe so.

Q. But the Union Pacific never found it to its interest to use it after 1888?

A. No, I understand not.

2115 Mr. SEVERANCE. After 1889 he said.

Q. After 1889?

A. After 1889, I understand not.

Q. And they were not using it in 1891 and 1892 and 1893?

A. No, sir.

Q. With reference to the question that Mr. Severance said you did not understand, Mr. Fowler——

Mr. SEVERANCE. No; he said he did not understand.

Mr. LOVETT. Well, it was on your suggestion.

Q. I did not mean it the way that it was finally explained to you. What I meant to ask was this: whether the Atchison and its connections east, and the Union Pacific and the Southern Pacific and their connections, do not create a competition and carry on a competition for this traffic to the Pacific coast as active as it ever was? There has been no relaxation in that competition?

A. Not that I know of.

Q. As far as you are able to observe, is it not just as active as it ever was?

A. As far as I am able to observe, yes, sir.

Q. Aren't there a great many lines between here and the Pacific coast that are just as able to create competition for that traffic as the Union Pacific ever was? For example, the Union Pacific was merely an intermediate carrier, operating a line about 1,000 miles in length—that is, from Omaha to Ogden. Now, are there not a great many other lines between here and a connection with the Southern Pacific and the Atchison that are just as able to compete for that traffic as the Union Pacific ever was?

A. Well, the lines out to the Missouri River and the lines from the Missouri River to Denver, or to Utah, or to Ogden, no
2116 doubt are as active in the solicitation for the business by the routes they represent, which, naturally, of course, would cut the Union Pacific out of the haul from the Missouri River to Ogden.

Q. Well, leaving out of consideration for a moment the Union Pacific line to Portland, taking the Union Pacific proper: are not the Denver & Rio Grande, the Burlington, the Rock Island, the Missouri Pacific, the St. Paul, the North-Western, the Baltimore &

Ohio, the Pennsylvania, and all of those intermediate lines, just as effective in that competition to-day as the Union Pacific ever was? Do they not operate as large a proportion, or a larger proportion, of the through mileage, as the Union Pacific did?

A. I should think so.

Q. The Union Pacific never had any rate-making power to the Pacific coast south of Portland, outside of this boat-line that you have just mentioned?

A. Well, at that time those rates were made by the Transcontinental Association.

Q. Yes. And by agreement and by concurrence?

A. Yes, sir.

Q. Do you know about the practicability of the Portland route by the Union Pacific as against the direct route of the Southern Pacific?

A. At the present time?

Q. Yes.

A. I do not.

By Mr. SEVERANCE.

Q. Just one other question, brought out by Judge Lovett's last questions. He has asked you if these other lines in the intermediate territory are not still actively competing, and you said they are, for business?

A. That is true, as far as I know.

Q. And, as far as you know, the elimination of competition
2117 on Pacific coast business has resulted from the cessation of competition between two of the lines from the Missouri or Mississippi rivers to the coast—that is, between the Union and Southern?

A. Yes.

Q. And aside from the elimination of that competition, as far as you know, the situation is about as it was before: that is right, is it not?

A. That is the way I understand it.

By Mr. LOVETT.

Q. That competition, with the exception of the extra conditions in 1888 and 1889 that you mentioned, was a competition in which the Southern Pacific and the Union Pacific were connecting lines, was it not?

A. Yes, sir.

By Mr. SEVERANCE.

Q. And if the Southern Pacific got the business the way it wanted to get it, it did not send it over the Union Pacific, but sent it over its own lines from New Orleans, did it not?

A. It did.

Q. And if the Union Pacific got the business it participated in the haul?
A. Yes, sir.

By Mr. LOVETT.

Q. And still had to send it to the Southern Pacific?
A. Had no other way to do it, absolutely.
(A recess was here taken until 2 o'clock P. M.)

2118 ANDREW PAAR,

called on behalf of the Complainant, being duly sworn, testified as follows:

Direct examination by Mr. SEVERANCE:

Q. Mr. Paar, where do you live?
A. Canton, Ohio.
Q. How long have you lived there?
A. Since 1870.
Q. And what is your business?
A. I am with the Diebold Safe & Lock Company.
Q. And what is the business of the Diebold Safe & Lock Company?
A. They manufacture vaults, safes, safe deposit boxes, and so forth; anything in the safe line.
Q. And how many years has that concern been in business? That is, how long have you been connected with it?
A. Since the latter part of 1872.
Q. In what capacity?
A. I have had charge of the shipping for about 25 years.
Q. How does the Diebold Safe & Lock Company compare in size with other manufacturers of similar articles in the United States?
A. Why we are about the largest.
Q. You are the largest, are you not?
A. Yes, sir.
Q. And have been for a good many years?
A. No; we were not always the largest, but we are now.
Q. For how long have you been the largest?
A. Probably a few years. We have enlarged; a large plant.
Q. But you have done a very large business during all the time you have been with them, have you not?
A. Yes, sir, we always have.
2119 Q. Have you factories at any other place than Canton?
A. No, sir.
Q. To what parts of the country do you ship your product, or have you shipped your product, since you have been with them?

A. Oh, most everywhere in the United States, and some foreign countries.

Q. You have shipped a good deal to the Pacific coast?

A. Yes, sir.

Q. How do your shipments to the Pacific coast move usually? Over what lines?

A. We have shipped by the—do you want the Southern lines or the——

Q. Take all the lines. I mean the transcontinental lines west of the Missouri and Mississippi Rivers.

A. The Union Pacific, the Southern Pacific, and that Los Angeles line——

Q. The San Pedro?

A. The San Pedro; and——

Q. Santa Fe?

A. The Santa Fe, yes, sir.

Q. And for north Pacific coast points, over what lines?

A. Northern Pacific, Great Northern and some by the Southern Pacific.

Q. The Southern?

A. Yes, sir.

Q. Well, you spoke of the Southern.

A. That is, from Portland.

Q. Oh, yes. Have you at any time shipped to California points by way of New Orleans and the Sunset Route?

A. Yes, sir, we have.

Q. How long ago?

A. It is a good while ago. We have made a few shipments recently, but those were routed from the other end.

2120 Q. That is, the consignees?

A. Yes, sir; the consignees send in the routing for it.

Q. Direct it?

A. Yes, sir.

Q. How is your business routed as a rule—by yourself, or by your consignees?

A. Quite a good deal is by the consignee, and a portion of it I do myself.

Q. Do you use any steamship lines to the coast?

A. Yes, sir.

Q. What line are you using now?

A. Now, the Hawaiian.

Q. How do you send your traffic that goes by the American and Hawaiian line?

A. We send it by way of New York.

Q. Over what line? The Pennsylvania?

A. I do not remember, but I think it is the B. & O. that I have sent the most of it.

Q. It goes over some rail line to New York?

A. Yes, sir.

Q. And then goes to a Mexican port?
A. Yes, sir.
Q. Across Mexico?
A. Yes, sir.
Q. And up by steamship?
A. Yes, sir.
Q. How do the rates by the American-Hawaiian line compare with the transcontinental rail rates?
A. They are lower.
Q. Do you remember about what percentage they are lower?
A. I think they are about 75 or 80 cents per hundred lower.
Q. What is the rate all-rail from Canton to San Francisco?
A. $1.75.
Q. And the American-Hawaiian rate is about $1.00, is it?
A. I think it is $1.05.
Q. And that line is made up by rail line to New York, steamship line to Mexico, across Mexico by rail, and up from the
2121 west coast of Mexico by ship?
A. Yes, sir.
Q. Can you give any idea about the distance that is?
A. No; I can not.
Q. What is the port on the Gulf side of Mexico?
A. I have forgotten that; I do not remember.
Q. Aside from the shipments that you have been making over the American-Hawaiian line, have you ever made any shipments to Pacific coast points part rail and part water?
A. We have, some, but it is a good while ago.
Q. Over what lines?
A. I think it went Southern Pacific and then by the way of New Orleans.
Q. To New York, and around by the boat line?
A. No; we sent it by the Q. & C. and New Orleans.
Q. That is, all-rail then?
A. Yes, that is all-rail.
Q. My question was whether you had shipped any by boat-and-rail other than by the American-Hawaiian line?
A. I think that we only made one shipment, and that was a good while ago, and I do not remember just how it went. It was not satisfactory. Our goods are highly finished, and they were marred, chafed.
Q. That is due to carelessness in handling, is it not?
A. I think handling so often is the cause of that.
Q. You have to handle how many times, when you ship by the American-Hawaiian line?
A. I think it is four or five times.
Q. More handling than it would be to ship all-rail to the north Pacific coast points and down by boat?
A. Yes, sir.
Q. That would be only two handlings?

A. Two handlings.

Q. Do you remember how you shipped to Portland prior to 1901?

2122 A. I do not exactly remember the route.

Q. You shipped over different routes, did you not?

A. Different routes; yes, sir.

Q. Well, to direct the question to one route: do you have any recollection of shipments to Portland by Ogden and the old Central Pacific route?

A. Yes, sir. Yes, sir; we did.

Q. And do you remember how the shipments reached Ogden? whether they went over the Rio Grande or the Union Pacific?

A. I think it was the Union Pacific.

Q. The Union Pacific and Central Pacific?

A. Yes, sir.

Q. Do you remember upon whose solicitation you made those shipments to Portland?

A. I think there was a man by the name of Carney came to see us.

Q. You speak of a man named Carney who came to see you with reference to Portland shipments?

A. Why, I think he worked for the Union Pacific.

Q. Worked for the Union Pacific, yes. How do your shipments go to Portland now, usually?

A. Why the most of them now go Northern Pacific, and some go Great Northern and Canadian.

Q. Do you ship any there by the Union Pacific and Oregon Short Line and Oregon Railroad & Navigation?

A. I think we do. Not many, though.

Q. Most of it by the Great Northern and Northern Pacific?

A. Yes, sir.

Q. Do you have any recollection of business moving by rail to Portland and thence by boat to San Francisco, years ago?

A. No; I do not.

Q. How is that?

A. I do not.

2123 Q. You do not remember of any business——

A. No, sir; not from Portland to San Francisco.

Q. Do you remember of any business moving the other way, by boat, between those places?

A. I do not.

Q. I misunderstood you, then, when I was talking with you before you went on the stand. My notes are wrong. You have no recollection of shipments to San Francisco by rail to Portland, and thence by boat?

A. There may have been one shipment gone that way, but that is a long time ago, and I do not remember just exactly.

Q. You do not remember distinctly about it?

A. No.

Q. Prior to 1901, do you remember of being solicited for business to the coast by Union Pacific solicitors and also by Southern Pacific solicitors?

A. Yes, sir.

Q. Where did the Union Pacific soliciting agent live?

A. I think he lived in Cleveland.

Q. And where did the Southern Pacific man live?

A. In Cincinnati.

Q. And which way was the Southern Pacific man trying to move the traffic?

A. Why, he was trying to move it by the way of New Orleans.

Q. And the Union Pacific man, which way?

A. By the way of——

Q. Omaha?

A. Omaha.

Q. Do you have that solicitation now of the Union Pacific against the Southern Pacific?

A. No, sir.

Q. Who represents those lines now, so far as business with you is concerned?

2124 A. Why, Mr. Connor; but there is another gentleman comes to see us; I think his name is Hild.

Q. He represents both lines, does he?

A. Yes, sir. He works for Mr. Connor; he is under his supervision.

Q. Where does Mr. Connor live?

A. In Cincinnati.

Q. Mr. Hild represents the two lines—Southern and Union?

A. Yes, sir.

Q. Does he indicate which way he wants to route the traffic?

A. Why, he occasionally comes in with other railroad men, and then it does not make any difference to him. He frequently comes in with the North-Western—sometimes with others—but mostly with the North Western.

Q. Then he wants to send it by Omaha by the North-Western?

A. Yes, sir.

Q. But when he is by himself?

A. Well, he likes to have it come by the way of New Orleans.

Q. Likes to have it come by New Orleans?

A. But if I tell him I want to give it to someone else, why, he does not object to it.

Q. What do you mean by "give it to someone else"?

A. Why, some other line to Chicago and beyond. Chicago gateway.

Q. How far is Canton from Pittsburg?

A. One hundred miles—or one hundred and one miles.

Q. What rate does Canton take—the Pittsburg common point rate?

A. Yes, sir.

Q. What inducements do soliciting agents offer you to get business?
A. They don't offer anything.
Q. Not in cash; but what method do they employ to try to
2125 get business?
A. Sir?
Q. What do they claim for their lines in order to get business? How do they try to get the business? I do not mean cash inducement.
A. One thing is personality—that is, friendship—an agent who has been calling on us for many years. That is one thing. And another thing is that they look after the shipment, trace it, follow it up, and advise us when it leaves the different junction points; that is, when we are in a hurry for a shipment; and we consider that quite a favor.
Q. The more efficient a man is in doing that, the more inclined you are to give him the business?
A. Yes, sir.
Q. Are your shipments of a character that demand great despatch, or are you usually in no particular hurry?
A. Why, we are usually in a hurry. Not always, but quite often we are in a hurry. Now, of course, when we ship by the way of New York, we are not in a hurry.
Q. I was going to ask you about that. How long does it take to reach San Francisco from Canton, as a rule, by the American-Hawaiian line?
A. Why, as near as I have learned, it takes from 30 to 50 days.
Q. How long does it take to reach San Francisco from Canton, all-rail, under ordinary conditions?
A. From 14 to 17 or 20 days.
Q. How was it in 1907—the time of the great congestion of traffic?
A. Why, it took more than 30 days.
Q. You spoke of the fact that it was undesirable, because of your goods being so highly polished, to transship any more than is
2126 necessary. Do you find that they get pretty good results in that way on the American-Hawaiian line?
A. We are packing them differently now, too, than we did formerly. That makes some difference. But they can almost refinish them out there and save money.
Q. On account of the difference in rate?
A. On account of the difference in rate.
Q. Do you have a plant at San Francisco?
A. We have a large store and warehouse.
Q. You distribute from there, do you?
A. Yes, sir.
Q. Do you have warehouses at other places along the coast?
A. At Los Angeles.
Q. Any further north?
A. Portland.

Cross-examination by Mr. LOVETT:

Q. You ship via all lines reaching California, do you not, Mr. Paar—all rail lines?

A. We divide it up.

Q. The Atchison and the Southern Pacific and its connections?

A. Yes, sir.

Q. There are a great many all-rail lines reaching there, aren't there? I mean different combinations. There are a great many combinations of lines from this territory to California, are there not?

A. In connection with the Atchison and the Southern Pacific?

Q. Yes. Ultimately they go either over the Atchison or the Southern Pacific or the San Pedro?

A. Yes, sir.

Q. But east of the Atchison and east of the Southern Pacific there are a great many lines as connections of either the Atchison or
2127 the Southern Pacific engaging in that traffic, are there not?

A. Yes, sir.

Q. And all of those lines have their separate solicitors in your territory, have they not?

A. Yes, sir.

Q. And that is true, also of the lines reaching New Orleans—the Louisville & Nashville, the Illinois Central, and Queen & Crescent?

A. Yes, sir.

Q. They all actively solicit business for California, and ultimately it goes there either over the Atchison or the Southern Pacific or the San Pedro; is that correct?

A. Yes, sir. Not always Santa Fe.

Q. No. I say, in reaching California it must ultimately go either over the Santa Fe or the Southern Pacific or the San Pedro?

A. Yes, sir.

Q. All of your California shipments prior to the opening of the San Pedro, that passed over the Union Pacific, also passed over the Southern Pacific, did they not, in reaching California?

A. They did.

Q. About what is the distance by the short rail-lines, or the usual routes, from your place to New Orleans? Do you know about the distance?

A. No, I do not know.

Q. You would approximate it about 1,000 miles, or 1,100 miles would you not?

A. Along there somewhere.

Q. And about how far would you say to Omaha?

A. I have not looked up the mileage; I do not know.

Q. Can you not approximate it, Mr. Paar?

A. Why, I would not like to say; I do not know.

Q. Don't you think it is in the neighborhood of 1,200 or 1,500 miles?

A. In fact, I do not know what it is.

2128 Q. I think my suggestion as to the mileage was perhaps too much, Mr. Paar. Do you know the relative distance from Canton to Omaha and New Orleans—that is, as to which is the greater?

A. Why, New Orleans would be the greater.

Q. Yes. It would be farther to New Orleans than to Omaha?

A. Yes, sir.

Q. Prior to 1901 there was solicitation for the business of your company by the Union Pacific and Southern Pacific separately, I understood you to say?

A. Yes, sir.

Q. Did not the Southern Pacific representative also solicit by way of Ogden, if he could not get it by way of New Orleans?

A. Oh, they would take it, if they could not get it by the way of New Orleans.

Q. They preferred it by way of New Orleans; but if they could not get it that way they would take it by any of the other connections?

A. Yes, sir.

Q. As against the Atchison or the Northern lines?

A. Yes, sir.

2129 J. F. TOWNSEND,

called on behalf of the Complainant, being duly sworn, testified as follows:

Direct examination by Mr. SEVERANCE:

Q. Mr. Townsend, where do you live?

A. Pittsburg.

Q. What is your business?

A. With the National Tube Company; traffic manager.

Q. How long have you been traffic manager of the National Tube Company?

A. Nearly ten years.

Q. Previous to that what was your business?

A. I was in the railroad business for twenty years.

Q. With what company?

A. Various companies. The Cleveland, Lorain & Wheeling, and the Lake Shore & Michigan Southern, and the Wheeling & Lake Erie.

Q. What kind of goods are manufactured by the National Tube Company?

A. Tubular goods. Pipe.

Q. Steel pipe?

A. Yes, sir.

Q. Is that one of the largest concerns of that kind in the country?

A. As my neighbor said, we have advertised it to be the largest manufacturer in the world of wrought pipe. We do not any more, but we used to do that. We are a good deal larger than we were then. I suppose it is our modesty.

Q. Assuming that your advertisement was true, and that you have grown since, you have very little doubt that you are the largest concern of the kind in the world, have you?

A. No, I have no doubt of it.

Q. Where are your plants located?

A. The Pittsburg district—we have three plants in Pitts-
2130 burg; one at McKeesport; Versailles, Pennsylvania; Christie Park; one at Syracuse, New York; Youngstown, Ohio; Lorain, Ohio; and Elwood City.

Q. What is the last?

A. Elwood City.

Q. Elwood City, Illinois?

A. Pennsylvania.

Q. Pennsylvania?

A. Yes, sir.

Q. Some of those plants are located outside of the district that takes the Pittsburg common point rate, are they not?

A. No.

Q. They all take the Pittsburg common point rate?

A. All take the same rate to the coast.

Q. That is what I mean—transcontinental rate?

A. All the same, yes, sir. We have a plant at Kewanee, Illinois, too, by the way. I forgot that.

Q. I thought you had one in Illinois somewhere.

A. Yes.

Q. What rate does that take as compared with your Pittsburg rate? Just the same to the coast?

A. It is the same to California terminals.

Q. That is what I mean.

A. Less rate to the north coast.

Q. The same rate to California terminals.

A. The same.

Q. Which way do you route your business to the coast, as a rule, from the Pittsburg district?

A. We have about twenty different ways.

Q. About twenty different ways?

A. Twenty different routes, yes, sir.

Q. What transcontinental lines does it move over?

A. It moves over the five transcontinental lines.

Q. The five transcontinental lines?

A. Yes. The Southern Pacific, the Santa Fe, the Northern Pacific, the Great Northern, and the C. P. R. That is all.

2131 Q. And moves over the Union Pacific?
A. Some portion of it.
Q. Some portion of it over the Union Pacific?
A. Yes.
Q. And the Union Pacific and Southern Pacific into San Francisco?
A. Yes.
Q. And the Union Pacific, the Oregon Short Line, and Oregon Railroad & Navigation, into Portland?
A. Well, very recently. We haven't used that line until recently.
Q. What line did you formerly use to Portland?
A. We used the Northern Pacific and Great Northern.
Q. Did you ever move stuff to the coast by New Orleans, Sunset Route?
A. Not much.
Q. Did you, some of your stuff?
A. I do not think we did any.
Q. Do not think you did any?
A. No.
Q. Not from any of your factories?
A. No. That is, via New Orleans you asked me?
Q. Yes. I am coming to the others later.
A. Yes.
Q. You do not remember that you ever sent any via New Orleans?
A. Oh, well, that is putting it pretty strong.
Q. You said, "not any." I understood you to say so.
A. Well, very little.
Q. Oh, very little.
A. Very little. In the old days you know, the consignee had something to say about it.
Q. Have you taken that privilege away from him?
A. No; we have given him more. We are selling delivered and prepaying the freight.
Q. Then you have the routing?
A. Well, as a general proposition we think we do.
Q. At the present time when you sell delivered f. o. b. at the
2132 destination, or however you deliver it there, of course you control the routing yourself?
A. Yes, sir; pay the freight.
Q. Have you sent stuff to the coast by El Paso?
A. Oh, yes; we do now.
Q. You do now?
A. Yes, sir.
Q. And over what lines does it reach El Paso?
A. It goes over the Texas Pacific, Rock Island; various routes.
Q. And thence to the coast by the Southern Pacific?
A. The Southern Pacific, yes, sir. That is Southern California business, however.
Q. Southern California?

A. Yes.

Q. Over what other lines—I am speaking of transcontinental lines now west of the Missouri and Mississippi Rivers—do you move traffic to Southern California, aside from the line via El Paso?

A. That is, aside from the Southern Pacific via El Paso? You do not care about the intermediate lines?

Q. You have stated that you move traffic via El Paso, and then Southern Pacific to Southern California?

A. Yes, sir.

Q. What other transcontinental lines do you use into Southern California aside from that route?

A. We use the Santa Fe and the San Pedro, and the Southern Pacific to some extent.

Q. Do you ever use the Union Pacific at all?

A. No.

Q. You never ship anything over the Union Pacific?

A. To Southern California, not much.

Q. How does the stuff get to the San Pedro that you send to them at Salt Lake City?

A. We send it over the various lines leading up to Colorado
2133 junctions. We have got to give them something, you know.

Q. But you do not give any of your traffic to Southern California to the Union Pacific?

A. Oh, we do some.

Q. And the San Pedro?

A. We do some; but, then, we give them so much more business for other parts of California that we——

Q. You try to divide it up as fairly as you can among the different lines?

A. We want to be fair, of course.

Q. How does your San Francisco business move as a rule?

A. San Francisco?

Q. Yes, sir.

A. Over the Santa Fe, over the Southern Pacific, generally.

Q. Does any of it go over the Union Pacific?

A. Some of it, yes, sir.

Q. The Union Pacific, and then over the Southern Pacific from Ogden?

A. Yes. But that does not represent the amount of the Southern Pacific business, what the Union Pacific gets from us; because we give the D. & R. G. and Colorado Midland, those Colorado routes, Southern Pacific, Rock Island, Burlington——

Q. Give them all a share of the business?

A. Yes, sir.

Q. You say that at present you are using the Union Pacific route into Portland to some extent, but formerly you did not. Did I so understand you?

A. I did not say that, no.

Q. Oh, I confused you with the other witness, I think.

A. You must have.

Q. How do you ship to Portland?

A. Via the Great Northern and Northern Pacific. Well, I think I did admit that we sent some business up that way now.

2134 Q. That is what I understood you to say.

A. Yes, some of it: very little, though.

Q. Union Pacific, Oregon Short Line, and Oregon Railroad & Navigation?

A. Yes, sir.

Q. Do you remember Mr. Edwin Hawley of New York?

A. Oh, I had a speaking acquaintance with him.

Q. Do you recall the time that he was representing the Southern Pacific?

A. Very well.

Q. Do you remember whether at that time there was any competition between the Union Pacific and the Southern Pacific for coast business?

A. Yes, sir.

Q. Who represented the Union Pacific interests in that competition?

A. Here?

Q. Yes.

A. I think Choate did at that time, latterly.

Q. Is there any competition now between the Union Pacific and Southern Pacific for transcontinental business?

A. You mean the New Orleans route?

Q. In Pittsburg—that comes under your observation.

A. Well, I suppose not. One through line.

Q. You are called on frequently by gentlemen soliciting traffic, are you not?

A. Yes, sir.

Q. They all come to see you, don't they—the amount of stuff you have to send?

A. I hope they do not pass me up; I do not want them to.

Q. Now, Mr. Townsend, having conceded what you have with reference to the extent of your business, being brought into communication with these gentlemen who are soliciting business, what is

2135 the important element that they urge to get business when they come to see you?

A. Time.

Q. Time?

A. Yes.

Q. Service?

A. Yes, sir. That is the important matter from our standpoint.

Q. And that is what they all claim that they can give you, I suppose, to get the business?

A. Well, no. They are very frank when there is anything the matter with the lines. That is particularly true with the Southern Pacific. If they have got a disability they will let us know about it.

Q. Of course, if there is some disability; but when there is nothing out of order, when nothing has happened, or there has been no accident, or anything of the sort, they all come in and assure you that they will hustle things right through, do they not?

A. They have all got the short line, yes, sir.

Cross-examination by Mr. LOVETT:

Q. In the days of Mr. Hawley's connection with the Southern Pacific, I believe you said that there was competition between the Southern Pacific and the Union Pacific—Mr. Choate representing the Union Pacific. Whatever business the Union Pacific got during that competition for California points went over the Southern Pacific from Ogden, did it not?

A. Yes, sir; as a general proposition.

Q. Was not that always true? There was no other outlet for it, was there?

A. No, sir, I think not.

Q. The competition then was between the Sunset Route, by way of New Orleans, and the rail lines?

A. And the other lines, of course.

Q. Yes. And the rail lines, of which both the Union Pa-
2136 cific and the Southern Pacific were a part?

A. Yes.

Q. And, of course, the Atchison?

A. Yes.

Q. And their connections east?

A. Yes, sir.

Q. I think you testified also that at the present time you patronize twenty or more lines in your business to the Pacific coast?

A. Yes.

Q. Do all of these lines lying east of the Missouri River engage in that business as connections of the Union Pacific, and Atchison and Southern Pacific?

A. All in the transcontinental line business. Representation here is a good deal bigger than it used to be. There are more agencies here—ten to one.

Q. Solicitation is more active for that business than it ever was?

A. Yes. In the last five years there have been over ten agencies established here.

Q. In connection with the transcontinental business?

A. Yes, sir—agencies that are soliciting it.

Q. You stated in answer to questions of Mr. Severance, Mr. Townsend, that there was no competition as between the Union Pacific and the Southern Pacific at this time, here?

A. I think Mr. Severance stated that.

Q. Yes; Mr. Severance stated that.

A. Yes.

Q. And you assented to that statement, if I understood you. You had reference merely to the fact that they have a joint agency, had you not?

A. Yes. I might say that the Union Pacific does solicit business in connection with other lines besides the Southern Pacific.

Q. The Rock Island, the Missouri Pacific, the Wabash
2137 interests and various lines reaching down in the southwest and ultimately to a connection with the Texas and Pacific, or with the Southern Pacific at El Paso, are all actively soliciting that business, are they not?

A. Yes, sir. And there are a great many new smaller lines that have some very wide-awake fellows in here looking for business.

Q. And all the various lines are soliciting this business by way of New Orleans, too?

A. Via New Orleans?

Q. Yes.

A. Well, I do not know. They do not solicit it much from me that way.

Q. The Louisville & Nashville, and Illinois Central?

A. Oh, yes.

Q. The Queen & Crescent?

A. Yes, sir.

Q. They all actively solicit this business?

A. Yes; but I had in mind the El Paso route when I said that—the Colorado gateways.

Q. So this business moves via those various connections to the Southern Pacific, to El Paso, Ogden, and some to New Orleans? I believe you said that you did not send any business via New Orleans to the Pacific coast?

A. Very little. Very little by that route.

Q. But it moves via these various connections with the Southern Pacific. All of the lines in this territory between here and El Paso, for example——

A. Yes.

Q. ——between here and New Orleans and between here and Ogden are actively soliciting for this business now, are they not?

A. Yes.

2138 Q. What is the effect of this solicitation upon the routing of your traffic, Mr. Townsend?

A. The result is that we would naturally give the new routes a chance, give them some business. If they make good, we give them some more. Some of them have.

Q. You have never sent any business to California by way of Portland and the water line down from Portland to San Francisco, have you?

A. We have no dead freight, no, sir.

Q. You have no dead freight?

A. No, sir. Ours is all time freight.

Q. Has any freight ever moved that way, as far as you know?

A. Not to my knowledge. I think I would lose my job if I sent any that way.

Redirect examination by Mr. SEVERANCE:

Q. Mr. Townsend, what was your reason for stating, in answer to Judge Lovett, a moment ago, that I stated that the competition had ceased here? Didn't you say that was so, when I asked you that question? Did you not intend to say what you did say?

A. Well, I assented to your statement.

Q. Well, that was your testimony, wasn't it? I am not under oath. I do not want you to state that I am testifying here, Mr. Townsend. You assented to what I asked you, did you not?

A. Yes.

Q. You say the Union Pacific solicit business in connection with other lines than the Southern Pacific?

A. Yes.

Q. You mean with the San Pedro?

A. Yes.

Q. In connection with the San Pedro?

A. Yes; that is one of them.

2139 Q. Is there any other line reaching the Pacific coast in connection with which they solicit business, except the San Pedro?

A. They will take business in connection with the Santa Fe?

Q. Where do they deliver to the Santa Fe?

A. California.

Q. Will you please state the point in California that the Union Pacific reaches?

A. The Union Pacific?

Q. Yes. You were stating that the Union Pacific solicited coast business in connection with other people than the Southern Pacific. Now, you state at what point in California the Union Pacific can deliver stuff to the Santa Fe?

A. Well, I had the Southern Pacific in mind.

Q. I thought you had. The fact is, is it not, Mr. Townsend, that formerly the Union Pacific had its own soliciting agency here in Pittsburg?

A. Yes.

Q. And they solicited business exclusively in the interests of their own line, did they not?

A. Yes.

Q. The Southern Pacific had its own soliciting agency here and solicited business for its own interest, irrespective of any other line, did it not?

A. Yes, sir.

Q. And now, Mr. Herring represents both of them, does he not?

A. That is it.

Q. You stated that within the past five years there have been as many as ten new soliciting agencies established in Pittsburg?

A. Yes.

Q. Are you aware of any other instance excepting the Union Pacific and Southern Pacific, where agencies that were formerly competing with each other have been consolidated?

A. I do not call them to mind.

2140 Q. On the other hand, you do know of ten new agencies that have been put in here?

A. Yes.

Q. It is a fact, is it not, Mr. Townsend, that this Pittsburg district originates more tonnage than any other district in the United States?

A. I believe so.

Q. Do you know Mr. Herring?

A. Very well.

Q. Has Mr. Herring been talking with you about this matter since you were subpoenaed?

A. No.

Recross-examination by Mr. LOVETT:

Q. Do you know Mr. ——. What is your man's name? What is the Interstate Commerce agent's name?

Mr. SEVERANCE. McKenzie.

Q. Do you know Mr. McKenzie?

A. Yes.

Q. He has talked with you about this, has he not, Mr. Townsend?

A. Yes, sir.

Q. Whom did he pretend to represent?

A. Why, the Interstate Commerce Commission, I believe—the Government.

2141 F. A. OGDEN,

called on behalf of the Complainant, being duly sworn, testified as follows:

Direct examination by Mr. SEVERANCE:

Q. Mr. Ogden, where do you live?

A. Pittsburg—or Crafton, rather, right near Pittsburg—a suburb.

Q. What is your business, Mr. Ogden?

A. General freight agent for the Jones & Laughlin Steel Company.

Q. How long have you been connected with their traffic department?

A. I have been general freight agent for Jones & Laughlin for about fourteen or fifteen years. I was in their shipping department about four or five years prior to that.

Q. What are your duties as general freight agent?

A. Attending to the handling of their railroad matters that may pertain to any of their shipments in or out.

Q. And you have occupied that position for fourteen or fifteen years?

A. About fourteen or fifteen years.

Q. Just for the sake of getting it in the record, will you give us some idea of the extent of the business of Jones & Laughlin?

A. Jones & Laughlin are said to be—and I admit it—the largest independent steel manufacturers in the United States, outside of the U. S. Steel Corporation.

Q. That is the largest concern in the country, outside of the United States Steel Corporation?

A. Yes, sir.

Q. Where are the plants of the Jones & Laughlin Company located?

2142 A. The plants that are in operation today are located in the city of Pittsburg on the south side of the Monongahela River, and on the north side out about a mile from here. And they have a plant which they are now building at Aliquippa; but that is not in operation. That is 18 miles down the Ohio River.

Q. Mr. Ogden, does your firm do business at Pacific coast points?

A. Yes, sir.

Q. Have they during all the time you have represented them in the traffic business?

A. Yes, sir.

Q. What class of steel manufacture do you make?

A. Structural steel. All sizes of merchants bars, shafting, cold roll steels, pulleys and hangers, power transmission machinery, plates.

Q. Do you have a large business on the Pacific coast, and have you had for a good many years?

A. Fairly so.

Q. How do you make your shipments to the coast at the present time, chiefly?

A. The shipments are divided between the Southern Pacific and the Santa Fe and the San Pedro and Salt Lake for the California points; and to the north coast points between the Great Northern and the Northern Pacific. A car or two, possibly, during a year will go via the Union Pacific and the Oregon Railway to Portland.

Q. And how does the traffic reach Ogden or Salt Lake, from the Missouri River? Over the Union Pacific?

A. We divide the business up. Part of the business to San Francisco goes via the Union Pacific and the Southern Pacific, and part via the Colorado Midland; part by the Denver & Rio Grande, from Denver, using the Rock Island or "Q.." or some of those lines, up to Denver.

2143 Q. How do your shipments go by the Southern Pacific—the Southern line of the Southern Pacific, how do they move—via New Orleans or El Paso?

A. We do not ship any by New Orleans, and I do not recall but possibly one or two cars in the past year that went by El Paso. The

Southern California business moves via the Santa Fe, or via the Union Pacific, or the Colorado Midland, or the D. & R. G., in connection with the San Pedro, Los Angeles & Salt Lake. I might add there also, to be strictly straight, that we do send some business by the Union Pacific and Southern Pacific to Los Angeles by the northern gateway; but it is not much.

Q. That goes around via——

A. Via Ogden.

Q. Via Ogden and Sacramento, and down?

A. It goes down that way, yes, sir.

Q. Did you formerly ship some business to California points by the Sunset Route, from New Orleans?

A. Yes, sir.

Q. How long ago did you cease shipping that way?

A. Oh, that is eight or nine years ago, I guess.

Q. Have you ever made any shipments to San Francisco by way of the Canadian Pacific and boat lines?

A. Yes; there were shipments made that way during the time of the differential by the Canadian Pacific, Wisconsin Central, Soo line, Canadian Pacific, and the boat line from Vancouver down.

Q. Did you ship a considerable amount that way, or only a little?

A. As I recall it, it was quite a good deal for that day. Business to the Pacific coast has developed wonderfully in the past ten years.

Q. At the present time do you ship any by the American-
2144 Hawaiian line?

A. Yes, sir, quite a little. It is increasing that way.

Q. What is your reason for shipping that way?

A. Differential in the freight rate, and very much more improvement in the time; faster time ever since they have gone over the Tehuantepec Railroad. Formerly the American & Hawaiian line went around Cape Horn and it took about 60 or 90 days. Now they send the stuff over the Tehuantepec Railroad, and the time is about 19 to 33 days from New York.

Q. How long a rail line is that across Mexico, do you remember?

A. I think it is about 180 miles. I am not positive about that.

Q. It is a narrow place down there?

A. Yes; a little neck.

Q. It goes from here to New York by rail, does it?

A. Yes, sir.

Q. Then by boat to the east coast of Mexico, and then across, and then up?

A. Yes.

Q. What is the differential that you get on your shipments?

A. Nine cents a hundred today.

Q. How much?

A. Nine cents a hundred pounds. $1.80 a net ton. The rate via New York and the American & Hawaiian line is 71 cents. By all-rail it is 80 cents.

Q. And what time do you say they make?

A. The fastest time is 19 days from New York, and the slowest time is 33.

Q. How long does it usually take to get the stuff from here to New York and get it loaded on the ship?

A. If you just let it go through the regular course it takes about three or four days to get it to New York. If it is a
2145 rush shipment to catch a vessel, why, you can get it through there in about 36 to 48 hours.

Q. So that if you push things right along you can get a shipment around to San Francisco now by the American-Hawaiian line in a little over 20 days?

A. About 21 or 22 days.

Q. How long does it usually take all-rail from here to San Francisco by the most direct route?

A. From two to three weeks.

Q. So there is very little difference in the time?

A. Very little difference in the time.

Q. Are your goods of a character that are damaged by being transshipped?

A. None of it, except the cold roll steel and power transmission, which is a very small portion of the business that goes to the Pacific coast.

Q. How do you move that?

A. All-rail.

Q. Prior to 1901 do you remember whether the Union Pacific and the Southern Pacific had separate agencies here in Pittsburg?

A. Yes, sir, they had.

Q. Do you remember the names of the gentlemen who represented the respective companies?

A. Mr. Fowler and Mr. Lothrop and Mr. Choate and Mr. Herring.

Q. Were they calling on you at that time soliciting business for their respective lines, in competition?

A. Yes, sir.

Q. Now Mr. Herring represents both lines, does he not?

A. Yes, sir.

Q. Does he and his assistants call on you now for business?

A. Yes, sir.

Q. Do they give any preference for one line over the other, as far as you can observe?

A. No, sir.

2146 Q. What services are there that these soliciting agencies of the various railroads perform for shippers, so far as you have observed? Aside from inducing you to give them the business, what do they do for you in the way of looking after your traffic?

A. Why, it is the personality of the agent who calls on them, and the services that he has to offer in behalf of his company—such as the tracing of freight, investigation of claims, loss, over-charge and damage, the taking up of the questions of irregularities, if there are any, or, you might say, too high a classification of material before

the classification committee—have his company take them up, give attention to them and see if they cannot be corrected, and better equalization of classification in rates of the different commodities.

Q. Mr. Ogden, from your experience, which has been very considerable, apparently, do you regard these agencies as useful to their lines in getting traffic?

A. A very important adjunct to the railroad.

Q. They secure the routing of a great deal of traffic, do they not?

A. Yes, sir. They are a great help to the shippers.

Cross-examination by Mr. LOVETT:

Q. Mr. Ogden, do you know of any reason why a joint agent in the matters which you have mentioned, should not serve the Union Pacific and the Southern Pacific as effectively as separate agents could?

A. I know of no reason, sir.

Q. You are familiar with the location of the lines of the Union Pacific and the Southern Pacific. Do you know of any
2147 reason why they should have separate agencies here?

A. Well——

Q. I ask for your judgment about that?

A. Do you want my judgment on that?

Q. As a man experienced in tariff matters. Has it an influence on you in the routing of your traffic?

A. I am for the agents. I want to see all the agents in Pittsburg I possibly can; but I do not see that—that is a pretty tough question to answer.

Mr. SEVERANCE. I guess you had better give that up, Judge.

Mr. LOVETT. No, we will not. We want his judgment on that.

Q. Let me add something to that question, Mr. Ogden. Cannot Mr. Herring or any other joint agent trace your shipments and settle your claims and do everything for you that separate agents of the Union Pacific and Southern Pacific could? Or, to put it in another way, if it is too much for one man, could not two joint men, both representing the Union Pacific and the Southern Pacific, do just as much for you in your transcontinental business as two separate men could?

A. Yes; as far as in relation to that is concerned I would say yes, every bit.

Q. You absolutely control the routing of your own business, do you not, Mr. Ogden?

A. All except the power transmission machinery.

Q. What governs that?

A. The only competition we have on that is Chicago, and we sell it on Chicago basis.

2148 Q. Still, that is controlled by your——

A. No; the shippers on the Pacific coast generally route that business themselves.

Q. Oh, yes. You are familiar with the location of the Union Pacific lines, are you not?

A. Yes, sir.

Q. Extending from Omaha and Kansas City to Ogden?

A. Yes, sir.

Q. And connecting there with the Southern Pacific and the San Pedro?

A. Yes, sir.

Q. Whatever shipments you send via the Union Pacific to California points go ultimately either over the Southern Pacific or the San Pedro, do they not, Mr. Ogden?

A. Yes, sir.

Q. Has the Union Pacific always been without any rate-making power in transcontinental rates—just merely an intermediate carrier?

A. We always have so considered it.

Q. Take the North-Western line, for example, between Chicago and Omaha, and the St. Paul. They are intermediate carriers in this transcontinental business too, are they not?

A. Yes, sir.

Q. Isn't it true that in this transcontinental business the Southern Pacific can get along very well without the Union Pacific, but that the Union Pacific could not get along without the Southern Pacific?

A. That is true.

Q. In this separate solicitation that existed here prior to 1901 between the Union Pacific and the Southern Pacific, did not the Southern Pacific's agent try to get business by way of Ogden when he could not control it by way of New Orleans?

A. Yes, sir: he would try to get it by any gateway he could get it.

2149 Q. New Orleans, El Paso, or Ogden?

A. Or Ogden.

Q. He would prefer New Orleans, because he would get a longer haul, and, presumably, more revenue out of it?

A. Yes, sir.

Q. Are not the Texas Pacific and the Rock Island and connections—eastern connections of the Texas Pacific and the Rock Island—actively working for this California business by way of El Paso?

A. Yes, sir.

Q. And the result of their work inures to the benefit of the Southern Pacific as against the Atchison, does it not?

A. Yes, sir.

Q. And the St. Paul, the North Western, and the various lines reaching the Missouri River, are all actively working for that business, too, are they not?

A. Yes, sir.

Q. And that ultimately inures to the benefit of either the Southern Pacific or Atchison; it ultimately goes over one or the other of those lines?

A. Yes, sir.

Q. And the Union Pacific also?

A. Yes, sir.

Redirect examination by Mr. SEVERANCE:

Q. Judge Lovett asked you whether it would not be possible for Mr. Herring, or any other able gentleman who is acting as soliciting agent for two different roads, to trace claims and that sort of thing. That, of course, could be done, could it not?

A. Yes, sir.

Q. But if there are two lines reaching the Pacific coast, of one of which the Union Pacific forms a part of a thousand miles, from the Missouri River, and the other runs from the Mississippi
2150 River to New Orleans to the Pacific coast, so that there are two ways to reach the coast—one by the Union Pacific turning over the business to the Southern at Ogden; the other going the whole distance over the Southern Pacific—can you see any way that Mr. Herring or any other man (no matter how able he might be) can work one of those lines as against the other, for business?

A. No; not in his present position.

Q. That is what I thought.

A. No.

Q. You said that you were in favor of as many agents as you could have here in Pittsburg. Now, that is because you find that they are useful to the shippers, is it not?

A. They are; yes, sir.

Q. And to the railroads that they represent?

A. Yes, sir.

Q. Useful to the shipper in performing these services, and useful to the railroads in securing business?

A. Yes, sir.

Recross-examination by Mr. LOVETT:

Q. Another joint man with Mr. Herring would suit your purpose just as well as——

A. That is just a personal opinion of my own, you know. I think that is a good thing. Perhaps other people might disagree with me.

Q. You think what is a good thing, Mr. Ogden?

A. To have more agencies here. Other people might disagree with me on that subject.

Q. But so far as your purposes are concerned, two men of equal ability, joint men representing the Southern Pacific and Union Pacific, would be just as good as two separate men, would they not?

A. Oh, yes, sir.

Q. Suppose that there were more agencies here: would that
2151 secure more of your business, Mr. Ogden?

A. For the——

Q. Suppose now, as a business proposition, the Union Pacific and Southern Pacific, acting upon your view of this matter, should establish a separate agency here; do you think that you would give the Union Pacific and Southern Pacific any more of your business than you now give them?

A. No; I do not think I would.

By Mr. SEVERANCE:

Q. But if the Union Pacific and Southern Pacific had separate agencies here at work, each agency made up of efficient men like Mr. Herring, each one solicitous for business, and coming and calling on you for business, it might make a difference in the distribution of the traffic as between those two ways to the coast, might it not?

A. No—if the Union Pacific was represented here separately, and the Southern Pacific separately——

Q. That is what I am speaking of.

A. ——I would give a certain amount of the freight that I was going to give to the Southern Pacific to the Union Pacific, and a certain amount of the freight, as I do now, to the Colorado Midland and the D. & R. G., who would take it up to Salt Lake, or Ogden, and give it to the Southern Pacific there. The Southern Pacific portion would be the same as it is now.

Q. You think it would?

A. Yes.

Q. Mr. Hawley testified in New York that when he was the general eastern agent of the Southern Pacific he worked all the business that he could by way of New Orleans, so that they could get the long haul.

A. Oh, yes. I am talking now about the two agencies working on the same route.

2152 Q. Well, that is not what I am talking about.

A. No; I see what you are after.

Q. I am talking about one agency that is working, as Hawley said he did work, for the Sunset Route, and the other agency working for the Union Pacific.

A. Oh, that possibly might make a difference.

Q. Yes; that would make a difference in the distribution of traffic.

A. I see what you are after. Yes; that would make a difference.

By Mr. LOVETT:

Q. What is it that would make a difference?

A. The Southern Pacific, I think, could rightfully demand of us, if they had representation in this territory, that they were entitled to some of the long-haul freight, and we would have to give it to them, I guess.

Q. What do you mean by long haul? By way of New Orleans?

A. Via New Orleans.

Q. How far would it have to go before it would reach the Southern Pacific that way?

A. From us?

Q. Yes.

A. Oh, about a thousand miles; a little over a thousand miles.

Q. The shippers are not interested in the division of the rates between railroads, are they?

A. No, sir.

Q. You do not care whether the Southern Pacific gets more revenue one way than it does another, do you?

A. Well, that is a question that comes up in the traffic departments of an industrial concern, very much, in the methods of doing
2153 business between the railroads and the steel manufacturer. It is coming more and more into use every day.

Mr. SEVERANCE. What do you mean by that?

WITNESS. I mean by that a case of reciprocity between the railroads and us.

Mr. SEVERANCE. That is, you prefer the companies that buy their supplies from you?

WITNESS. Yes, sir.

Q. Now, coming back to the main question, Mr. Ogden: Would the establishment of an agency here by the Southern Pacific change in the least your policy of the routing of your traffic as to the Southern Pacific?

A. As compared with New Orleans and Omaha, do you mean?

Q. Yes.

A. No, sir; not to San Francisco and the Northern California points.

Q. Would it change it in any way as between the Southern Pacific and Union Pacific?

Mr. SEVERANCE. He was about to state, when you interrupted him.

Mr. LOVETT. I did not mean to interrupt him.

WITNESS. It all depends upon how much pressure the Southern Pacific would put upon me.

Q. What pressure could they put on? We would like to know.

A. They are users of material that we manufacture; and in view of the fact that they buy from us as well as from other people, they are entitled to a share of our business; and if they would come to us on a proposition of that kind, why, I would be in duty bound to recognize that.

Q. Do the solicitors have anything to do with the purchasing of material?

A. Well, if a solicitor comes in and asks me for business,
2154 and his road is not buying anything from us, I politely tell him that there is not much doing for him just at present.

Q. You think that might work around, do you?

A. It does.

Q. Has it in our case?

A. In your case?

Q. Yes.

A. Yes, sir. The Southern Pacific have always been very good friends of ours.

Q. And the Union Pacific, too, have they not?

A. Well, the Union Pacific are located out in a territory which the Colorado Fuel & Iron Company are in, and I think they are more partial, probably, to people out there than they are to people here.

Q. How would that consideration be altered at all by the fact that they have a separate agency? The Union Pacific and Southern Pacific are both represented here and they are competing with other lines for this traffic, and how could the purchase of material enter into that, if the Southern Pacific had a separate agency here, any more than it does now? That is the point I want to make clear. In other words, is not the question of reciprocity as much open now as it would be if they had a separate agent?

A. I think so.

Q. So, after all, then, there would not be any advantage to either you or the Southern Pacific, as far as you can see, in having a separate agency here, would there?

A. No, I don't really—outside of my own opinion that I would like to see the agencies here, and the more people you have working for you in that respect, on your shipments, why, the better. But Mr. Herring, representing the Union Pacific and the Southern Pacific, as it is now constituted, practically represents one line, and he can himself do what the other two men would have
2155 to do—he and the man that was representing the Union Pacific.

Q. They are desirable people to have around; but so far as you can see, two joint men would be just as good as two separate men?

A. I do not see the necessity of two joint men. One is good enough.

Q. You do not see the necessity of two separate men, do you?

A. Consulting my own feeling in the matter, I would like to see the agencies here.

Q. But you cannot specify anything they could do if they were here?

A. No.

Q. What a single man would do, a joint man would do?

A. No. I think Mr. Herring fulfills all the requirements.

By Mr. SEVERANCE:

Q. Judge Lovett has introduced a rather interesting topic this last time. Let us pursue it a little further. You say that business is governed more or less by the spirit of reciprocity?

A. To some degree, yes.

Q. It is quite proper that it should be, is it not?

A. Yes, that is right.

Q. Now, assuming that the Union Pacific had not bought the control of the Southern Pacific at all, that they were as they used to be before 1901—entirely separate; not only having separate agencies here, but separate in interest; and the Southern Pacific, as Mr. Hawley testified he did, in New York, endeavored to work all the business to the coast by way of New Orleans for the benefit of the Southern Pacific—the Union Pacific, on the other hand, having no interest in the Southern Pacific, trying to work everything, of
2156 course, by Omaha or Kansas City—both of those companies being consumers, to some extent, of steel rails and other things that you manufacture, do you not think this principle of reciprocity might figure a little in the distribution of your traffic as between these two outlets to the coast?

A. As far as the Union Pacific is concerned, they would not get anything, under the present basis of reciprocity, because they buy very little from us. But the Union Pacific to-day is getting some business by that gateway because they are a through line, as we might say, in connection with the Southern Pacific, and are furnishing fast time and good train service; and that is an argument in their favor; while, on the other hand, the Colorado Midland and the D. & R. G., not being heavy purchasers, but purchasing some for their requirements, we give them some of the business that the Union Pacific would get if they were heavy purchasers from us.

Q. The fact is, then, that that is a weapon that railroads can use? I do not mean weapon in an offensive way, but it is an argument that railroads can use to get traffic, is it not?

A. It is a fair argument.

Q. And the Southern Pacific can use as an argument with you, if they were fighting for business, as they used to by New Orleans, that they are buying steel rails of you, can they not? That is proper.

A. We do not make rails; we make bars.

Q. Well, whatever you make.

A. Whatever we make.

Q. Whatever you do make, that is a fair argument for them to put up to you, is it not?

A. Yes, sir.

Q. To get traffic to the Pacific coast?

A. Yes, sir.

Q. On the other hand, if the Union Pacific was independent
2157 of the Southern Pacific, and would come to you and buy stuff from you, that would be a fair argument for them to put up to get business routed that way, would it not?

A. Yes, sir.

Q. So that there would be some little difference produced, perhaps, by the separate ownership, instead of having one man who would say which one of the companies shall buy of you and which one shall buy of another man, and so on, if they were entirely separate and

apart? It might make some difference in the movement of traffic through this principle of reciprocity?

A. Yes, sir; it would have its bearing.

Q. All the lines that are competing for transcontinental business out there west of the River are trying to get your business upon the theory that they give good service, are they not?

A. Yes, sir.

Q. The Santa Fe claim they give good service?

A. Yes, sir.

Q. Try to give it, I suppose?

A. Yes.

Q. The Union Pacific?

A. The Union Pacific.

Q. In connection with the Southern or the San Pedro?

A. Yes, sir.

Q. And the El Paso route, and all of them, try to give good service to Southern California?

A. Yes, sir.

Q. Does your traffic move to Southern California by the San Pedro and the Southern Pacific to some extent?

A. Yes, sir.

Q. And also moves there by the El Paso gateway?

A. No, sir.

Q. Not to Southern California?

A. No, sir.

Q. The New Orleans gateway?

A. No, sir. The Santa Fe, San Pedro and Southern Pacific.

Q. You did not move anything to Southern California by
2158 the Sunset Route or any part of it?

A. No, sir; none that we controlled; and I am not positive that——

Q. I thought you said that through the connection at El Paso you moved stuff. Perhaps I misunderstood you?

A. We did in former days, not now.

Q. You have done it, though?

A. We have done it in times past, yes. We don't do it now.

Q. Well, what is the reason for that?

A. The old question of reciprocity.

Q. That is the same thing, is it? Reciprocity takes it over the other roads?

A. The lines between here and El Paso are not lines that are very heavy purchasers. Whether they are users of our material to any great extent or not, I do not know; but they are not heavy purchasers, and we do not ship by that gateway.

Q. How about between here and New Orleans?

A. The Illinois Central is the line that we would favor if we would ship by New Orleans.

Q. Do you ship some that way?

A. We ship to New Orleans that way, but not to the Pacific coast.

Q. Not to the Pacific coast?

A. No, sir.

Q. I think you gave in detail the way you do ship to the coast, did you not?

A. Yes, sir.

Q. Do you ship some over the Canadian Pacific?

A. Not now.

Q. Not now?

A. Not into this country. If it is going into the Canadian Pacific coast, why, we do not control the routing on that. That is export material.

Q. Does your export stuff go by the Pacific or go by the
2159 Suez, destined to points across the Pacific?

A. Why, the biggest portion of our export shipments that we have made to Japan has gone by Seattle.

Q. By Seattle?

A. The Great Northern Railroad.

Q. Have you shipped anything by San Francisco?

A. Maybe a small box of samples, or something like that. I do not know of anything else.

Q. Chiefly by the Great Northern?

A. Chiefly by the Great Northern.

By Mr. LOVETT:

Q. I wish to pursue a little further that interesting subject that Mr. Severance opened up. I understood him to suggest, and you to assent to it, that if the Southern Pacific and the Union Pacific were entirely separate in their relations—that is, had no relations—that possibly through reciprocity the Southern Pacific might get a larger share of California business than it now gets, as against the Union Pacific. Now, Mr. Ogden, you don't mean to say that the Southern Pacific——

Mr. SEVERANCE. That is not what I asked him.

Mr. LOVETT. What did you ask him, then?

Mr. SEVERANCE. I asked him whether, if they were separate and distinct and each one working this reciprocity business, it might make a difference from time to time in the distribution of the traffic. You did not say which way.

Mr. LOVETT. Oh, yes. Well, that is in substance the same, I think.

2160 Q. I understood you to assent to that statement. Do you mean to suggest that the Union Pacific and Southern Pacific separately would buy more material than they do under their present relations, that they would use more?

A. No, I don't say that. They might buy more of us, though.

Q. Why?

A. Because I would eliminate the Union Pacific Railroad out of it altogether.

Q. Well, the Union Pacific does not buy from you now, and I understand you have eliminated it.

A. No, we have not eliminated them altogether. We give them a share of our business because they make the time.

Q. You do that notwithstanding the fact that they do not buy from you?

A. Yes, sir.

Q. Now, you say if the Southern Pacific were separated from the Union Pacific and were to buy from you, you might give them more of the business.

A. The slow freight, the freight we did not have any hurried movement for, yes.

Q. What greater inducement could there be for the Southern Pacific to buy from you if separated from the Union Pacific, than now, Mr. Ogden?

A. Because, as I have just said, the freight to the coast that we are not in a hurry for, that is slow, would take the longer route via New Orleans.

Q. Take the longer route via New Orleans?

A. Yes.

Q. How long since you shipped any that way?

A. Why, there may be a car or two that escapes my memory, but as for general movement in that territory I suppose it has been seven or eight or nine years.

Q. Does the Southern Pacific buy from you now?

A. Yes, sir.

2161 Q. Well, don't you reciprocate now?

A. You bet; yes, sir.

Q. How?

A. Well, as I say, we give them some of the business via the Union Pacific railroad, and we give them some of the business via the other lines, the D. & R. G. and the Colorado Midland, but most of our business lately ——

Q. Why don't you reciprocate by way of New Orleans?

A. Because the time via the western gateway is much better than the time via New Orleans.

Q. How about this freight where you say time is not a consideration?

A. The dead freight, the slow freight?

Q. I don't know what kind of freight it was; the kind you said you would give them by way of New Orleans if they would buy more from you.

A. Well, we give that to them at Ogden. They get a good piece of it.

Q. You do that now?

A. Yes, sir.

Q. And you probably would do that even if they bought more from you, wouldn't you?

A. Under the present circumstances, yes, or under the old time.

Q. What do you mean, then, by saying if they bought more from you, you would give them more by way of New Orleans?

A. We could do that, but at present they are hooked up with the Union Pacific, and we consider that one line to the Pacific coast, to San Francisco.

Q. The Union Pacific and the Southern Pacific?

A. Yes, sir.

Q. But you give your business to San Francisco, then, at Ogden?

A. Yes, sir.

Q. Patronizing the Denver & Rio Grande and other lines
2162 east of Ogden?

A. Yes, sir.

Q. And you do not give the Union Pacific any except where you have to on account of time?

A. Yes, sir.

Q. Their superior service. If they were separated, and the Southern Pacific should buy more from you, the only difference would be that you think you would give them more freight by way of New Orleans?

A. We did in times past.

Q. How long past?

A. We used to ship pretty heavy via New Orleans.

Q. How long ago?

A. About eight or nine years ago.

Q. Did they buy more from you then than now?

A. They bought through our agency or representative then on the coast, that carried our material in stock. Now, since the formation of that concern into a much larger concern, they do not represent us. We only have an office on the coast. Now they buy direct from us.

Q. Why, doesn't the Southern Pacific buy from you on the Pacific coast now?

A. Yes, they buy direct through our San Francisco office.

Q. In other words, there has been no change in that method of buying, has there?

A. Well, for a long time their name would not appear on our books. Now their name appears on our books since we have dispensed with the old Geo. W. Gibbs Company, and latterly the Pacific Hardware & Steel Company. Now the Southern Pacific buy directly from us and their name appears right on our books.

Q. Aren't their purchases satisfactory?

A. Very much so.

2163 Q. Why don't you ship by way of New Orleans, then? Why don't you reciprocate?

Mr. SEVERANCE. He has explained. You have got only one line now.

Mr. LOVETT. We have got two lines—we have got three.

WITNESS. You have got a good line via Omaha, Union Pacific and Ogden, and we are shipping that way now because you make the time.

Q. If we would buy more wouldn't you ship that way?

A. Ship what way?

Q. By way of Ogden, the way you are now doing?

A. Yes.

Q. What I want to understand is the reason why you say you would ship by way of New Orleans if we would buy more.

Mr. SEVERANCE. No, he said he would buy more if you were disassociated from the Union Pacific; that is what he said.

Mr. LOVETT. Now, Bro. Severance, let the witness answer.

WITNESS. I don't know but we are both arguing from two different points of view.

Q. I want to get your reason for saying if the Southern Pacific would buy more of your products that you would ship by way of New Orleans.

A. I didn't say if they would buy more. They are good buyers of ours, and for that reason we are favoring their route.

Mr. STUBBS. What he said was that if they bought more they would ship more.

Mr. SEVERANCE. He said if the two lines were separate, the way they used to be, they would get more business.

WITNESS. I didn't say if they would buy more, because the
2164 Southern Pacific, I must admit, is a very good purchaser of Jones & Laughlin.

Q. You do not mean to be understood as saying, then, that if the Southern Pacific should buy more of you that you would ship more by way of New Orleans?

A. Oh, no, no, not as a problem of the present.

Q. Well, I do not think you answered the question.

Mr. SEVERANCE. Let him finish his answer.

WITNESS. Not the way the situation is now.

Q. What is that?

A. Not the way the situation is now. Of course if the Southern Pacific would come to us and demand of us, on account of their purchases, that we ship via New Orleans, it would have to have consideration at our hands. They could do that to-day.

Q. But they are satisfied now, you mean, with your shipments by way of Ogden?

A. Yes, sir.

Q. It is immaterial to them whether you ship by way of Ogden?

A. It is immaterial how we send it to them.

Q. So you send it over their line either at Ogden, New Orleans or El Paso?

A. I think so, yes, sir; they get it at some of the junction points.

Q. Are they indifferent about your shipments over the other lines instead of the Union Pacific to Ogden?

A. Mr. Herring is a very active man. He wants the business for his line whichever way he can get it, the long or the short haul, naturally; and he is after the business as against everybody else, and every body else is against him.

2165 By Mr. SEVERANCE:

Q. I think you and Judge Lovett were, as you said, figuring from different standpoints. Let me see if I understood you correctly. What you meant to testify and what you did testify was that under present conditions the Union Pacific and the Southern Pacific having amalgamated, you regard it as immaterial to the Southern Pacific whether you send the stuff via Ogden or via New Orleans—as the thing is now?

A. Yes. They will take it either way.

Q. And what you said was that if they had continued separate they might have diverted traffic via New Orleans by coming to you and asking for it as against the Union Pacific?

A. Well, they could come to us and demand it that way, possibly.

By Mr. LOVETT:

Q. Now I do understand you. What has the amalgamation of the Union Pacific to do with it, inasmuch as you don't ship over the Union Pacific anyway?

A. Oh, we do ship some.

Q. Only what you have to in the matter of time. You ship over the competitors of the Union Pacific to Ogden.

A. We consider that that is one direct route and under the same control.

Q. That is just exactly the way you would ship if the Union Pacific was off the map, isn't it. You would ship by way of Ogden?

A. No, we have the Santa Fe. We don't have to ship over the Union Pacific to Ogden.

Q. I know that, but what has the amalgamation of the Union Pacific and the Southern Pacific to do with your shipments there
2166 inasmuch as you don't ship over the Union Pacific except as you have to on account of the time?

A. What has it to do with it?

Q. Yes.

A. I don't understand you, Judge.

Q. I understood you to state in answer to Mr. Severance, that inasmuch as the Southern Pacific and Union Pacific have been amalgamated, as you say, that you do not ship by way of New Orleans because you turn it over to the Southern Pacific at Ogden. Now, when it goes that way it does not pass over the Union Pacific; so I want to see what the amalgamation has to do with it. What influence has it? What has it to do with it at all?

A. The reason why we ship by the Union Pacific, as I said before, is on account of the service—the through train service.

Q. But I am asking you why you don't ship by the Union Pacific but ship over the Rio Grande and its connections.

A. Because those people are here soliciting that business in competition.

Q. So it goes to the Southern Pacific at Ogden anyway?

A. The Southern Pacific is bound to get the business.

Q. But as the Union Pacific doesn't get any of it, I want to know the reason why you say the amalgamation has anything to do with that.

Mr. SEVERANCE. He didn't say they did not get any of it, Judge.

Mr. LOVETT. Let the witness answer.

Mr. SEVERANCE. He says they don't get any of that except what is sent over the Union Pacific on account of the time.

2167 (The question was read.)

A. The Southern Pacific and the Union Pacific I consider one through line from here to San Francisco, say. We give them the business that we are absolutely in a hurry for and want to make time on; it is quite considerable—has been in times past—for the reason that the mills have been behind in their orders two and three months, and we had to get the stuff there as quick as we possibly could after it was shipped. The other little lines in Colorado—the D. & R. G. and the Colorado Midland—buy some material from us; they have some representation here, some very nice, active young men who solicit us for this business, and we give them a share of it. We consider that if it goes over the D. & R. G. or the Colorado Midland it has got to go to the Southern Pacific and the Southern Pacific gets the car. The combined total of the business that we ship over the Colorado Midland and the D. & R. G. and the Union Pacific makes up what we consider a fair share of our business for the Southern Pacific railroad. Now, as I say, if the Southern Pacific would come to me and demand that we should give them some of the business to New Orleans, we would have to give it consideration; no doubt about that. Whether we would give them much business or not afterwards would be determined at that time, for the reason that we would rather ship it via the Ogden gateway, as better time is made that way than via New Orleans and via El Paso.

Q. That does not operate as any restraint at all on your business—the fact that they do not demand the shipment via New Orleans, does it?

A. No, they have not asked us for it.

2168 Q. You would rather send it the way you do send it, of course?

A. If I had nothing to consider except the service to be rendered in my shipment, I would give it to the Union Pacific at Omaha always.

Q. You can ship it by way of New Orleans if you want to, can't you?

A. Yes, but the delay in getting the business to the market, or in the shipment en route, might seriously interfere with our sale of that material.

Q. So it might be a disadvantage to you for the Southern Pacific to insist upon shipments via New Orleans?

A. It would be. I said that would be a matter of consideration when they would come.

Q. And you reciprocate the Southern Pacific's trade, then, by sending by way of Ogden over these various lines?

A. By the different routes.

Q. And not over the Southern Pacific and the Union Pacific, although you consider them practically one line?

A. Practically one line.

By Mr. SEVERANCE:

Q. In the old days, when Mr. Hawley was the general eastern agent, he worked very hard to send all the traffic he could by way of New Orleans, didn't he?

A. Yes, sir.

Q. And at the present time Mr. Herring is not working very hard to send all the traffic via New Orleans, is he?

A. No; Mr. Herring is working to get the business at any junction point that he can get it.

Mr. LOVETT. And Mr. Hawley's work was to the disadvantage of the shipper, then, if it went by way of New Orleans?

2169 WITNESS. We found it so.

Mr. SEVERANCE. But under the principle of reciprocity you harkened to Hawley, did you, and his line?

WITNESS. No. In those days we did not control the business.

2170 JOHN F. LENT,

being duly sworn as a witness on behalf of the Camplainant, testified as follows:

Direct examination by Mr. SEVERANCE:

Q. Mr. Lent, where do you live?

A. Pittsburg.

Q. How long have you lived in Pittsburg?

A. Practically all my life.

Q. What is your business?

A. I am a traffic manager for shippers.

Q. What shippers?

A. There are a number of large industries and two associations of manufacturers that I am traffic manager for.

Q. Would you mind putting those on the record?

A. I will.

Q. What are they?

A. I am traffic manager for the National Paving Brick Manufacturers' Association and the Pennsylvania and Western New York Brick Association; then, of the individual companies, the Carbon Steel Company, the Hussey & Binns Shovel Company, the Pittsburg Steel Foundry, the Mack Manufacturing Company, the Independent Brewing Company, the Republic Rubber Company, the United Engineering Company. I believe those are all.

Q. Are the plants of those various companies located at Pittsburg, or Pittsburg common points?

A. In Pittsburg and surrounding districts.

Q. Is it in the district that takes the Pittsburg-Buffalo common point rates?

A. Yes, sir, many of them.

Q. I don't suppose you would be able to tell anything about
2171 the output of those various concerns, by carloads?

A. No, I would not.

Q. In the aggregate it amounts to a very large tonnage, doesn't it?

A. Yes, sir.

Q. How long have you been in that business?

A. In the business of representing these various companies a little short of four years.

Q. Previous to that what was your business?

A. I was traffic manager of the Union Steel Company.

Q. Is that a large concern here?

A. It was a large corporation, a $25,000,000 institution, that sold out to the U. S. Steel corporation.

Q. And up to what time did you represent them—up to 1904?

A. I represented them in 1901 and 1902.

Q. Previous to that time what railroads, if any, were you connected with?

A. I was commercial agent for the Pere Marquette system for between two and three years.

Q. What years?

A. In 1899 and 1900, as I recall it.

Q. Previous to that were you in the railroad service?

A. Yes.

Q. With what company?

A. I was with the Pennsylvania lines.

Q. For how long a period of time?

A. I started in 1889, as messenger, and continued through the offices to chief clerk in the division freight office.

Q. Do you remember when the Union Pacific and Southern Pacific had separate agencies here in Pittsburg?

A. Yes, sir.

Q. Were you acquainted with the agents?

A. Yes, sir.

Q. What were their names?

2172 A. For the Southern Pacific, Mr. Herring; for the Union Pacific, I knew Mr. Fowler as the first agent of my knowledge, and then Mr. Lothrop, Mr. Choate, and subsequently Mr. Herring.

Q. Was Mr. Choate the last agent of the Union Pacific prior to the time the two offices were consolidated?

A. Yes, sir.

Q. And do you remember when they were consolidated?

A. I think it was in 1901, but I am not sure of the date.

Q. Since then Mr. Herring has been the agent of both lines?

A. Yes, sir.

Q. When these offices were separate what was the condition as to competition between the Union Pacific and the Southern Pacific for transcontinental business?

A. The agent for each line solicited the business, in the interests of his road.

Q. Which way was the Southern Pacific endeavoring to work its business to the coast?

A. The Southern Pacific seemed to contend for the long haul.

Q. Via New Orleans?

A. Via New Orleans.

Q. Was there competition between the Union Pacific and Southern Pacific for business to Portland at that time?

A. There may have been, but not to my knowledge. I don't recall any.

Q. You don't remember as to Portland?

A. No, sir.

Q. Was there at any time a movement of traffic by the Morgan line from this region?

A. It has not been practicable from a rate standpoint, from the Pittsburg district.

Q. It is only from points east of Pittsburg?

A. Yes, sir.

Q. So that the movement from the Pittsburg district, so far as the Morgan line is concerned, is practically nothing?

2173 A. Exactly.

Q. Were there any occasions that you remember when those rail rates were absorbed as far west as Pittsburg by the Morgan line?

A. For coast business, I believe there was no time, in my knowledge.

Q. Was there for any other class of business except coast business?

A. For a very short period the Morgan line was a factor on Texas business from this territory, due to the application of the seaboard rates from Pittsburg district, but for a very limited time.

Q. Did that extend beyond Texas—extend into Colorado?

A. I believe not.

Q. So that the Morgan line has not been effective in the Pittsburg district?

A. I understand it has not.

Q. That is what I understood. When you were working with the Pere Marquette, where did you endeavor to route transcontinental traffic?

A. The Pere Marquette was not much of a factor on transcontinental business.

Q. Their western terminus is Chicago, isn't it?

A. At that time they had not gotten into Chicago.

Q. Oh, I see. Then, of course, they were not?

A. They had to work it across the lake——

Q. Across to Manitowoc—through that way?
A. Yes, from Luddington over to Manitowoc.
Q. Then they did not figure very much?
A. They did not figure.
Q. Had it been the custom of the transcontinental lines, prior to the amalgamation of the agencies of the Southern Pacific
2174 and Union Pacific, to maintain commercial agencies in Pittsburg—all the transcontinental lines?
A. Yes, sir.
Q. Did the Canadian Pacific have an agency here?
A. Yes, sir.
Q. The Northern Pacific?
A. Yes, sir.
Q. The Great Northern?
A. Yes, sir.
Q. The Santa Fe?
A. Yes, sir.
Q. What are these agents doing for these different lines?
A. The solicitation on their part seems to be more in the matter of advocating the service that the road is capable of giving, and supplying rates and tariffs, and giving such information as helps the shipper out on matters that the shipper can not have as intimate a knowledge of as the agent.
Q. Do you regard these agencies as efficient and useful to railroads in securing business?
A. Yes, sir.
Q. And in offering these various bits of assistance to the shippers, I suppose it is for the ultimate purpose of getting the business for the road represented by the solicitor, is it not?
A. That seems to be the motive.
Q. Now, since 1901, when the Southern Pacific and Union Pacific agencies were consolidated, has there been any competition between the Union Pacific and the Southern Pacific for transcontinental business, as far as you have observed?
A. No, sir.
Q. Does the personal element enter into the ability of commercial agents to get business?
A. It does.
Q. That is, the personal friendship with the shippers?
A. Yes, sir.
2175 Q. And personal relations with them?
A. Yes, sir.
Q. You think that is effective in securing business, do you?
A. I have always regarded it so.
Q. And you think this assistance to shippers that you have mentioned is effective likewise?
A. I do; yes, sir.
Q. Do you remember of any time that business has been carried to coast points by the Canadian Pacific and by boat from Vancouver?

A. Yes, sir; I have known of such.
Q. When was that?
A. I had knowledge of that probably eight or nine years ago.
Q. What kind of traffic moved that way, do you remember?
A. I think I sent some nails and wire that way; not much freight though.
Q. To where—San Francisco?
A. San Francisco.
Q. How did that move—first by Chicago, or did the Canadian Pacific get it up north here some place?
A. It has been so long ago that my recollection of the routing that was used between here and Portland is rather indefinite.
Q. Do you remember the existence of the boat line from Portland to San Francisco?
A. Yes, sir.
Q. Did you ever make any shipments that way?
A. Yes, sir.
Q. What kind?
A. That is this shipment I speak of.
Q. I didn't ask you about that. You didn't understand. I asked you about shipments by the Canadian Pacific and Vancouver. You are speaking about shipments from Portland, are you?
A. I am speaking about shipments from Portland to San Francisco.
Q. That was some nails and wire?
A. Yes.

Q. Do you have any recollection of any shipments from here
2176 or points near Pittsburg to Vancouver by the Canadian Pacific and then down by boat to San Francisco?

A. I have never used that route.
Q. Do you know of any oriental business going from Pittsburg by the Pacific coast?
A. I do not.
Q. Do you know of any that has moved that way in the past?
A. Yes, sir; I know that shipments have moved that way.
Q. Do you know over what lines they have moved to the coast?
A. I have not had any shipments of my own.
Q. You merely know of them from your knowledge——
A. Hearsay.
Q. You only know of them from your knowledge of the traffic. Well, they have come to your knowledge, have they, as a traffic man?
A. Yes, sir.
Q. Do you remember what kind of stuff went that way?
Mr. LOVETT. He says that all he knows about it is hearsay.
Mr. SEVERANCE. He is competent to testify.
Mr. LOVETT. I object to that as hearsay.
Q. You keep familiar with the movement of traffic out of here, don't you—try to?
A. Yes, sir; try to.

Q. It is part of your business, isn't it?

A. Yes, sir.

Q. Now, if you recall what shipments you learned of that were made to the Orient via San Francisco——

Mr. SEVERANCE. Do you want to object to it?

Mr. LOVETT. Yes. The defendants object to that upon the ground that the witness has already stated that all he knows about it is hearsay.

Q. You may answer the question, Mr. Lent.

A. I could not indicate intelligently any particular class of business.

2177 Q. Do you remember the route over which it moved to the coast—what transcontinental route west of the Missouri River?

A. I have no specific knowledge of the route.

Q. I don't remember whether I asked you this question or not—I intended to: Do you know of any time, years ago, when business moved to Portland, Oregon, by the Ogden gateway and Central Pacific?

A. Yes, sir.

Q. Did you ever make shipments that way yourself?

A. No, sir.

Q. Since you have been familiar with conditions here have there been any shipments around the Horn or by the Panama route to the coast?

A. I have shipped by the Panama route.

Q. What steamship line did you use from New York?

A. The Panama Railroad and Steamship Line.

Q. The Panama Railroad itself owns the steamship line from New York to Colon, doesn't it?

A. We so understand it.

Q. Operated with the railroad?

A. Yes, sir.

Q. From Panama north to San Francisco what line did it go over—the Pacific Mail?

A. We were not informed as to that. They made the arrangement for the through rate, and it was immaterial to us.

Q. How long ago was that?

A. Within the past six months.

Q. Previous to that had you also shipped that way?

A. I have had shipments that way; yes, sir.

Q. Always, ever since you have been in the business, have you—off and on?

A. Yes; at long intervals however.

Q. That route has always been open?

A. Yes, sir.

2178 Q. How are the rates on that route, and how have they been, compared with the transcontinental all-rail rates?

A. There is a substantial differential prevailing.

Q. How do the rates on that route compare with the American-Hawaiian line across Tehuantepec?

A. The Hawaiian line usually gets a little better rate. Their service is a little better.

Q. The Hawaiian line gets a higher rate than the Panama?

A. Yes, sir.

Q. Because the service is better?

A. I think that is the general rule.

Q. In what respect is the service better? Quicker, you mean?

A. Quicker, yes, sir, by the Tehuantepec route.

Q. Do you remember of shipments by the American-Hawaiian line before the Tehuantepec route was opened?

A. Via the Horn?

Q. Yes.

A. Yes, sir.

Q. Was there considerable traffic moved out of here over that route?

A. I can not answer as to the extent. I had a shipload or a large cargo that went.

Q. The route that way was a very long route, but most all sea route?

A. Yes.

Q. The tariff was less?

A. The rates were very attractive then.

Q. Did you ever know of any shipments—did you ever control any shipments yourself from territory east of Pittsburg and Buffalo by the Morgan line?

A. East of the Pittsburg district?

Q. Yes.

A. Not east of the Pittsburg district, no, sir.

Q. But you have shipped from the Pittsburg district by the
2179 Morgan line?

A. Yes, sir.

Q. When?

A. Not to California points.

Q. That is what I mean. Not transcontinental?

A. No, I haven't; not transcontinental.

Q. You said you did to Texas points, I believe?

A. Yes, sir.

Cross-examination by Mr. LOVETT:

Q. You keep informed of the changes in transcontinental rates generally, don't you, Mr. Lent?

A. I try to.

Q. And you are familiar with the method of filing them under the interstate law?

A. Yes, sir.

Q. You are, I suppose, familiar in a general way with the provisions of the Interstate Commerce Act regulating rates?

A. In a general way, yes, sir.

Q. That is the business of these traffic agents of shippers, is it not—to keep posted on those matters?

A. Yes, sir.

Q. And inform their employers or principals? There are a great many different routes open from this district to the Pacific coast, are there not—routes that embrace either the Atchison or the Southern Pacific ultimately?

A. Yes, sir.

Q. Various lines leading from this territory, and lying between this territory and the Missouri River and the Rocky Mountains?

A. Yes.

Q. As connections of the Southern Pacific or Atchison form through routes on this Pacific coast business?

A. Yes, sir.

Q. All of these routes are open to shippers, are they not?

A. They are.

Q. Shippers here who wish to ship to the Pacific coast may
2180 go, if they prefer, via the Southern Pacific route via New Orleans, or via El Paso, or via Ogden, or via the Atchison; all of these lines are open to them?

A. They are, yes, sir.

Q. And have been all along?

A. Yes, sir.

Q. And that has been true ever since the days of Mr. Hawley, too, hasn't it?

A. Yes. I don't know the gentleman.

Q. You know of him, do you not?

A. I know of him.

Q. During the days when the Union Pacific and the Southern Pacific had separate agents here, the Union Pacific agent worked for the Ogden route, the Southern Pacific agent worked preferentially for the New Orleans route, didn't he?

A. Yes, sir.

Q. But if he could not get it that way as against the Atchison, for example, and could get it by way of Ogden, he would work via Ogden, would he not?

A. He would, yes, sir.

Q. Or via El Paso?

A. Yes, sir.

Q. In other words, he preferred the route that afforded him the longest haul?

A. Yes, sir.

Q. But if he could not get that, he would take what he could?

A. Exactly.

Q. But if a shipper preferred either one of those routes, he had a right to take it, did he not? They were all open to him?

A. They were all open, yes, sir.

Q. That has always been true?
A. Yes, sir.
Q. Such business as the agent of the Union Pacific controlled for the Pacific coast went ultimately over the Southern Pacific, didn't it, from Ogden west?
A. Yes, much of it.
Q. All of it, didn't it? all of that going south of Portland?
A. Yes.
2181 Mr. SEVERANCE. You mean all-rail business?
WITNESS. The all-rail.
Q. The all-rail business?
A. Yes, sir.
Q. The great bulk of it went that way, didn't it?
A. Yes, sir.
Q. Did you ever know, besides this shipment of nails, any freight to go to San Francisco by way of Portland from this territory?
A. No, I have no knowledge except of this one shipment that I speak of.
Q. And when was that made?
A. Probably six or seven years ago.
Q. You can not fix it more definitely?
A. I can not fix the date, though.
Q. And you never knew of any traffic moving to San Francisco by way of Portland except the shipment to which you refer?
A. No, I have no specific knowledge of anything else.
Q. How did that shipment that you referred to move, do you remember?
A. Up to Portland?
Q. Yes.
A. I can't recall just the routing which was used.
Q. Do you know whether it went over the Union Pacific or the Northern Pacific?
A. I am not prepared to say just how it went.
Q. So you cannot recall at all the route up to Portland?
A. No, sir.
Q. What line carried it from Portland to San Francisco, do you know?
A. A steamship line the name of which I don't recall.
Q. That was a very exceptional shipment?
A. It was in my experience. We didn't use it much.
Q. Are you positive even about that shipment, Mr. Lent? You don't remember the routing at all up to Portland? Are you positive about that?
2182 A. My recollection is rather faint, but I feel sure that we had a shipment.
Q. Are you sure it went by steamer or by rail from Portland?
A. By steamer from Portland.
Q. You are sure of that, are you?
A. Yes; I feel sure of that much.

Q. With the exception of that shipment, all shipments controlled by the separate agents of the Union Pacific here, as far as you know, destined to California, went over the Southern Pacific?

A. The Southern Pacific; yes, sir.

Q. From Ogden. Now do you see any reason why, in view of the relations of the Union Pacific merely as one link in this transcontinental rail line, assuming that it is a preferred connection of the Southern Pacific—do you see any reason, from the standpoint of the shipper or from the standpoint of the railroad company, why a joint agent could not represent both the Union Pacific and the Southern Pacific interests as well as separate agents could?

A. With the same activity that two representatives would give, I see no reason why.

Q. There is competition enough by the Atchison and its connections to stimulate activity, isn't there?

A. There is.

Q. All of these eastern connections, lines east of the Missouri River, lines east of Ogden, Kansas City and El Paso, the Texas & Pacific and its connections, the Rock Island, and these various other lines lying between here and the Missouri River and as far west as the Rocky Mountains—that is pretty active too, isn't it?

A. In this territory it is very active.

Q. Although it ultimately goes over either the Southern Pacific or the Atchison?

A. Exactly.

2183 Q. There is no disadvantage to shippers in having all these lines open; that is, the fact that you may ship via New Orleans or El Paso or Omaha is no disadvantage to you, is it?

A. No, sir.

Q. And all of those gateways have been kept open, I believe you have stated?

A. Yes, sir.

Q. If the Southern Pacific had an agent here, separately, actively soliciting against the Union Pacific line, his line would not be an advantageous one, would it, by way of New Orleans, as compared with the all-rail line?

A. From the standpoint of service, no.

Q. Well, from any other standpoint?

A. Unless in the matter of reciprocal relations, that one of the other witnesses spoke of.

Q. In the matter of buying supplies, etc.?

A. Yes. I would not be interested in that, however.

Q. Well, you don't see any reason why it could not reciprocate just as much now, do you?

A. From the business that my companies have it is not a factor.

Q. Well, the competition of the Atchison for California business, and these other lines, is enough to stimulate the spirit of reciprocity in the Southern Pacific, isn't it?

A. Yes, sir.

Q. You don't see how the Union Pacific, if separate, could stimulate that any greater, do you, as it is dependent on the Southern Pacific anyway for its outlet west?

A. So far as my own knowledge goes, I don't see that it could be much improved.

2184 By Mr. SEVERANCE:

Q. You have spoken about the consolidation of these agencies here in Mr. Herring, and Mr. Lovett has asked you a number of questions with reference to it. When the agencies were separate, the agent of the Union Pacific, Mr. Lothrop or Mr. Choate, was trying to get business exclusively via that route, wasn't he?

A. Yes, sir.

Q. The agent of the Southern Pacific (Mr. Herring) was trying, if possible, to get business via the Southern route?

A. Exactly.

Q. So that there was active competition between the two, wasn't there?

A. There was.

Q. For Pacific coast business. And it was only when a party insisted on sending his stuff via a northern route, either the Santa Fe or the Union Pacific, and refused to send it around by New Orleans, that the Southern Pacific man would try to get it via Ogden; that is true, isn't it?

A. That is correct.

Q. Now, Judge Lovett says that there is other competition; that the Santa Fe man is enough to stimulate competition.

A. Yes, sir.

Q. Suppose the Santa Fe should be represented by the same man that represents the Southern Pacific and the Union Pacific; suppose Mr. Herring should spread himself out a little further and take in the Santa Fe; can you then see how there would be any competition in these through routes to the Coast, between the Santa Fe and the Southern Pacific and the Union Pacific?

A. The competition would be eliminated.

2185 Q. Therefore when Mr. Herring takes in two of those three routes, competition is eliminated between those two and only exists between the two together and the Santa Fe?

A. That is correct.

Q. That is true, isn't it?

A. As I understand it.

Q. Now, the rates have been the same via all the routes, haven't they?

A. The all-rail rates; yes, sir.

Q. All-rail rates; that is what I mean.

A. Yes, sir.

Q. By all the routes?

A. Yes, sir.

Q. For many years?

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A. Yes, sir.

Q. Do you know anything about the divisions among connections?

A. No, sir. There was a time when I did.

Q. You remember, don't you, that they have been stable?

A. Yes, sir; I believe they have.

Q. They were established many years ago, and have never been changed?

A. I believe they have been unchanged.

Q. So that the Union Pacific was free to go in and get all the business it could, without any fear of losing any part of its divisions?

A. Yes, sir.

Q. And it did hustle actively for the business?

A. It did.

Q. And its agency worked exclusively for that line, didn't it?

A. It did.

Q. And what was done here by the consolidation of the agencies was to do away with the Union Pacific agent and put Mr. Herring, who had been competing with the Union Pacific agent, in charge of both lines?

A. He was placed in charge of both lines.

2186 By Mr. LOVETT:

Q. Now I wish to split these hairs with Bro. Severance once more. Isn't there this vital difference between the situation of the Atchison and the Union Pacific: that the Atchison has its own lines to California points, and, through its own lines and its connections east, is an active competitor of the Southern Pacific for California business, whereas the Union Pacific cannot get to California except in connection with the Southern Pacific? Isn't there that difference in the two systems.

A. That is a statement of fact.

Q. It is a very material statement, isn't it?

A. Yes, sir.

Q. Isn't it also true that the Union Pacific could never make a rate to California without the concurrence of the Southern Pacific?

A. That would be true.

Q. You don't suppose that the Southern Pacific, controlling the line from Ogden to California points, would permit the Union Pacific to make a rate to California or to cut the rate to California, do you, if it knew it?

A. The Southern Pacific would be the ruling factor.

Q. Yes. It controls that situation so far as the Union Pacific is concerned?

A. Yes, sir.

Q. Necessarily. Now in this matter of divisions, you said that they are largely stable. You see no reason why, if the Union Pacific

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or any other line attempted to manipulate its revenue by giving concessions from it, and if the Southern Pacific discovered that, that it should not change those divisions, do you? You know of no reason why it should not do it?

A. No, sir.

2187 Q. In other words, the division is not so fixed that the Southern Pacific could not change it or cut off the connections altogether with the Union Pacific, if it wanted to?

A. Exactly. The division is a matter between the roads.

Q. Now this competition that you said existed between the Southern Pacific and the Union Pacific, that Mr. Severance again asked you about, so far as the Southern Pacific was concerned it was a contention for the most revenue; that is, the preference of either one of three routes that it controlled?

A. Yes, sir.

Q. And that it was seeking to get the traffic over that route and at that gateway that afforded the longest haul and the greatest revenue. That is true, isn't it?

A. That was the effort, yes, sir.

Q. And when the Union Pacific got the traffic, the Southern Pacific got it also, though not quite as much revenue perhaps as if the Southern Pacific took it the other way?

A. Exactly.

By Mr. SEVERANCE:

Q. The Southern Pacific didn't have anything to do with making the rates on that shipment that you sent by Portland and thence by boat, did it?

A. They would not have.

Q. And that route was always open to the Union Pacific, which had a line from the Missouri river to Portland, wasn't it? The Union Pacific through its sub-lines, the Oregon Short Line and the Oregon Railway & Navigation, reaches Portland, doesn't it?

A. Yes, sir.

Q. And had a boat line down to San Francisco?

A. That route was open.

2188 Q. That route was open, and that route was open to be used by the Union Pacific if the Southern Pacific attempted to claim an unfair division, wasn't it?

A. I don't know how they used it.

Q. Well, I say it was open to be used?

A. It was open at least.

Q. For competitive purposes?

A. Yes, sir.

Q. Now, the Southern Pacific cannot make a rate of itself, from Pittsburg to California, can it?

A. They can not.

Q. It can only make a rate in connection with connecting lines?

A. Yes, sir.

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Q. That is the way the railroad business is always done, isn't it?
A. Yes, sir.
Q. The rates are made through the bureaus?
A. Concurrence through the bureaus.
Q. They are all made by agreement, aren't they?
A. By concurrence, yes, sir.
Q. And the rates being fixed in that way, by concurrence of the various lines interested, no one line controls it; they all have to concur, don't they?
A. That is correct as far as the rates go.
Q. And if the rate should be changed tomorrow, the other lines would have to meet it, wouldn't they; otherwise they would go out of the traffic?
A. It depends on which way the change was.
Q. If one line between two competing points should change the rate, the other lines would have to meet that rate or go out of the business?
2189 A. It depends on which way the change is. If it is reduced——
Q. I mean if the rate was lowered.
A. If the rate is lowered, the other line would have to meet it.
Q. And if the rate was put up, the other lines would be glad to meet it, wouldn't they, naturally?
[The witness laughs.]
Q. But the fact is that in the nature of the business, the rates between all these points that are competitive, over all the lines, must in the nature of things be the same?
A. Yes, sir.
Q. And they have been maintained the same, except in periods when the law was violated——
A. Yes, sir.
Q. —and cut rates were put in?
A. Yes, sir.
Q. So that the competition which has existed for many years—the legitimate competition which has existed for many years—has been competition in service and competition in solicitation of business?
A. Yes, sir.
Q. That is all, isn't it?
A. Yes, sir.
Q. And in soliciting business, the soliciting agent has used the various means of inducing traffic to go via his line, that have been stated here on the stand?
A. Yes, sir.
Q. Now, prior to the amalgamation of these agencies here in Pittsburg—the agencies of the Southern Pacific and the Union Pacific, that competition, the only competition that can legitimately exist, was in existence between the Union Pacific route and the Sunset Route, as you have testified?
A. Yes, sir.

By Mr. LOVETT:

Q. Now let me make an application of Mr. Severance's theory.

2190 Mr. SEVERANCE. I have no theory. I was asking questions.

Mr. LOVETT. Yes, you have a very good one. I think it is sound.

Q. Isn't there this difference between the case that he assumes and the case that exists so far as the Union Pacific and the Southern Pacific are concerned: that if there was a disagreement between the Union Pacific and Southern Pacific as to divisions or as to tariffs, at Ogden, that the Union Pacific would have no outlet for transcontinental business except by way of Portland and the boat line, if that be considered one, whereas the Southern Pacific might have forty, in that it could establish rates with the Denver & Rio Grande——

A. Exactly.

Q. ——with its connections at El Paso, the Texas & Pacific, the Rock Island, and with the various lines that it connects with in Texas and at New Orleans?

A. Yes, sir.

Q. In other words, its lines are so situated and have such connections that if the Union Pacific should antagonize it, it would be open to do business perhaps almost as well as it could with the Union Pacific, whereas the Union Pacific would be shut out of the California business except in connection with the Southern Pacific? Isn't that true?

A. That is true. The theory on which you are arguing seems to be from the standpoint of divisions.

Q. Yes; and joint rates.

A. And joint rates; yes, sir.

Q. That is, suppose that they were to terminate there.

A. Yes. If the divisions were not satisfactory the rates would not be put in.

2191 Q. Now the next point. Suppose that the Union Pacific attempted to work this route via Portland over which you shipped nails to San Francisco—suppose that it attempted to work that route on California business as against the Southern Pacific, to coerce divisions, or for some purpose of that sort—which I think has been suggested by Mr. Severance; could not the Southern Pacific retaliate and injure the Union Pacific vastly more than the Union Pacific could possibly injure it by using the Portland route, by the Southern Pacific transferring its business to the Denver & Rio Grande at Ogden? In other words, as it is, the Union Pacific is the preferred connection of the Southern Pacific. Suppose the Union Pacific were to disrupt that by using the Portland route; don't you think, from such knowledge as you have of the railroad business that the Union Pacific would be in very much worse condition if it attempted to use the Portland route, by the Southern Pacific favoring the Denver & Rio Grande?

A. I would so regard it, because of the fact that the Southern Pacific would control the larger tonnage.

By Mr. SEVERANCE:

Q. Now let us see about that last statement. Where does the Union Pacific start—the eastern end of it?

A. At Omaha.

Q. What lines are there that are feeding business into the Union Pacific at Omaha?

A. The North-Western and St. Paul.

Q. Let me suggest some and see if I am right. You said the North-Western and the St. Paul?

A. Yes.

Q. The Illinois Central?

A. The Illinois Central.

Q. The C. B. & Q.?

A. The C. B. & Q.

2192 Q. The Wabash?

A. The Wabash.

Q. The Chicago Great Western?

A. Yes, sir.

Q. The Rock Island?

A. The Rock Island.

Q. Do you think it would be an advantageous thing, in the case that my friend has just suggested, for the Southern Pacific-Ogden route to antagonize all these lines that are sending business over the Union Pacific and thence over the Southern Pacific to San Francisco?

A. Wouldn't it be good policy to antagonize them?

Q. No, to antagonize all those lines that are gathering up business, taking it to Omaha, and then sending it out to Ogden over the Union Pacific?

A. It certainly wouldn't be good policy to antagonize them.

Q. Consequently, when you get to talking about the Southern Pacific refusing to do the decent thing, irrespective of the fact that the law requires them not to discriminate against the Union Pacific, they could not afford to do that in view of this enormous traffic that is controlled by these lines east of Omaha, could they, in which that traffic could be sent by the Santa Fe or the Northern routes or by the Union Pacific around by Portland and by boat? If they got into a warfare of that kind it would disorganize the whole situation out there, wouldn't it?

A. That would be a correct statement, with the modification that the shippers are a factor in selecting the route.

Q. They are, yes; certainly they are. But what I am getting at is, that each one of these lines, the Southern Pacific and the

2193 Union Pacific—each one has certain elements of strength in its position, in order to get the other to do justice by it.

A. Yes.

Q. And they have lived along for a great many years, most of the time harmoniously, under a substantially uniform division, as you have stated?

A. Yes, sir; I believe so.

Q. And, as a matter of ordinary business and common sense, such a situation as Judge Lovett has suggested would not be apt to occur, would it—of trying to freeze the Union Pacific out of a reasonable proportion of the through rate?

Mr. LOVETT. If the Union Pacific had common sense management it would never try to use the Portland route.

WITNESS. I would like to sanction that—with the addition that we have the eastbound business to keep in mind, originating on the Southern Pacific.

Q. Certainly. We have the eastbound business; very true. The fact is that the Southern Pacific was in a good position to compete with the Union Pacific, wasn't it, for business?

A. Yes, sir.

Q. And the Union Pacific, because of its eastern connections, and because of its being a short line across, and because of its having a line up to Portland and a boat line down, was in good position to compete with the Southern?

A. Yes, sir.

Q. And each one was competing with the other, until Bro. Stubbs took possession and put Mr. Herring in here all by himself, in Pittsburg. Isn't that about right?

[The witness laughs.]

By Mr. LOVETT:

2194 Q. Isn't it true that every one of these lines that Mr. Severance mentioned as feeding the Union Pacific at Omaha can just as well feed the Denver & Rio Grande and send their business to the Pacific coast over the Denver & Rio Grande and the Southern Pacific at Ogden?

A. To parts of the Pacific coast?

Q. All? Can't they reach everything south of Portland?

A. Without the use of the Southern Pacific did I understand you?

Q. No; you misunderstood my question. Mr. Severance named a number of lines that he said were feeders of the Union Pacific at Omaha.

A. Yes.

Q. My question is, Is it not true that every one of those lines can just as well feed the Denver & Rio Grande at Denver and Pueblo and points there, and reach the Southern Pacific that way, without going over the Union Pacific?

A. Yes, sir.

Q. Every one of them?

A. Yes, sir.

Q. So that they are not dependent on the Union Pacific to reach the Southern Pacific?

A. No, sir.

Q. Isn't it true that a good many of those lines that he mentioned do reach the Southern Pacific over the Denver & Rio Grande?

A. I can not answer as to that.

Q. Now, another thing. Mr. Severance asked you a general question here. Suppose that the Union Pacific were to attempt to use the route up to Portland, and then a boat line down to San Francisco; do you not think, from such knowledge as you have of the movement of the traffic of the country, that these connections of the Union Pacific and the Denver & Rio Grande, that Mr. Severance named, would naturally use the Denver & Rio Grande and the Southern Pacific, rather than to attempt to work the Union Pacific around that way—as a business proposition?

2195

A. Yes, sir; as a business proposition I would not regard it as so good a route.

Q. The Southern Pacific has a good many lines in the interior of California?

A. Yes, sir.

Q. So, even if they were to use the Portland route and get down there, they would still have to use Southern Pacific lines to get to the interior?

A. Yes, sir.

Q. Mr. Severance asked you, in his sweeping proposition, whether the Southern Pacific, by reason of originating this large amount of business, was in a position to compete with the Union Pacific. Don't you mean by that, that the Southern Pacific, originating that business, could send some of it by the Southern Pacific and some of it over its own line to Ogden, and thence over either the Union Pacific or the Denver & Rio Grande?

A. The eastbound business?

Q. Yes.

A. Yes, sir.

By Mr. SEVERANCE:

Q. That is, the Southern Pacific is in very good position to compete with the Union Pacific on eastbound traffic, because it can route it by the Sunset Route?

A. They control the traffic largely out there.

Q. Well, they control the unrouted traffic, we will say?

A. Yes, sir.

Q. I believe it has been developed in this matter that there is certain traffic that the shippers are still allowed to control?

A. Yes.

Q. I think you mentioned that?

A. Yes, sir.

Q. But the unrouted traffic can be sent either way by the Southern Pacific?

2196

A. Yes, sir.

Q. So that they are in an excellent position, with their Sunset Route, to exclude the Union Pacific from that unrouted traffic to the east?

A. They are.

Q. And that would be regarded as an act of competition between the Sunset Route and the Southern Pacific, would it not?

A. If they were operated separately that would be——

Q. That is what I am speaking of. Suppose that they were operated separately?

A. Yes. That would be the natural tendency.

By Mr. LOVETT:

Q. Mr. Severance is fond of showing that it is impossible for Mr. Herring and Mr. Stubbs each to compete with himself. Is it not impossible also for the Southern Pacific to compete with itself? It controls both of these routes, doesn't it?

A. Yes, sir.

Mr. SEVERANCE. It is not impossible for the Union Pacific to get business out there and get it routed that way, via Ogden, through its own efforts?

WITNESS. If they were separated?

Mr. SEVERANCE. Yes.

WITNESS. Yes, sir.

An adjournment was then taken until the morning of Thursday, January 28, 1909, at 10.30 o'clock, at the same place.

2197 CIRCUIT COURT ROOM, PITTSBURG, PA.,
*Thursday, January 28, 1909—10.30 a. m.*

The hearing was resumed, pursuant to adjournment, before the Special Examiner, Hon Sylvester G. Williams, at the above time and place.

Present: On behalf of the complainant: Mr. C. A. Severance, Mr. G. E. Husted. On behalf of the defendants: Mr. R. S. Lovett, Mr. D. T. Watson.

## THOMAS SNAPE,

called on behalf of the Complainant, being duly sworn, testified as follows:

Direct examination by Mr. SEVERANCE:

Q. Where do you live, Mr. Snape?

A. At East Liverpool, Ohio.

Q. How long have you lived there?

A. About 25 years.

Q. What is your business?

A. Bookkeeper and routing agent for the C. C. Thompson Pottery Company.

Q. What kind of pottery do they make?

A. They make white tableware, Rockingham, and yellow ware.

Q. Is it an establishment of considerable size?

A. Yes, sir.

Q. To what parts of the country do you ship your products?

A. All over the United States.

Q. Do you ship to the Pacific coast?

A. We have, but in combination cars with other potteries.

2198 Q. You know Mr. Wells, of West Virginia, do you not?

A. Yes, sir.

Q. Have you shipped with him?

A. Yes, sir.

Q. Do you know Mr. Herring?

A. Yes, sir.

Q. Do you know Mr. Lothrop and Mr. Choate?

A. Yes, sir.

Q. Do you remember, years ago, those gentlemen calling on you soliciting shipments?

A. Yes, sir; they used to come about once a month.

Q. Which way was Mr. Herring soliciting shipments?

A. For the Southern Pacific.

Q. And Mr. Choate?

A. For the Union Pacific.

Q. Did you attend to the routing of your product then?

A. Yes, sir.

Q. How did you send it?

A. We sent it in combination cars, sometimes with Knowles, Taylor & Knowles, and the Homer Laughlin China Company.

Q. Where are those people located?

A. They have one of their factories on the East Liverpool side, and the other on the Newell side—West Virginia (the Laughlin), but our cars were with the ones on the East Liverpool side. They have three plants.

Q. What route did those cars take to the coast?

A. I could not say. They had the shipping of them.

Q. Mr. Wells attended to that?

A. Mr. Wells and Knowles, Taylor & Knowles had the shipping of them.

Q. Since 1901 have your shipments been solicited by Mr. Herring?

A. Yes, sir.

Q. For which route, if either, or for both?

A. He represents both.

2199 Q. He expresses no preference between the two?

A. No.

Cross-examination by Mr. LOVETT:

Q. When your shipments went by the Union Pacific, in response to the suggestions of Mr. Choate, which way did they go?

A. We never made any shipments of our own; they were invariably made in conjunction with the other potteries.

Q. What route did they take?

A. I could not say. They had the ordering of the cars and the shipping of them. We simply had to load our goods and turn the car over to them.

Q. But you do know that whatever shipments went to the Pacific coast over the Union Pacific would also pass over the Southern Pacific from Ogden west?

A. That I understood.

Q. How is that?

A. I could not say how they shipped.

Q. Are you familiar with the location of the Union Pacific lines and the Southern Pacific lines?

A. Yes, sir.

Q. You know, do you not, that the Union Pacific connects with the Southern Pacific at Ogden, Utah?

A. Yes, sir.

Q. And that that was the only outlet for the Union Pacific south of Portland?

A. Yes, sir.

Q. So that whatever shipment went to any point south of Portland, over the Union Pacific, would necessarily pass over the Southern Pacific from Ogden west?

A. Yes, sir.

Q. In soliciting business, when they had separate solicitors, if Mr. Herring could not get the shipment by way of New Orleans, he would seek to get it either by El Paso or Ogden, would he not?

2200 A. Well, when they came to us soliciting, I invariably told them that we had not the shipping of the car. Then, of course, they did not express any opinion of any routing. I simply told them who had the shipping, and then they went to them; so they had no occasion to express any ——

Q. So you don't know, then, what method——

A. No, I don't know what the other potteries——

Q. You simply knew that one was a Southern Pacific representative and the other a Union Pacific?

A. That is all.

Q. Do you know the different routes to the Pacific coast by which shipments are made of your products?

A. No, I do not.

Q. You don't know how many lines there may be over which it can move to the Pacific coast?

A. If we were shipping to the coast I should know; but not having to do, why——

Mr. SEVERANCE. They turn it all over to Mr. Wells.

2201 W. E. WELLS,

called on behalf of the Complainant, being duly sworn, testified as follows:

Direct examination by Mr. SEVERANCE:

Q. Mr. Wells, where do you live?
A. At Newell, West Virginia.
Q. What is your business?
A. I am secretary of the Homer Laughlin China Company, manufacturers of white tableware.
Q. You know Mr. Snape, who was just on the stand, do you not?
A. Yes, sir.
Q. You are the Mr. Wells he was speaking of?
A. I presume so. I could not hear his testimony.
Q. He was speaking of Mr. Wells routing their traffic to the coast years ago.
A. I presume he referred to the office with which I am connected. Personally I did not do it.
Q. But you remember of shipments being made in cars in which your product and theirs were both loaded, do you not?
A. Yes, sir.
Q. How many potteries has your company?
A. There are two separate plants.
Q. Where are they located?
A. One at East Liverpool, Ohio, the other at Newell, West Virginia.
Q. Who has had charge of the shipments or the routing, so far as the routing is left to your company?
A. On coast shipments?
Q. Yes.
A. They are always routed by the consignee.
2202 Q. They are always routed by the consignee?
A. Invariably.
Q. They are now. How was it formerly?
A. Always, as far as I recollect, for twenty years. I have never known it any other way.
Q. You have never had the routing?
A. No.
Q. Were you familiar with the routes over which the stuff moved?
A. Prior to ten years ago I gave that matter personal attention.
Q. Which way did the cars move, prior to ten years ago?
A. I can recall using every transcontinental line.
Q. First striking the transcontinental lines at the Missouri or Mississippi River, did some of the cars go by New Orleans?
A. Occasionally there was a car by New Orleans—the Southern Pacific at that point.
Q. El Paso?
A. I do not recall using that connecting point in any routing.

Q. Is there any other point at which you reached the Southern Pacific and the South, excepting New Orleans?

A. I have no recollection of any other.

Q. Did you ship over the Santa Fe?

A. Frequently.

Q. The Union Pacific?

A. Yes, sir.

Q. The Northern Pacific?

A. Yes, sir.

Q. The Great Northern?

A. The Great Northern.

Q. This business you say was routed by the consignees?

A. Always.

Q. Who were the consignees—wholesale merchants?

A. Principally, but not always.

2203 Q. Where were they located in the Pacific coast country?

A. At Los Angeles, Sacramento, San Francisco, Portland, Tacoma, Seattle.

Q. All along the coast?

A. All along the coast.

Q. Do you know Mr. Herring?

A. Yes, sir.

Q. Did you know Mr. Choate?

A. Never personally.

Q. Did you know any of the Union Pacific agents in the old days, when they had a separate agency?

A. I cannot recall having known any of them personally.

Q. Did you ever see them in your office soliciting business?

A. I can only assume that I did; I don't remember.

Q. Are there any other potteries that ship in connection with your company, except Mr. Snape's company?

A. Yes. I know there have been enclosures in our cars from other potteries, but I do not distinctly recall what ones. I know there have been quite a number.

Q. You knew Mr. Herring years ago, you say?

A. I have known Mr. Herring for nearly twenty years.

Q. In the days when the Union Pacific had its own agency, which way did Mr. Herring solicit traffic?

A. My recollection is that Mr. Herring solicited traffic via the Southern Pacific.

Q. By New Orleans, you mean?

A. Of that I am not clear.

Q. Your recollection is indistinct about that?

A. It is. It is a matter of not much importance to us, and I never charged my memory with it.

Q. And the Pacific coast business has always been routed by

2204 the consignees, as you remember?

A. Always.

Q. Therefore you had no special reason to remember, I suppose, about the——

A. For several years past our business in California has been done with one wholesale firm. They have two leading houses, one at San Francisco, and the other at Los Angeles. Their consignments have been routed via the Union Pacific for San Francisco, and via the Santa Fe for Los Angeles, for as many years back as I remember. That is their standing routing.

Q. For how many years have they been your sole customer out there?

A. Since, I think, about 1898.

Mr. LOVETT. Such shipments as passed over the Union Pacific went also over the Southern Pacific from Ogden to San Francisco, did they not?

WITNESS. Necessarily.

2205 WILLIAM C. WATSON,

called on behalf of the Complainant, being duly sworn, testified as follows:

Direct examination by Mr. SEVERANCE:

Q. Mr. Watson, where do you live?

A. I reside at East Liverpool, Ohio.

Q. What is your business?

A. I am employed by the Knowles, Taylor & Knowles Company, manufacturers of earthenware, as superintendent of sales, order and transportation.

Q. How long have you been connected with that firm, Colonel?

A. Thirty years.

Q. In the same capacity?

A. No.

Q. How long have you had charge of their shipments?

A. It has varied. When I first went there I went from the Pennsylvania Railroad Company as shipping clerk, and I served in that capacity for six years; then I traveled four months in the year for about ten years, but had an assistant during that time as shipping clerk, that is, a man to make out the bills of lading, and so forth, while I was absent. The last eight years I have been superintendent of the department and constantly in the office. All mail orders and shipping business went through my hands during the last eight years.

Q. Are you acquainted with Mr. Herring?

A. Oh, yes.

Q. How long have you known Mr. Herring?

A. I have seen the gentleman and met him for a great many years.

2206 Q. You have known him a long time?

A. Yes.

Q. Do you remember of the time when Mr. Herring was agent of the Southern Pacific, and the Union Pacific had a separate agency here in Pittsburg?

A. I remember when Mr. Herring was agent of the Southern Pacific Railroad alone, yes, sir.

Q. Did you know Mr. Choate?

A. I met him. I don't know as I knew him.

Q. Did he use to call on you?

A. Yes, sir.

Q. What was Mr. Choate doing when he called on you? What was he trying to get?

A. He was after freight, like the rest of them.

Q. He was the agent of the Union Pacific, was he?

A. Yes, sir.

Q. And he was soliciting business that way?

A. Yes, sir.

Q. Which way did Mr. Herring solicit business for the coast?

A. In early days they solicited freight by New Orleans.

Q. Did you ever make any shipments via New Orleans?

A. Yes, sir.

Q. Do you occasionally see Mr. Herring nowadays?

A. See him once in a while, but see Mr. Corfield, his traveling man. Mr. Herring stays in Pittsburg. He has a traveling man that comes down to see us.

Q. He has an assistant who comes to see you?

A. Yes, Mr. Corfield.

Q. Do they also write to you at the present time with reference to shipments?

A. Yes, sir.

Q. I show you Complainant's Exhibit 112. Does Mr. Herring or his assistants ever send or give you postal cards of that character?

A. I believe they do, yes, sir; that is, they send to my assistant; passes through my hand. Yes, sir.

2207 Q. In making shipments, do you fill out the blanks, or have you used any of those postal cards?

A. We use them once in a while, but we don't pay much attention to it. This card here is a card that they send us—the Union Pacific Railroad Company, Oregon Short Line, and the Oregon Railroad & Navigation Company, the Southern Pacific Company, the Houston & Texas Central Company, and so on; and if it is very important that they rush the car, we use the card—tell them that we shipped car number so and so over their line or the connecting line with them, and they send us back a little notice that they will rush it through, or something like that. It don't amount to much—they don't do it.

Q. On this postal card is the heading: "Union Pacific Railroad Company, Oregon Short Line Railroad, The Oregon Railroad & Navigation Company, Southern Pacific Company, Houston & Texas Central Railroad, San Antonio & Aransas Pass Ry.," and at the bottom it says: "Kindly designate through routing."

A. I didn't notice that.

Q. I wanted to ask you whether you ever fill out these postals and send them back, designating the routing, or whether you ignore that suggestion of Mr. Herring?

A. Well, we don't pay much attention to these. We treat them politely when they come in, and they give us a Pittsburg stogie, and that is about all there is to it.

Mr. SEVERANCE. I offer in evidence Complainant's Exhibit 112 (Watson).

Complainant's Exhibit 112 is (Watson) as follows:

2208 "FORM 1524.

Union Pacific Railroad Company.
Oregon Short Line Railroad.
The Oregon Railroad and Navigation Co.
Southern Pacific Company.
Houston & Texas Central Railroad
San Antonio & Aransas Pass Ry.

---------- 190--

DEAR SIR:

We forwarded today
Via ----------
Care ----------
At ----------
Car No. ----------
Initial ----------
Containing ----------
Consigned to ----------
Destination ----------
which please forward to destination with all possible dispatch.

Yours truly,

_____

By mailing this Postal, it will insure against delays.
Kindly designate through routing.
A 4 3 08 1M."

On address side of postal card is printed the following:

"UNION PACIFIC RAILROAD CO.
Mr. G. G. Herring, General Agent,
Park Building. Pittsburg, Pa."

Q. Do any of these gentlemen that call on you from Mr.
2209 Herring's office, have visiting cards with them?—A. Yes, sir. Mr. Corfield usually leaves his visiting card each time.

Q. Have you any of them with you?—A. This is the gentleman's name [producing a card which was marked Complainant's Exhibit 113 Watson].

Q. I show you complainant's Exhibit 113. Is that a card which was left in your office by Mr. Corfield?—A. Yes, sir.

Q. Whose handwriting is the pencil memorandum in, if you know?—A. That is my own.

Q. When did you put that on—at the time he was there?—A. No, sir, shortly after he was there. I rubbed it out afterwards.

Q. That is just a memorandum that he represented Mr. Herring?—A. That was a memorandum to me that he represented Mr. Herring.

Mr. SEVERANCE. I offer in evidence Complainant's Exhibit 113 (Watson.)

Complainant's Exhibit 113 (Watson) is as follows:

"J. E. CORFIELD,
Traveling Freight Agent.
708 Park Building.
Pittsburg, Pa.

Union Pacific Railroad Co.
Oregon Short Line Railroad.
Oregon Railroad & Navigation Co.
Southern Pacific Co."

On back of card is a small map, same as Complainant's Exhibit 116.

Q. Do they write you any letters soliciting shipments?—A. 2210 Yes.

Q. Have you any of them with you?—A. Here is one from the Union Pacific Railroad Company, the Oregon Short Line and Southern Pacific [handing paper to Mr. Severance].

Q. I show you Complainant's Exhibit 114. Is that a letter from Mr. Herring?—A. Do you want me to read it?

Mr. SEVERANCE. The witness would like to keep the letter. If you have no objection, he may just read it in?

Mr. LOVETT. I have no objection.

Q. Read the letter, printed matter and all.

A.—

"Union Pacific Railroad Company
Oregon Short Line Railroad Company
The Oregon Railroad & Navigation Company
Southern Pacific Company

TRAFFIC DEPARTMENT.

G. C. Herring, General Agent,
707–708–709 Park Building.

In reply, please refer to No. 21273 R.

KNOWLES, TAYLOR & KNOWLES,
*East Liverpool, Ohio.*

GENTLEMEN: Understand the Pacific Crockery & Tinware Company, Los Angeles, have ordered from you carload or crockery and have requested routing of same via Chicago and Atchison, M. K. & T., T. & P., care of Southern Pacific at El Paso. Would appreciate your advice whether or not this order has yet shown up, and if you can kindly arrange to respect the consignee's wishes in regard to the routing of same, and greatly oblige,

Youry truly,

G. C. HERRING, *General Agent.*"

Q. What is the date of that letter?—A. It is dated January 19, 1909.

The EXAMINER. Pittsburg, Pennsylvania?

WITNESS. Yes, Pittsburg, Pennsylvania.

2211 Mr. SEVERANCE. By consent, the witness may keep the original letter, it having been read into the record.

WITNESS. This car has not gone out yet; I would like to keep this original letter.

Q. In what way do you make your shipments to Portland, Oregon? How are they divided?—A. They are usually routed by the customer, and they go over the Northern Pacific line with the connecting lines from Chicago, for Portland.

Q. Does any of the business move over the Great Northern to Portland?—A. Yes sir.

Q. Does any of it move over the Union Pacific to Portland?—A. Well, to that question I would say no. Probably one car of goods would go that way in ten years.

Q. Most of your business goes over one or the other of the Northern roads?—A. Yes, sir.

Q. To Portland, I mean.—A. To Portland, yes, sir; Portland, Seattle, Tacoma and those points.

Q. Do you remember years ago of shipments to Portland moving by way of Ogden and the Central Pacific?—A. How many years ago?

Q. Any time since you have been in business?—A. Thirty years is a long time to remember anything like that.

Q. I don't care about your fixing the date, but I want to know if you know of shipments going over that route.—A. To Portland over what?

Q. Via some route as far as Ogden—either the Union Pacific or Rio Grande, or some route—and then by the Central Pacific.—A. The best answer I can give to that is, that I do not remember.

Q. Are any shipments made from your plants by the Mor-
2212 gan line of steamships to the coast, or have there been?—A. There have been shipments made up.

Q. How long ago, Mr. Watson, if you remember?—A. To San Francisco?

Q. Yes; any coast points.

A. Not the Morgan line. We made a shipment about fifteen years ago to R. R. Burns & Company, of San Francisco, California, in that way—not by the Morgan line, but by rail to New York, and a sailing vessel from New York to San Francisco.

Q. Oh, around the Horn?

A. Around the Horn, yes, sir.

Q. But you never shipped any by the Morgan line of steamers?

A. Yes, we have, but I cannot recall any particular shipment, because it has been some years ago.

Q. Does your place where your plants are located take the Pittsburg and Buffalo rate to the coast?

A. Why, we understand so, yes, sir.

Q. You are in the Pittsburg common points?

A. We are supposed to be, or at least we understand that we are in the Pittsburg district.

Q. How does your business to San Francisco move at the present time, as far as the continental lines are concerned?

A. You mean to San Francisco alone, or to the coast points?

Q. Say to coast points generally, then. You have already testified as to Portland; but take the points south of Portland.

A. To Los Angeles at the present time, we ship by the—to give a short answer, we ship by the Southern Pacific at El Paso; and to the same point (I am talking about Los Angeles) by the Atchi-
2213 son, Topeka & Santa Fe either at Chicago, care of the Chicago & Alton, and thence wherever they connect. Sometimes different routes, you know. Most of our freight to Los Angeles is routed by the—you did not ask the question, but I might as well say—is routed by the customer.

Q. Does any of it go by the San Pedro route?

A. Very little.

Q. Does some of it go that way?

A. We probably ship a little that way in less than carloads.

Q. That goes by the Union Pacific and the San Pedro, does it not?

A. Why, it must of necessity go over the Union Pacific, too.

Q. How does your San Francisco business move?

A. They seem to divide it up. It goes by the Southern Pacific, the Atchison, Topeka & Santa Fe, from the different gateways. Sometimes it goes over the Rock Island; sometimes over other roads down through the south there to El Paso; and other times we ship it over the Rock Island, C. M. & St. P., and other roads that run into Ogden.

Q. With connections at Ogden?

A. With different connections, yes, sir.

Q. Does some of it go by Omaha—the Union Pacific?

A. Oh, yes; once in a while there is a carload goes that way.

Q. Then it is pretty generally distributed among the different lines, is it?

A. Yes.

Q. And routed, as you say, almost entirely by the consignees?

A. Nearly so, yes, sir. Since the Interstate Commerce Commission is looking after things, and since the rate is the same, you know, there is not much left for me to do.

2214 Q. Do you remember in the old days when efforts were being made by the Southern Pacific to send goods via the New Orleans route?

A. Yes, sir, I do.

Q. And there was competition between them and the Union Pacific people, who tried to send it by Omaha?

A. Well, I never got anything out of it; but I know they were always hustling for it.

Q. Each one was hustling to get the business?

A. Yes. Harry Passavant used to come down to see me there.

Q. Who?

A. Mr. Passavant. I said "Harry"—but, Mr. Passavant.

Q. Passavant?

A. Yes.

Q. Which line did he represent?

A. He represented the Union Pacific. That is, earlier—before you were born.

Cross-examination by Mr. LOVETT:

Q. When did Mr. Passavant solicit the business, Mr. Watson?

A. That is a long time ago. I could not tell you the date of it. Maybe Mr. Herring could; I cannot.

Q. You could not approximate about the date?

A. Oh, away back when I was a boy. If you want an approximate date, it must have been fifteen or twenty years ago, was it not, Mr. Herring? About that time. Mr. Choate came after the Passavant boys.

Q. When they solicited freight and secured freight for California points to go over the Union Pacific, you understand that that would also go over the Southern Pacific, do you not, Mr. Watson?

A. No, no. It went over the Union and Central Pacific.

2215 Q. Well, the Southern Pacific operates the Central Pacific.

A. Now they do, yes.

Q. But all that went over the Union Pacific for California points also went over the Central Pacific?

A. At that time, yes, and now.

Q. So after all, it did go over a portion of the Southern Pacific line; it would go over the Southern Pacific line a portion of the way, assuming that the Southern Pacific operates the Central Pacific?

A. Now, or then?

Q. Now.

A. How do you want me to answer that?

Q. Now, and then.

A. What?

Q. I want you to answer it in accordance with your understanding of the fact, of course, as you will do.

A. In those days we thought we were shipping by a competing line when we shipped by the Union Pacific and the Central Pacific.

Q. You thought you were shipping over a line——

A. In those days, yes.

Q. ——that was competing with the Southern Pacific?

A. Yes, or any other lines.

Q. But you did not know in those days that the Southern Pacific controlled the Central Pacific?

A. No. I am not up in stocks.

Q. But, nevertheless, all shipments that passed over the Union Pacific for California points went over what you understand to be the Central Pacific?

A. Yes, sir.

Q. That is the point I want to establish. During the time that Mr. Herring was soliciting for the Southern Pacific, and
2216 the Union Pacific had a separate agency, Mr. Herring, I understood you to say, tried to induce the routing of the traffic by way of New Orleans, but if he could not get it that way, wouldn't he also try to get it by way of El Paso or by way of Ogden?

A. Mr. Herring or any of his representatives represented to me that they represented the Southern Pacific Railroad Company, and they were after business, and they did not name any particular point that they wanted that business at. They were after business—just like the rest of those gentlemen do.

Q. They wanted the business wherever they could get it.

A. If I understand your question, you are referring to back before they absorbed the Union Pacific?

Q. Yes.

A. Well, he was soliciting freight for his railroad, just like any other man would do.

Q. There are other lines soliciting freight for the Pacific coast, are there not, Mr. Watson?

A. Other lines?

Q. Yes.

A. Yes, sir. The Atchison, Topeka & Santa Fe man is down once in a while.

Q. Does the Rock Island system solicit it?

A. Oh, yes.

Q. Does the Missouri Pacific?

A. The M. K. & T.? Yes; they come around once in a while.

Q. And the Texas & Pacific?

A. Well, I am not acquainted with their man, but he comes in there once in a while, or writes in.

Q. And the Missouri Pacific: did you answer as to that?

A. Well, the M. K. & T.; that is the Missouri Pacific. Yes.

Q. No, it is not.

2217 A. The M. K. & T.? Oh, the Missouri Pacific? Yes, they come in.

Q. The Missouri Pacific, and the M. K. & T.?

A. Yes.

Q. The C. B. & Q.?

A. The C. B. & Q., yes.

Q. The North-Western?

A. Yes, Chicago & North-Western, yes, sir.

Q. And the Chicago, Milwaukee & St. Paul?

A. Yes.

Q. And the Louisville & Nashville?

A. Well, yes.

Q. The Illinois Central?

A. Yes. All of them.

Q. All of them solicit business?

A. All of these railroads. They bother you to death.

Q. If the Southern Pacific had no solicitor at all, does not the result of the work of the Rock Island, the Missouri Pacific, the Missouri, Kansas & Texas, and all of those other lines, except those that directly connect with the Atchison, accrue to the Southern Pacific?

A. I presume it does.

Q. Whatever the Missouri Pacific would get for California points would ultimately go over the Southern Pacific, would it not?

A. If they make a certain rate, or agree to a certain rate and a certain time, it does not make any difference to me how they put it through.

Q. Yes, but the point I am trying to develop is this: The question is, if it is not true that even without any representative of the Southern Pacific here at all, by virtue of its location on the Pacific coast, its lines west of Ogden and west of El Paso, all of these intermediate carriers, in soliciting, would, in a large measure, solicit for the Southern Pacific Company, because that is their western connection.

A. Usually all those fellows attend to their own business.

2218 Q. Take the case shown by the letter that you produced: there is traffic going over the Chicago & Alton, the Missouri, Kansas & Texas, and Texas Pacific. The lines which you say have representatives here, in working for that business, necessarily work for the Southern Pacific, do they not?

A. They do not say anything about it. I shall have to give you the same answer—they look after their own business.

Q. Is not their only outlet to the Pacific coast the Southern Pacific?

A. That might be.

Q. Do you know whether it is or not? Are you familiar with the lines out there?

A. I am familiar with the main lines by virtue of shipping, and, as a boy, traveling over them.

Q. It is true, is it not, that prior to the opening of the San Pedro line in 1905, all traffic for the Pacific coast south of Portland had to go over either the Southern Pacific or Atchison?

A. Prior to when?

Q. Prior to 1905. I mean all-rail traffic. I do not mean the shipments around Cape Horn or the Panama route.

A. Well, I do not want to make that statement under oath, as to dates.

Q. Well, prior to the opening of the San Pedro line, then, without reference to the date?

A. As far as my recollection serves me, the statement is correct. Without date, now, understand. I cannot remember as to the day.

2219 JOSEPH M. BELLEVILLE,

called on behalf of the Complainant, being duly sworn, testified as follows:

Direct examination by Mr. SEVERANCE.

Q. Where do you live, Mr. Belleville?

A. Pittsburg.

Q. How long have you lived here?

A. About eight years—no, ten years.

Q. What is your business?

A. Traffic manager of the Pittsburg Plate Glass Company.

Q. How long have you been in that position?

A. Since February, 1898.

Q. Previous to that what was your business?

A. I was for about fourteen years agent of the P. C. C. & St. L. Railway Company, at Wheeling, West Virginia.

Q. To what place does the Pittsburg Plate Glass Company ship its product in general?

A. All over this country.

Q. Do you have a large or a small amount of shipments to the Pacific coast?

A. Rather large.

Q. Have you had for a long time?

A. Yes, sir.

Q. During all the time you have been with the company?

A. Ever since I have been connected with the company, yes, sir.

Q. How has that product moved to the coast; over what transcontinental lines?

A. There have been very few of the transcontinental lines that have not had some share of it. One or two of them that have had a majority of it.

Q. How has it moved?

A. I will name them in the order of their prominence, al-
2220 though I have not paid such particularly close attention to the Pacific coast movement, for the reason that all of our sales to the Pacific coast are made f. o. b. factory, and we make the shipments as directed by the consignee, all shipped to one firm, W. P. Fuller & Company, who are the largest glass operators on the coast.

Q. Where are they—at San Francisco?

A. They have warehouses at San Francisco, Los Angeles, Portland, Seattle, Spokane, and they may have one or two more. That is all that I recall just now. The business for Los Angeles goes very largely by the Santa Fe. It is divided between the Santa Fe and the San Pedro, and some of it by the Chicago & Northwestern in connection with the Union Pacific.

Q. How does the San Francisco business move?

A. The San Francisco business, the large majority of it for some time past, has been moving by the Union and the Southern Pacific, via Ogden.

Q. How was it prior to 1901, if you remember—the first three years you were here?

A. Prior to 1901? I think it was pretty fairly divided.

Q. How?

A. Probably the Union Pacific got a little more. They probably got more than half of it.

Q. How did the rest of it go?

A. And the lines by New Orleans probably got a quarter of it, and the rest of it was divided among two or three different routes.

Q. You know Mr. Herring, do you not?

A. Yes, sir.

Q. Did you know Mr. Choate?

A. Yes, sir; I know him.

Q. Do you remember when Mr. Choate represented the Union Pacific here?

A. I do.

2221 Q. Were those gentlemen competing with each other for coast business then?

A. Yes, sir.

Q. When you were in the railroad business, did you have anything to do with securing, or helping to secure, transcontinental traffic?

A. Not exactly that. If you mean if I had anything to do with the routing—I often did.

Q. Did you with the routing?

A. Yes, sir. That is, in the early days along from 1878 to, probably, 1885, three-fourths of the business for western points and for Pacific coast points that came to us, came to us unrouted.

Q. Up to 1885.

A. So that at that time the terminal agent was more important than he is today.

Q. How was it from 1885 to 1898?

A. The shippers got gradually more and more to specifying routing. I think after 1884 or 1885 it was a rare thing; but prior to that, four out of five of the bills of lading that came to us would have no routing on whatever.

Q. What function do these soliciting agents perform in getting business? It seems that the various lines keep up commercial agencies.

A. Very much the same as the traveling salesman for a commercial house.

Q. The same thing—going around trying to dispose of his transportation?

A. Yes.

Q. And what arguments, in general, do they put up to get the business? The rates are all the same, and therefore what——

A. That they need the business. That is about the argument.

Q. They need the business, yes.

2222 A. It is the personal equation to-day more than anything else.

Q. You think that has more than anything else to do with it?

A. I think it has.

Cross-examination by Mr. LOVETT:

Q. Such business for California points as you moved over the Union Pacific always went over the Southern Pacific west of Ogden, did it not, Mr. Belleville?

A. Yes, sir.

Q. The only outlet for the Union Pacific to California points?

A. That is my understanding.

Q. Mr. Choate, or other agent, in soliciting for the Union Pacific, then, was necessarily soliciting for that portion of the route of the Southern Pacific, was he not?

A. I presume so; though he did not talk about the Southern Pacific.

Q. That was the effect, however, of his solicitation?

A. Yes.

Q. Then the solicitation by Mr. Herring, or other separate representative of the Southern Pacific, was, you say, for the New Orleans route, by way of New Orleans?

A. Yes, sir.

Q. And by way of El Paso?

A. Mainly via New Orleans. But his solicitation came as a result of information from the coast representatives; and generally when he came soliciting business he had advice from his coast representative that W. P. Fuller & Company had sent us certain orders which they had asked us to route in a certain specific way, and if they asked to have it routed by El Paso, why, that is the way he solicited it; and if they asked to have it routed by way of New Orleans,

2223 that is the way he solicited it.

Q. If he could not get it by way of El Paso or by way of New Orleans, he tried to get it by way of Ogden, did he?

A. All he wanted to know of me was if I would respect the routing of the consignees.

Q. He did not solicit it himself, did he?

A. Yes, sir.

Q. Didn't he try to get it by way of Ogden, if he could not get it any other way?

A. I have no recollection of that.

Q. You have no recollection of that?

A. No, sir.

Q. Do you know of any reason why he should not try to get it that way?

A. No, I do not, except that the other was the longer haul.

Q. Yes; but if he could not get the long haul, he would rather get the short haul than none at all?

A. Undoubtedly.

Mr. SEVERANCE. That is purely speculative.

Mr. LOVETT. Well, I want him to speculate about it.

Q. His solicitation was really against the Atchison, was it not, Mr. Belleville?

A. No; I think it was against the Union Pacific as well as the Atchison. The Union Pacific was the strong competitor at that time for the Pacific coast business, much stronger than the——

Q. Competitor for what?

A. Particularly in the early days, from 1898 to 1901.

Q. You have had some experience as a railroad man, in addition to traffic manager for shipments?

A. Yes, sir.

Q. You say that the strong competitor was the Union Pacific. You mean competitor for what?

A. Competitor of the Southern Pacific for coast business.

2224 Q. Was it any stronger than the Santa Fe?

A. I regarded it so at that time. That was in 1898.

Q. Don't you mean that the line made up of the Union Pacific and the Southern Pacific was the strong competitor, the strong line for California business?

A. Yes, sir.

Q. That is what you mean, is it not?

A. Yes, sir. It was at that time the strong line.

Q. Well, is it not to-day?

A. No; I think the Santa Fe is equally strong.

Q. You think it is equally strong to-day with the Union Pacific-Southern Pacific line?

A. Yes, sir.

Q. When you speak of the Union Pacific and Southern Pacific being competing lines, you do not mean to testify that the Southern Pacific could compete against itself, holding both ends of the line, do you?

A. No, sir. I was speaking rather of the agents than of the roads?

Q. So far as the Southern Pacific is concerned, is it not a question purely of division, as to whether it will get more revenue by way of New Orleans than by way of Ogden?

A. Certainly.

Q. That is true, is it not?

A. Certainly.

Q. And it was trying to work the traffic the way that afforded it the most revenue?

A. Undoubtedly. The agent wanted to make the best showing for his agency that he could, and he made the best showing by sending it via New Orleans rather than to get it at Ogden.

Q. He had to work for the gateway that afforded the Southern Pacific the most revenue, and no matter which way it went,
2225 if it did not go over the Atchison, it would go over the Southern Pacific; that is true, is it not?

A. Yes, sir.

Q. The public is not interested in the matter of divisions of through rates as between carriers, is it, Mr. Belleville?

A. Not that I know of.

Q. There are a great many other lines in here soliciting business for the Pacific coast?

A. Yes, sir.

Q. All the lines lying between here and El Paso and connecting with the Texas & Pacific between New Orleans and El Paso, and the lines reaching the Missouri River and the Rocky Mountains, are all actively soliciting that business, are they not?

A. Yes, sir; very strong.

Q. The Texas & Pacific?

A. Well, not very much.

Q. The Missouri Pacific?

A. Yes, sir, the Missouri Pacific.

Q. The Missouri Pacific and Texas Pacific have a joint agency, have they not?

A. Yes, sir.

Q. They work together?

A. They work together.

Q. Is the Rock Island soliciting it?

A. Yes, sir.

Q. The Burlington?

A. Yes, sir.

Q. The Chicago & North Western?

A. Yes, sir.

Q. The St. Paul?

A. Yes, sir.

Q. The Denver & Rio Grande?

A. Yes, sir.

Q. All of those lines are actively soliciting business for the Pacific coast?

A. Yes, sir.

Q. Such business as they get ultimately goes over the Southern Pacific, does it not—the lines that I have named?

A. I can not say that that is true with regard to all of them, but I presume it is.

2226 Q. Is it not true of the Texas Pacific?

A. No, it is not. On some of the lines running out of Chicago and out of St. Louis, the business moves in connection with the Santa Fe.

Q. Yes; but none that I have named?

A. Possibly not.

Q. Do not the Texas & Pacific and the Missouri, Kansas & Texas, and the Rock Island, send theirs through El Paso?

A. Yes, sir.

Q. Except such as the Rock Island takes to Denver and turns over to the Denver & Rio Grande to go to the Southern Pacific at Ogden?

A. Yes, sir.

Q. Does not the Burlington get the long haul by working with the Southern Pacific?

A. I presume so. I have not followed that up very closely, for the reason, as I say, we are not definitely interested in the terminal route.

Q. But from such general knowledge as you have of the railroad situation with respect to traffic for the Pacific coast, that is true, is it not?

A. Yes, sir.

Q. You know that the Chicago, Burlington & Quincy runs to Denver, do you not?

A. I do.

Q. And that the Rock Island runs to Denver and Colorado Springs?

A. Yes, sir.

Q. And that the Missouri Pacific has a Denver line?

A. Yes. I know their natural outlet is over the Southern Pacific.

2227 Re-direct examination by Mr. SEVERANCE:

Q. Mr. Lovett asked you if it was not a fact that in case the Union Pacific secured business for San Francisco or California points, it would have to go over the Southern Pacific from Ogden to the coast to get there. That is true, is it not?

A. Yes, sir.

Q. But if the Southern Pacific agency here in Pittsburg was successful in sending business by the New Orleans route, the Union Pacific did not share in that business, did it?

A. No, sir.

2228 WILBUR B. EVEREST,

called on behalf of the Complainant, being duly sworn, testified as follows:

Direct examination by Mr. SEVERANCE:

Q. Mr. Everest, where do you live?
A. Wilkinsburg, Pa.
Q. Where is your office?
A. At East Pittsburg, Pa.
Q. What is your business?
A. Principally traffic manager for the Westinghouse Electric & Manufacturing Company.
Q. How long have you occupied that position?
A. About nine years.
Q. The Westinghouse Company has business in various parts of the country?
A. In all parts of the country, yes, sir.
Q. And likewise abroad?
A. Yes, sir.
Q. What is their business in general?
A. The manufacturing of electrical machinery and appliances.
Q. That company and the General Electric Company are the two largest companies in that line of business, are they not?
A. They are.
Q. They are the principal companies in that business in the United States?
A. They are.
Q. How long have you been traffic manager of the Westinghouse Company?
A. My appointment as traffic manager was at some time in September of 1900.
Q. Previous to that what were your duties?
A. I was for a short while general freight agent.
Q. In the traffic department?
A. Yes, sir.
Q. Of the same company?
A. Yes, sir.

2229 Q. And what are your duties as traffic manager, or what were your duties as general freight agent?

A. My duties were varied at that time. The title and the duties that went with it I did not hold very long; it was only a matter of a few months. I had, for some year or two prior to that, charge of the stores, making requisitions for materials, and of the shipping; but the matter of shipping was only incidental; I did not pay very much personal attention to it.
Q. Since September, 1900, you have devoted your attention to that?
A. Exclusively devoted my attention to the traffic of the company.
Q. In shipping electrical machinery (we will confine our matters

to the Pacific coast country for the present), who routes the traffic? Do you do it, or is it done by the consignees?

A. We route almost all of our traffic, the only exception being sales that are made f. o. b. our works for direct shipment. Most of our coast business is handled through our warehousing operations, and we ship in carload lots to those points before the distribution takes place.

Q. Where do you have your warehouses?

A. At Los Angeles and San Francisco, in California.

Q. Do you have them farther north along the coast?

A. We have one in Seattle.

Q. None in Portland?

A. I believe they are carrying a small stock there, but nothing that is regular.

Q. Do you remember, when you first became the traffic manager, that Mr. Choate was here representing the Union Pacific?

A. I remember Mr. Choate. I do not remember him having
2230 solicited me for Union Pacific business.

Q. You do not remember about that?

A. No, sir.

Q. You know Mr. Herring, of course?

A. I know Mr. Herring.

Q. Do you remember of his soliciting business of you prior to the time that he represented both roads?

A. I have no clear recollection of that.

Q. You do not remember that?

A. I did not become acquainted with the representatives of the railroads until about, or shortly after, 1901, when I understood the consolidation took place.

Q. How is your traffic moved to the coast?

A. By all of the various routes.

Q. Take business to San Francisco; just detail the transcontinental lines it goes over. I do not care about the eastern connections.

A. We divide it between the Union and Southern Pacific route, and the Santa Fe, by their various connections.

Q. Does any of your business, or has any of your business, moved by New Orleans?

A. Not of late.

Q. Did it formerly?

A. There was a period, the exact date of which I do not recall—it is several years past—that a congestion of all the lines at the river was in effect, and at that time we sent considerable business over the Illinois Central and the L. & N. and connections at New Orleans with the Sunset route.

Q. The congestion along the Northern lines enabled that line to give you better service to the coast?

A. Yes, sir.

Q. To get your stuff through quicker?

2231 A. That was our understanding and our reason for our routing.

Q. But ordinarily your shipments were divided between the Union Pacific and the Southern Pacific beyond Ogden, and the Santa Fe on the other?

A. Yes, sir, and their connections.

Q. Do you use the San Pedro route at all?

A. To Los Angeles we have used it frequently.

Q. And what other lines do you use to Los Angeles?

A. The Santa Fe and the Southern Pacific.

Q. The Santa Fe which way—by New Orleans or El Paso or Ogden?

A. No; Union Pacific and Southern Pacific.

Q. That is——

A. We use the direct route.

Q. ——you ship the three ways to Los Angeles?

A. Yes, sir.

Q. The Union Pacific and the Southern Pacific from Ogden, the Union Pacific and the San Pedro road from Salt Lake, and the Atchison?

A. Yes, sir.

Q. You use those three lines into Los Angeles?

A. Yes, sir.

Q. How do you ship into Colorado and Utah common points?

A. By the direct lines from Chicago—either the North Western or the Union Pacific or the Rock Island.

Q. And have you shipped to Colorado and Utah common points by New Orleans?

A. Not that I recall.

Q. You do not remember any such shipments?

A. I do not remember.

Q. Have you ever used the Morgan line of steamers?

A. For Mexican business only, that I recall.

Q. For Mexican business?

A. Yes, sir.

Q. But not for coast business?

A. Not for coast business.

Q. How does your Oriental business go?

2232 A. Principally by way of New York. Our Oriental business is all consigned at New York—taken out of our hands at that point.

Q. Does that move by Suez, usually?

A. I so understand, although I do not route the Oriental business, for the reason that the company is represented by Takata & Company in their Oriental operations, and Takata & Company assumes the property at port.

Q. Have you ever made Oriental shipments by the Pacific coast?

A. There have been Oriental shipments by the Pacific coast.

Q. Which way did they move?

A. Sometimes to southern coast ports and sometimes to the north, as directed by Takata & Company.

Q. What ports do you mean? You say the southern coast ports and northern coast ports.

A. San Francisco is the only one I recall for the southern coast port.

Q. And others?

A. Vancouver is the only other I recall.

Q. You do not recall Seattle, either?

A. No, sir.

Cross-examination by Mr. LOVETT:

Q. Prior to the opening of the San Pedro line, all business that you routed over the Union Pacific for California passed over the Southern Pacific also, did it?

A. I think so. I do not see how it could——

Q. Didn't it necessarily?

A. Yes, sir.

Q. And I believe you stated that you also sometimes shipped by way of El Paso—or do you?

A. We would not choose that route, except where the customer had purchased f. o. b. our works and requested it.

2233 Q. You testified also that you sometimes shipped by way of New Orleans?

A. I recall that we did ship that way, for the reasons stated.

Q. All those routes have been open, rates have been in that way, and you could have shipped by any of those gateways——

A. Yes, sir.

Q. ——at any time since you have been traffic manager?

A. Yes, sir.

Q. You had the option to ship either of those routes that you, wanted to?

A. Yes, sir.

Q. But you found generally the Union Pacific-Ogden-Southern Pacific route more satisfactory for San Francisco shipments?

A. Yes, sir.

Q. There is very active solicitation by all of the intermediate carriers—that is, the lines lying between Pittsburg and New Orleans and El Paso and the Missouri River and Rocky Mountains—for that California business, is there not?

A. Yes, sir, very active.

Q. And if the Southern Pacific had no solicitors in this territory at all, much of that business controlled by its eastern connections would necessarily go over its lines, would it not?

A. I do not see how it could be otherwise.

Q. You understand that the shipper is not interested in the division of the through rate as between the different carriers participating in it, do you not, Mr. Everest?

A. I would see no reason for interesting myself, if the rates were equal.

Redirect examination by Mr. SEVERANCE:

2234 Q. Mr. Lovett has asked you whether the Southern Pacific would not get some business through its eastern connections if it maintained no commercial agency here at all. Undoubtedly that is true, it would not. But your experience has shown you, has it not, that all the railroads regard it as essential in their business to keep agencies at large shipping points like Pittsburg? They all have agencies here, have they not, soliciting business?

A. They do, yes, sir.

Q. I suppose if the Westinghouse Company should cease to work for business, they would get some business because they are a big concern?

A. The case is parallel, I believe.

Q. But they would get more business if they worked for it?

A. Exactly.

Re-cross examination, by Mr. LOVETT:

Q. The Texas Pacific and the Missouri Pacific have joint agents here, haven't they, Mr. Everest? Aren't they represented by a joint agent?

A. I know of the Missouri Pacific agency. I did not understand that the Texas Pacific had an agency here.

Q. Is not the Missouri Pacific agent a joint agent for the Texas Pacific?

A. Not to my knowledge.

Q. Such business as the Texas Pacific might get for the Pacific coast would go via the Southern Pacific from El Paso, would it not?

A. I should say so, naturally.

Q. And so with the Missouri Pacific, either by way of El Paso or by way of the Denver & Rio Grande?

A. Unless there were other specified routes and connections.

Q. But that is the natural route for the Missouri Pacific?

A. Yes, sir, I should judge so.

2235 Q. And that is true also of the Rock Island, is it not? It would get the long haul to El Paso, wouldn't it?

A. For California business.

Q. And the Burlington?

A. And the Burlington, yes.

Q. And the North Western?

A. And the North Western.

Q. The St. Paul?

A. Yes.

Q. Such traffic as all of those lines secure by their solicitation, the natural outlet for it is the Southern Pacific, is it not?

A. I should judge so, because they feed the Southern Pacific.

2236 DENNIS CROWLEY,

called on behalf of the Complainant, being duly sworn, testified as follows:

Direct examination, by Mr. SEVERANCE:

Q. What is your business?

A. I am employed by the Carnegie Steel Company as a salesman.

Q. Previous to your connection with the Carnegie Steel Company, what was your business?

A. I was with the Southern Pacific Railroad.

Q. In what capacity?

A. Part of the time as a stenographer, and part as a freight solicitor.

Q. During what period of time were you freight solicitor with the Southern Pacific?

A. About five years prior to 1901.

Q. Were you with the Southern Pacific up to the time the separate offices of the Union Pacific and Southern Pacific were maintained here?

A. Yes, sir.

Q. What were your duties as soliciting agent for the Southern Pacific?

A. Soliciting freight for the Southern Pacific Railroad via the different gateways.

Q. Which way did you endeavor to route the freight? What was your first endeavor?

A. The preferred route was the Sunset Route; that is, via New Orleans.

Q. How would the traffic move from here to New Orleans?

A. It moved over the different lines leading out of Pittsburg; by way of Cincinnati, some of it; some of it moved via St. Louis,—not a great deal; Illinois Central.

Q. Did you solicit traffic from any manufacturers or other
2237 persons having freight to send, whose plants were located east of here, so that it went by the Morgan line?

A. No.

Q. You did not solicit any Morgan line traffic?

A. No.

Q. It was entirely all-rail?

A. That is, for California.

Q. That is what I mean.

A. No, it was all-rail from here.

Q. You solicited all-rail. At that time was the Union Pacific represented separately here?

A. Yes, sir.

Q. Who was their agent?

A. Mr. Choate was their agent, I believe, shortly before the consolidation.

Q. I believe you said that you were with the Southern Pacific for four or five years prior to that?

A. Yes.

Q. Do you recall who else represented them, aside from Mr. Choate?

A. I believe Lothrop was with them for——

Q. Did they also have soliciting agents working under the direction of Mr. Choate and Mr. Lothrop?

A. Yes, sir.

Q. Do you remember their names, or how many there were of them?

A. I think Mr. Toymbee was a soliciting freight agent at that time.

Q. In what way were those gentlemen endeavoring to route traffic to the coast?

A. They solicited the business via Ogden; that is, their line up to Ogden.

Q. By the Union Pacific?

A. Yes, sir.

Q. From either Kansas City or Omaha?

A. I am not very familiar with that. I could not say just what the details of the routing were.

Q. You know that the Union Pacific comes to the River at both Kansas City and Omaha?

A. Yes.

2238 Q. They did not represent anybody but the Union Pacific, though?

A. Not that I know of, no, sir.

Q. Did you also solicit business for Portland, Oregon?

A. We did not get very much business for Portland.

Q. How did you send such business as you were able to get?

A. I don't remember having secured any Portland business.

Q. At all?

A. At all; no, sir.

Q. What did you know about the competition existing then on passenger business to the coast?

A. I did not have anything to do with the passenger business; they had a separate man looking after it here.

Q. Who did?

A. The Southern Pacific.

Q. Did the Union Pacific have a passenger man here?

A. Yes, I think they did.

Q. Were they advertising here at that time the passenger routes to the coast?

A. Yes, sir; they advertised the route.

Q. The separate lines advertised?

A. I do not know anything about the Union Pacific advertisement.

Q. Did the Sunset Route advertise here?

A. The Sunset Route advertised their train.

Q. What is the nature of the efforts put forth by freight solicitors to get business?

A. They call on the shippers regularly; they look after the details of freight rates, offer them any assistance they can in looking after the material en route, see that it gets to destination in proper time, trace the shipment.

Q. Do you think the personal relations between the shippers and the solicitors have anything to do with getting business
2239 for the roads?

A. Yes, it has some effect.

Q. From your experience, would you say that it is a useful adjunct to a railroad, to maintain commercial agencies, in getting business?

A. Yes.

Q. When you were soliciting traffic, did you solicit Oriental traffic?

A. Yes, we did.

Q. Which way did you send it?

A. What we secured we sent by way of San Francisco, if I recall correctly.

Q. How did you send it from here to San Francisco?

A. We sent it via the Sunset Route as a preferred route. The business on which time was an important factor went via the Ogden gateway.

Q. And then it went to the Orient by boat from San Francisco?

A. By boat, yes, sir.

Cross-examination by Mr. LOVETT:

Q. I believe you testified that when you were soliciting for the Southern Pacific Company, New Orleans was the preferred gateway?

A. Yes, sir.

Q. And, if you could not get it that way, you then sought to get it by way of El Paso and Ogden?

A. Yes, sir.

Q. Naturally you preferred the gateway that afforded you the longest haul?

A. The long haul; yes, sir.

Q. Whatever traffic the Union Pacific agent secured here for California, during that time, necessarily passed over the Southern Pacific, did it not?

A. Yes, sir.

Q. The Southern Pacific, then, got a haul of about 850
2240 miles out of the traffic——

A. Yes, sir.

Q. —destined to San Francisco?

A. Yes, sir.

Q. Do you know whether the Texas & Pacific and the Missouri Pacific have a joint agent here now, or are the agencies separate, or has the Texas & Pacific any representation at all?

A. I do not know.

Q. The Missouri Pacific has a representative, has it not?
A. Yes, sir.
Q. And always has had since you have been here?
A. Yes, sir.
Q. Such traffic for California as may be controlled through the solicitation of the Texas & Pacific, the Missouri Pacific, the Missouri, Kansas & Texas, the Rock Island, the Burlington, the Denver & Rio Grande, the North Western, the St. Paul—the natural outlet for that traffic would be the Southern Pacific, would it not?
A. Yes, as a rule.
Q. Are all of those lines actively soliciting in this territory?
A. Yes, sir.
Q. And always have been since your connection——
A. To my knowledge; yes, sir.
Q. I believe you testified that you did not solicit business from this territory for California points by way of the Morgan line from New York?
A. Yes, sir.
Q. You say that you did not?
A. No, we did not solicit California traffic via the Morgan line from this territory.

Redirect examination by Mr. SEVERANCE:

Q. Judge Lovett asked you whether the traffic that might be solicited by a number of different agencies here in Pittsburg
2241 would not naturally reach the coast over the Southern Pacific, and you said it would?
A. Yes, sir.
Q. He enumerated a large number. Among the rest, he enumerated several lines that go no farther than Omaha, like the Milwaukee & St. Paul, the North Western so far as coast business is concerned, the Illinois Central, the Chicago Great Western, and the Wabash. Now, those lines, on transcontinental business, can carry it no farther than Omaha, then they would have to turn it over to the Union Pacific, to reach Ogden, would they not?
A. Yes, sir.
Q. So that while those lines were working for the Southern Pacific, they would likewise be working for the Union Pacific?
A. Yes, sir.
Q. Judge Lovett has apparently endeavored to minimize the importance of the Union Pacific somewhat, in connection with transcontinental business. But you would regard a link of a thousand miles from the Missouri River to Utah, when there are only four or five lines reaching across the continent, as rather an important link, would you not?
A. I should think so.

By Mr. LOVETT:

Q. There are a good many other important lines, too, are there not?

A. Yes, there are quite a number.

Q. The Union Pacific is merely an intermediate carrier?

A. Yes.

Q. It is practically without any rate-making power, so far as transcontinental business is concerned, is it not?

A. We consider it as an intermediate line.

2242 Q. Like the North Western or the St. Paul?

A. Yes, sir.

Q. These lines that Mr. Severance mentioned as being required to turn over their traffic at Omaha to the Union Pacific, such as the North Western, the St. Paul and several others—there is no reason, is there, why they could not turn over such traffic as they had for the Pacific coast, to the Burlington, the Rock Island or the Missouri Pacific, at Omaha, and let those lines take it to Denver and turn it over to the Denver & Rio Grande? They are not dependent on the Union Pacific, are they?

A. No; it is not compulsory to turn it over to the Union Pacific.

Q. No. They have other lines that they could interchange with?

A. Yes.

By Mr. SEVERANCE:

Q. The Rock Island and Burlington are in competition with those lines, east of Omaha, are they not?

A. In competition with what lines?

Q. With the Milwaukee, the North Western, the Illinois Central, and others?

A. Yes, sir.

Q. Therefore the Burlington, reaching out to Denver, or the Rock Island, reaching out to Denver, would naturally itself work for the long haul on coast business, would it not?

A. Yes, sir.

Q. Therefore, you would not say that those lines terminating in Omaha could exchange business as favorably with lines that run clear out to Denver as they could with the Union Pacific,

2243 which reaches Omaha, would you? That is a better connection for them in the way of interchange of business, is it not?

A. I am not familiar enough now with the details to say very much about that.

Q. Well, in answer to Judge Lovett, you said they could exchange as well with these others. Now, as a matter of business they could not, could they?

A. As a matter of policy I should think that they——

Q. Policy—that is what I mean?

A. Yes. They would not change with them, as they would have their long haul—take it out.

Q. They would naturally rather exchange with the Union Pacific?

A. They would take their long haul.

Q. Certainly. Well, I am speaking of the lines reaching Omaha. Take the Milwaukee & St. Paul, the Great Western, the Illinois Central, the Wabash, the North Western: none of those lines reach Colorado points or the points that Judge Lovett mentioned in his question?

A. No.

Q. They do not reach Denver. The Rock Island and the Burlington do reach Denver; and, of course, they are looking out naturally for the long haul. Now would you say that it would be as good business for those lines that terminate at Omaha to turn business over to their competitors which reach Chicago and also out to Denver, as it would be to turn it over to the Union Pacific?

A. No, I would not consider it.

Q. No. The Union Pacific would be a better road to exchange with, because it comes clear through to Omaha; would it not?

A. Yes, sir.

2244 Q. Another question that Judge Lovett asked you was whether the Union Pacific wasn't only an intermediate carrier, and he suggested that it was like the St. Paul or the North Western; and I think you assented to that. In doing so you did not reflect that the Union Pacific owned its own line to Portland, with a boat-line to San Francisco, did you? Don't you think that a railroad owning a line from the Missouri River to tide water, with ships on the sea connecting San Francisco and other points, is in a different position than the North-Western or the Milwaukee & St. Paul, that stop at the Missouri River?

A. I had in mind the business going to the California terminals. When I said that we considered it in an intermediate line, I had in mind the California terminal business, not the North Pacific Coast.

Q. Now, business moves to California terminals, in the first place, around Cape Horn, does it not?

A. Yes, some of it did go that way.

Q. Yes. It moved by Panama?

A. Yes.

Q. Two sea voyages and a short land voyage. It moves by the American-Hawaiian line across Mexico, with two sea voyages and one land voyage, does it not?

A. Yes.

Q. It moves by the Morgan line—a long sea voyage around the Florida coast and up to Galveston and New Orleans, and thence by the Sunset; you know that, do you not? I do not mean Pittsburg business, but Atlantic coast business.

A. You are not speaking of business from Pittsburg district?

Q. No; from the Atlantic seaboard territories.

A. Generally speaking, yes. I have no personal knowledge of any of the business east of here—how it moves.

2245 Q. But as a railroad man you know that that line is open and is carrying a very large tonnage in competition with the all-rail lines, do you not?

A. I understand it is open, yes.

Q. Now, if all those lines—some of them very long, around Cape Horn or by Panama, can carry business into San Francisco in competition with the all-rail lines, do you not think the Union Pacific could carry business in there with its all-rail line to Portland and the short haul by sea from Portland to San Francisco?

A. The sea part of it is an objectionable feature of the route.

Q. Is it any more objectionable in the case of the line from Portland to San Francisco than in the case of the Panama route or the Tehuantepec route—where you have two sea voyages, one on each side of Mexico?

A. There is not much business that I am aware of that moves via the Horn or via the Panama route.

Q. Is there a great deal of business that moves by the Tehuantepec route?

A. I don't know.

Q. Can you see any reason in the nature of things why the route by the Union Pacific to Portland and thence by boat to San Francisco would not be fully as desirable a route as the route by Panama or by Mexico or by the Morgan line——

A. Oh, yes.

Q. —where you have a sea voyage in each case and a rail haul in each case, and you have only one transshipment at Portland as against two by Mexico or two by Panama?

A. Yes, I should say it would be.

Q. It would be what?

A. As desirable.

2246 Q. As desirable. That is what I thought.

(No response.)

By Mr. LOVETT:

Q. The lines by Cape Horn, by Panama, and by Tehuantepec get business by making the low rates, do they not?

A. Yes, sir.

Q. And they can cut and slash rates pretty much as they please, I suppose, without much opportunity on the part of the Southern Pacific to retaliate, can they not?

A. I have always found it so in soliciting.

Q. Is there not this important difference between the situation of those lines and the Union Pacific: that the Union Pacific has a thousand miles of railroad lying between the Missouri River and Ogden that is very largely dependent on the Southern Pacific from Ogden to the Pacific coast as a connection for business?

A. Yes, sir.

Q. Have you ever known of any substantial shipments to California terminals by way of the Union Pacific and Portland and then by water down?

A. No, sir.

Q. You never knew of any shipments of any substantial quantity that way?

A. No.

By Mr. SEVERANCE:

Q. Judge Lovett just asked you whether the Panama route, among others, could not get business by cutting and slashing rates, while the Union Pacific, with the Southern Pacific connection, could not do that, and I think you assented to that suggestion?

A. Yes, sir.

Q. Are you aware of the fact that the Southern Pacific
2247 Company owns a majority of the stock of the Pacific Mail?

A. I knew they had some interest in it when I was with them. I do not know what the condition is to-day.

Q. Do you not know that for quite a number of years they have owned a majority of the stock——

A. No.

Q. ——so as to control it?

(No response.)

Q. Are you aware of the fact that the Panama route is made up of ships of the Panama Railway and the Panama Railroad itself to Panama; that is, ships from New York to Colon, the Panama Railroad to Panama, and then the Pacific Mail to San Francisco?

A. Do you mean at the present time?

Q. Yes, and for a long time past. That is the Panama route, is it not?

A. I couldn't say. I don't know whether it is or not.

Q. If it is and the Southern Pacific controls the line from Panama to San Francisco, how can they cut and slash rates any more down there than they can along the line from Ogden to San Francisco? It is a similar situation, is it not?

A. Well, in my experience the steamer lines always seem to be able to make whatever rate they please.

Q. Did the Panama route make whatever rate it pleased?

A. They apparently took business. We couldn't get it at the regular rates.

Q. That must have been a case such as Judge Lovett thinks impossible, then, of the Southern Pacific competing against itself, must it not? If the Pacific Mail was competing with the rest of the Southern Pacific system; you can not account for that, can you?

A. No, I can't.

2248 By Mr. LOVETT:

Q. Are you also aware of the fact that since the Government got control of the Panama Railroad and the steamers on the Atlantic, they have established rates with the tramp steamers, and that the business on the Pacific coast, carried by the Panama route, is largely carried by foreign ships?

A. No, I am not familiar with that.

Q. You never heard of the Southern Pacific controlling the clipper ships around Cape Horn, did you?
A. No, sir.
Q. Nor the Tehuantepec route—you never heard of the Southern Pacific controlling that, did you?
A. No, sir.
(A recess was here taken until 2 o'clock p. m.)

2249 S. P. WOODSIDE,

called on behalf of the Complainant, being duly sworn, testified as follows:

Direct examination by Mr. SEVERANCE:

Q. Mr. Woodside, where do you live?
A. In Ben Avon, Pa., a suburb of Pittsburg.
Q. What is your business?
A. General freight agent of the West Side Belt and the Wabash-Pittsburg Terminal Railroads.
Q. How long have you been in that position?
A. Since July 1, 1907.
Q. Prior to that, what was your business?
A. Traffic manager for the Pittsburg Coal Company, the River Coal Company, and allied interests.
Q. For how long?
A. Four years and eleven months.
Q. Previous to that time what was your business?
A. General agent of the Erie Railroad, for fifteen years, in this city.
Q. In what year did you cease to represent the Erie here?
A. I left them on July 31, 1902.
Q. You had been with them fifteen years prior to that?
A. From August 1, 1887.
Q. Are you acquainted with Mr. Herring?
A. Yes, sir.
Q. Have you known him a long time?
A. Yes, sir.
Q. Did you know Mr. Choate?
A. Yes, sir.
Q. What was Mr. Choate doing when you knew him?
A. Mr. Choate was general agent of the Union Pacific road
2250 here, to the best of my knowledge and belief.
Q. Did you know Mr. Lothrop?
A. I remember the name, but I cannot recall the man.
Q. Did you know Mr. Passavant?
A. Yes, sir.
Q. What was his position?

A. He was either contracting freight agent or traveling freight agent of the Union Pacific road.

Q. During the time prior to 1901, when the offices of the Union Pacific and Southern Pacific were consolidated here in Pittsburg, were the representatives of those roads competing with each other for coast business?

A. Yes, sir.

Q. Was there any competition between them for business to Colorado and Utah points?

A. I cannot answer that positively, Mr. Severance, but I think there was.

Q. How did the Southern Pacific Colorado and Utah business move—all-rail or Morgan line?

A. I can't recall as to the Colorado and Utah business.

Q. Did you know of traffic moving by the Morgan line at the time when Mr. Herring represented the Southern Pacific exclusively?

A. I know that we had an occasional car by way of New York for the coast.

Q. That was when you represented the Erie?

A. Yes, sir.

Q. And you would ship it from this district, somewhere in here, to New York, care of the Morgan line?

A. Yes, sir.

Q. Coast business?

A. Coast business.

Q. Did you get any part of the haul or traffic that went by New Orleans?

A. Yes, sir.

Q. To what point did you take it?

2251 A. Cincinnati or Louisville. That would be the gateway—the Ohio River gateway.

Q. And did you participate in the business that the Union Pacific took over their line?

A. Yes, sir.

Q. Where did you take that—to Chicago?

A. To Chicago or East St. Louis; whichever way it was routed.

Q. What way did Mr. Herring endeavor to route his traffic when they were competing with each other?

A. My recollection is that the Cincinnati route was the preferred route.

Q. By way of what Southern Pacific gateway?

A. New Orleans.

Q. And then it would move over your line to Cincinnati?

A. To Cincinnati, yes, sir.

Q. And then by what road—the Louisville & Nashville?

A. The Q. & C., or the L. & N., or, later on, by the Illinois Central by way of Louisville.

Cross-examination by Mr. LOVETT:

Q. I think, from one of your answers, that you misunderstood a question asked you by Mr. Severance. He asked you whether any business moved, during your connection with the Erie, from this territory by the Morgan line, and you said there was some. Did you mean that it moved to New York and thence by boat to New Orleans, or did you mean all-rail to New Orleans?

A. I meant that there were occasionally cars that moved by way of New York city on which we gave bill-of-lading to New York
2252 only. They were consigned in the care of the Morgan line, and sometimes in care of the Clyde line from there. Where they went beyond that, I know not.

Q. At what points did such shipments originate?

A. I think there were a few cars of nails and wire from Rankin, Pennsylvania, about eight or ten miles south of here.

Q. South or east of Pittsburg?

A. South or east of Pittsburg. There were only semi-occasional cars.

Q. You knew of nothing moving from Pittsburg that way, did you?

A. There may have been a few cars from parties located in Pittsburg proper on the P. & L. E. tracks.

Q. Do you recollect any?

A. No, sir, I cannot positively.

Q. There may have been, but you do not recollect any?

A. I could not say positively at this time.

Q. I think you said that the Erie handled freight from this district for the Pacific coast, carrying some of it to Cincinnati?

A. Yes, sir.

Q. And carrying some of it to Chicago?

A. Yes, sir.

Q. Which way did you try to route that? Which way did you prefer to route it—to give it the long haul?

A. While I was with the Erie road, our position was that of a neutral line. In a very large majority of cases the freight came to us routed, and we were known all through the territory as a line that would absolutely respect routing. At irregular intervals we would get a car that was not routed, but they were very few and far between; and then we tried to divide it up among the different connecting lines.

Q. Didn't you try to get the long haul out of it?

A. Where we could, yes, sir.

2253 Q. You didn't understand that the Erie line to Cincinnati and the Erie line to Chicago were competing lines in any proper sense, did you? In other words, were you not doing what Mr. Herring of the Southern Pacific was doing—trying to get the haul for his long line, wherever he could, and otherwise take it for the short haul?

A. Yes, sir.

Q. That is substantially what Mr. Herring was doing, was it not?

A. That is what I believe he was doing, yes, sir.

Q. And you never supposed that by having two lines, one towards Cincinnati and another towards Chicago, that those two lines were competing with the Erie—the Erie's own lines? It was not competing with itself, was it?

A. There were two strings to the same bow. That is the way I considered them.

Q. Well, that is about the situation.

A. I had no preference.

Q. That was about the situation with the Southern Pacific line, was it not—two or three strings to its bow?

A. It would appear so to me, yes.

Q. This competition that, in answer to Mr. Severance's question, you stated existed between Mr. Choate and Mr. Herring, was not that after all freight for the Southern Pacific line? In one way it would get the long haul, and in the other way it would get the short haul? Whatever the Union Pacific got went out by way of the Southern Pacific, did it not?

A. It went out by the way of the Central Pacific from Ogden, depending on the ownership of the Central Pacific road.

Q. In other words, everything that the Union Pacific got
2254 for the Pacific coast, south of Portland, went over the Central Pacific to destination?

A. So I believe, yes, sir.

Q. A great many other lines in the territory lying between Pittsburg and the Mississippi and Missouri Rivers and the Rocky Mountains, are actively soliciting for that California business, are they not?

A. Yes, sir; I believe more today than ever.

Q. And all of the lines lying in that territory are engaged in that business and actively solicit for it?

A. Yes, sir.

Q. They all have agents here, have they not, and have had during all this time?

A. I would say that a majority of those lines have, yes, sir.

Q. Some try to work it by way of New Orleans, some by way of El Paso, some by way of Denver, and some by Omaha and Kansas City, do they not?

A. Yes, sir.

Q. Each trying to get the longest haul and the most revenue?

A. Yes, sir.

By Mr. SEVERANCE:

Q. Of course, as to any traffic that Mr. Herring was able to send via New Orleans, the Union Pacific did not participate at all, did it?

A. No, sir.

Q. So that the competition that you spoke of, between the Union Pacific and the Southern Pacific, was, on the part of the Southern

Pacific, an endeavor to get a part of the through haul, and on the part of the Southern Pacific, to get the entire haul from the river, by the Sunset; that is the competition that you meant?

A. That was the competition, yes, I believe.

2255 By Mr. LOVETT:

Q. And the Southern Pacific got a part of the haul either way?

A. Yes, sir.

Q. About how far is it from Pittsburg to New Orleans by the ordinary rail lines?

A. I would state, roughly, about a thousand miles; I think between a thousand and 1,100 miles. I have not the exact mileage; that is my recollection.

Q. As a railroad man you do not understand that the shippers are interested in the division of through rates as between the carriers, do you?

A. I do not.

By Mr. SEVERANCE:

Q. The shippers are interested in good service and in having their shipments looked after by the representatives of the road?

A. Yes, sir.

Q. If delayed for any purpose——

A. And proper equipment furnished, and the goods go through in good shape.

2256 J. H. BLACKBURN,

called on behalf of the Complainant, being duly sworn, testified as follows:

Direct examination by Mr. SEVERANCE:

Q. Mr. Blackburn, where do you live?

A. Salem, Ohio.

Q. How long have you lived in Salem?

A. 25 years.

Q. What is your business?

A. I am with the W. H. Mullins Company.

Q. What is the business of the W. H. Mullins Company?

A. They manufacture architectural sheet-metal work, pressed steel boats, fireproof windows.

Q. To what part of the country do you ship your product?

A. Practically all over the world.

Q. Is your establishment a large concern of its kind?

A. Yes, sir.

Q. Is it an old concern?

A. About 40 years, in the architectural end. The boat business is practically a new business; it has been established about ten years.

Q. Your factories are located at Salem, Ohio?

A. Yes, sir.

Q. How far is that from Pittsburg?

A. 70 miles.

Q. Does it take the Pittsburg rate?

A. Yes, sir.

Q. What is your position with the firm?

A. Purchasing agent. I look after the routing of the shipments also.

Q. You say you ship all over the world. Do you ship a good deal to the Pacific coast?

A. No, sir.

Q. Have you in times past?

A. Not a great amount, no, sir.

2257 Q. You have had some shipments to the coast?

A. Yes, sir.

Q. You know Mr. Herring?

A. Yes, sir.

Q. Do you remember when he was the agent of the Southern Pacific road, before the amalgamation of the agencies here?

A. Yes, sir.

Q. Did Mr. Herring call on you to solicit shipments for transcontinental freight at that time?

A. Yes, sir.

Q. By what route?

A. By the Southern Pacific.

Q. Which way did he endeavor to route it?

A. At that time, usually by New Orleans.

Q. That is the way he solicited it?

A. Yes, sir.

Q. How does your business move to the coast now, that formerly went by New Orleans?

A. By all the lines. We have no particular line to follow.

Q. Do you still ship by New Orleans?

A. Some, yes, sir.

Q. And what other lines? You say by all the lines.

A. By the Santa Fe and through Denver; over the lines from there.

Q. By the Union Pacific?

A. Yes, sir.

Q. That is for California business?

A. Yes.

Q. How does your Portland business move?

A. By the Great Northern and Northern Pacific.

Q. Any of it by the Union Pacific?

A. No, sir.

Q. Do you have any Oriental business?
A. Yes, sir.
Q. Does that move by the coast or by New York?
A. By New York.
Q. When Mr. Herring was soliciting business exclusively for the Southern Pacific, did the Union Pacific have a solicitor
2258 in the field?
A. Yes, sir.
Q. Where did he come from?
A. I don't know whether he came from Pittsburg or Cleveland. I do not remember.
Q. What were the arguments that these gentlemen used to get business?
A. Prompt service and tracing cars.
Q. The Union Pacific man urged that for his route, and Mr. Herring for the New Orleans route?
A. Yes, sir.

Cross-examination by Mr. LOVETT:

Q. Mr. Herring solicited preferentially for the New Orleans route, I believe you said?
A. Yes, sir.
Q. When he could not get it that way, wasn't he glad to get it by way of Ogden or El Paso?
A. I don't remember.
Q. Whatever business moved to California over the Union Pacific also went over the Southern Pacific from Ogden, did it not?
A. It naturally would, yes, sir.
Q. Was not approximately all of the business you sent by way of New Orleans to Mexico export business, Mr. Blackburn?
A. A large part of it. Of course we had some coast business, but the majority of the business was for Mexico.
Q. That which you had for the coast was for Lower California or Southern California?
A. Yes, sir.
Q. You seldom shipped that way to San Francisco?
A. Some shipments would go that way.
Q. Very few, or many?
A. Comparatively few.
Q. Your San Francisco shipments usually went by direct railroad?
A. Yes, sir.
Q. All the lines between Pittsburg and New Orleans and the
2259 Missouri River and Rocky Mountains solicit your business?
A. Yes, sir.
Q. They have, right along?
A. Yes, sir, all the time.
Q. And you send it by various lines?
A. Yes, sir.

Q. You are not interested in the division of through rates as between the carriers, are you?
A. No, sir.

By Mr. SEVERANCE:

Q. The carriers are, are they not?
A. I presume so, yes, sir.
Q. Judge Lovett asked you about shipments to Mexico. The Union Pacific did not solicit shipments to Mexico, did they?
A. I don't remember.
Q. Your testimony with reference to the competition for business between Mr. Herring's New Orleans route and the Union Pacific had reference to coast business?
A. Yes, sir.

2260 J. S. MURRAY

called on behalf of the Complainant, being duly sworn, testified as follows:

Direct-examination by Mr. SEVERANCE:

Q. Mr. Murray, what is your business?
A. I am with the Aluminum Company of America.
Q. What is their business?
A. The manufacture of aluminum.
Q. What product of aluminum do they make?
A. They make the metal from the clay.
Q. Oh, they make the metal?
A. Yes, sir.
Q. You don't make up the metal?
A. We make up the metal into cable and sheet, in various forms.
Q. Where are your plants located?
A. We have plants at New Kensington, Pa.; Niagara Falls, N. Y.; Massena Springs, N. Y.; East St. Louis; Bauxite, Arkansas; Cave Spring, Ga.
Q. How long have you been with that company?
A. About five years.
Q. What was your business before that?
A. I was connected with four small subsidiary companies of the Apollo Iron & Steel Company, and the water, gas, electric light and telephone business.
Q. You were not in the traffic business?
A. No, sir.
Q. Does the Aluminum Company ship to the Pacific coast?
A. Some, yes, sir.
Q. How does that business move?
A. Most of it moves from Massena, New York.
Q. In what part of the State is Massena?

2261 A. Massena Springs, in the northern part of New York state, near Ogdensburg. It is on the R. W. & O. division of the New York Central road.

Q. Over what transcontinental lines does it move?

A. It moves from Massena via the New York Central and Grand Trunk lines to Chicago; from Chicago, the various lines, such as the Atchison; and then the various lines to Omaha; the Union Pacific, Southern Pacific, San Pedro or Salt Lake route via Ogden.

Q. Does it also move over the Northern Pacific and Great Northern for Portland and that region?

A. Yes, sir; it also moves around—shipments via New York.

Q. By the Morgan line?

A. By the Morgan line, yes, sir, to the coast.

Q. Could you give any idea of the way the business is divided, the percentages?

A. No, I could not. The routing of shipments that comes under my head is only shipments where we sell delivered, and there are very few of them.

Q. The consignee usually determines the routing?

A. The consignee usually determines the routing.

Q. But your stuff moves by all those routes that you have mentioned?

A. Yes, sir.

Q. Do you make shipments to Colorado common points?

A. We have made shipments, yes, sir.

Q. By what route?

A. We have made shipments via Morgan line into Galveston.

Q. And thence up to Colorado?

A. Yes, sir.

Q. Do you know Mr. Herring?

A. I do.

Q. Do Mr. Herring and his assistants solicit business from you?

A. Yes, sir.

2262 Q. For what lines?

A. For the Southern Pacific and the Union Pacific.

Q. Do they make any distinction between the two?

A. No, sir.

Cross-examination by Mr. LOVETT:

Q. When were the shipments made to Colorado points by the Morgan line?

A. Within the last two or three years, various times.

Q. Since 1901, were they not?

A. Yes, sir.

Q. You have no knowledge of shipments prior to that time?

A. No, sir.

Q. Since 1901 you have shipped to Galveston and thence up to Colorado points?

A. Yes, sir.

Q. The shipments for California, that go over the Union Pacific go also over the Southern Pacific, do they not, except those that go over the San Pedro?

A. Yes, sir.

Q. They go over the Southern Pacific west of Ogden?

A. West of Ogden, yes, sir.

Q. Are the various railway lines lying between your territory and the Rocky Mountains and El Paso, solicitors of your freight?

A. Yes, sir.

Q. All of these different routes are open to you, are they not?

A. Yes, sir.

Q. And have been all along?

A. Yes, sir.

Q. You are not interested in the division of the through rate between the different railroad companies, are you?

A. No, sir.

2263 R. H. THOMSON,

called on behalf of the Complainant, being duly sworn, testified as follows:

Direct examination by Mr. SEVERANCE:

Q. Mr. Thomson, where do you live?

A. At Crafton, Pa.

Q. What is your business?

A. Traffic manager of the Oil Well Supply Company.

Q. How long have you been with them?

A. It will be nine years the first of July.

Q. Previously to that what was your business?

A. I was with the Chamber of Commerce for about two years and six months; prior to that I was commercial agent here of the Vandalia.

Q. Where does the Vandalia run?

A. It is part of the Pennsylvania system now, running from Indianapolis to St. Louis—the main line. I might say that I was joint agent of the Illinois Central and Vandalia, for a few years, until the Illinois Central pulled away from us here. They pulled away from the joint office here in Pittsburg after I was representing them for about two or three years.

Q. And put in an office of their own?

A. Yes, sir.

Q. What kind of commodities does the Oil Well Supply Company manufacture?

A. Everything that is used in the drilling, operating, and so on, of oil wells, pipe lines, etc.; manufactures boilers, engines, and all machinery.

Q. It is a large concern of the kind?

A. The largest in the world.

2264 Q. Where do you ship your product?

A. Wherever there is any gas or oil.

Q. In the world?

A. Yes, sir; Russia, Japan; every place.

Q. I believe there is some oil in California?

A. Yes, I guess there are a few gallons over there.

Q. Do you have a good deal of freight for California?

A. Yes, sir, we have eight branches there.

Q. Do you consign your goods to some branch and then distribute from the branches?

A. Yes, sir; and also direct to our customers.

Q. Where are your California branches located?

A. San Francisco, Orcutt, Bakersfield, McKittrick, Los Angeles, Maricopa; I believe those are all of them.

Q. Is Maricopa in California or in Arizona?

A. In California. I think its old name was Monarch.

Q. And you ship to these branch houses and distribute from those, as well as direct to customers?

A. Yes, sir.

Q. You sell to most of the oil companies that are doing business in California, do you?

A. Yes, sir. Of course we have competitors in the field.

Q. But you endeavor to sell all you can to all of them?

A. Yes, sir.

Q. These competitors do not constitute you their agent, do they, to sell for them?

A. No, sir.

Q. What way does your freight move to California?

A. It moves via all lines. It depends largely on where it is moving from.

2265 Q. That which goes to the branch houses that you have there is routed——

A. When I speak of "from," I mean our manufacturing plant. We have a boiler works at Oswego, N. Y., where we manufacture all our boilers; and that usually moves by way of Chicago, and if it is going to our Los Angeles branch it usually moves via El Paso; sometimes via the Union Pacific, Salt Lake, and the Southern Pacific.

Q. Sometimes by the Santa Fe?

A. No; not now. It used to.

The last answer of the witness was read by the reporter.

WITNESS. If you will allow me, I would like to correct that.

Q. Certainly.

A. Where I say that it moves via El Paso, the Southern Pacific, and then Union Pacific, and the San Pedro.

Q. When it is moved to San Francisco, how do you route it?

A. It sometimes moves by way of the Southern Pacific long haul, by way of El Paso, and other times by way of Salt Lake and Ogden—the Union Pacific.

Q. You say that the Atchison does not get any of it?
A. Not now, not to the Los Angeles field.
Q. Does it to any of the fields?
A. Yes, sir.
Q. Bakersfield?
A. Yes, sir. We are located locally on their tracks there.
Q. I know they go through Bakersfield.
A. Yes. Up until about a year ago we did give the Santa Fe all of our Los Angeles business, but since that it goes to the Southern Pacific on account of our being located on their tracks at that destination.

2266 Q. Have you changed your location at Los Angeles?
A. Yes, sir.

Q. From the Atchison to the Southern Pacific?
A. Yes, sir.
Q. At whose suggestion?
A. Our own. We purchased ground there.
Q. And since then all your business to Los Angeles goes over the Southern Pacific?
A. That is, now, to Los Angeles, unless——
Q. That is what I am speaking about.
A. —— unless, of course, there is congestion, such as we had here something like a year ago; we sent a great deal of our material in there by way of the San Pedro, for the simple reason that we could make better time.
Q. Now, you spoke of sending some by New York?
A. No, I didn't.
Q. I misunderstood you. I thought you did.
A. No, sir, I didn't. We would never send anything by way of New York and water.
Q. You never do?
A. No, sir, unless it is specially requested by our customer.
Q. What is the objection to that, from your standpoint?
A. Our tubular goods, casing and so on, are very apt to be damaged, crushed; and if you have a certain amount of material that you are sending to a customer for a well, and you are one joint short, you might as well be short the whole lot—if he is out in the field and can not fix it up. The boilers, of course, could not be handled on steamers as well.
Q. You load them on cars and unload them at destination?
A. Yes, sir.

2267 Q. So that for your purposes the all-rail routes are preferable?

A. Always the best.
Q. Have you shipped at all by the Morgan Line—not to your branch houses, but to your customers?
A. Yes, sir.
Q. What character of goods?

A. Some tubular goods; but with the distinct understanding, while we made delivery of the goods, that they would stand all loss or damage.

Q. What is the important consideration that governs you in distributing your business between the different lines?

A. Well, usually we are located on some tracks, right-of-way, but in the far West we have our own property.

Q. Is there anything else that interests you?

A. Sometimes when a man buys a few dollars worth of goods, we give him the pull on it.

Q. That is, if some railroad company happens to buy a few goods, you give them a little freight?

A. We give them the haul, yes, sir, on his goods.

Q. The Southern Pacific are in the oil business indirectly in California, are they not, as you have heard?

A. Yes, sir.

Q. That gives them a little pull on your business?

A. It did a while ago; they got the haul via New York, but they requested it that way. In other words, if you rub my back we will rub your back.

Q. Well, that is polite. Then, these shipments that went by New York, although you did not regard that as being as good a route for you, were made at the solicitation——

A. Request.

2268 Q. ——of the Southern Pacific?

A. At the request of the Southern Pacific, or any person else who would request it that way—we would ship it that way.

Q. Now, in that case, was the Southern Pacific Oil Company the consignee, or was your branch house the consignee?

A. No, it would be a direct shipment.

Q. A direct shipment to whom?

A. To the consignee.

Q. If it was a direct shipment to the consignee, I do not see that the matter of selling goods to them could have any influence.

A. If you would sell a bill of goods delivered at destination, it would, wouldn't it?

Q. Yes, but that I did not quite understand.

A. Yes.

Q. That is what I want to know. You were paying the freight, were you?

A. We were paying the freight. We would make the delivery at the other end. But if you would come to us and say, "We would like to have a carload of freight delivered at a certain point—will you send it over a certain line?" it is to our interest to do it.

Q. Then, as I understand it, the Southern Pacific being the consignee under its relation with some company that bought the stuff from you, requested you to ship by the Morgan line, the boat line, from New York, and you did so?

A. Yes, sir.

Q. Although you appreciated that there was danger of your goods being damaged in transit?

A. Yes, sir. But let me say that these tubular goods that are going move from the seaboard territory.

Q. Yes, I understand that.

A. They do not move from this territory.

2269 Q. I understand that. They go from the seaboard territory.

A. Yes, sir.

Q. The rates are just the same by the Morgan line as by the all-rail lines. But for the solicitation of the Southern Pacific people that you send this consignment via New York, you would have sent it all-rail?

A. Yes, sir.

Q. For your own convenience?

A. To make a safe shipment of it.

Q. Well, you regarded that as perfectly legitimate competition——

A. Yes, sir.

Q. ——on the part of the Southern Pacific as against the Union Pacific and all other all-rail lines, did you not?

A. Why, it is their own business.

Q. Certainly, their own business, except that you pay the freight.

A. Of course we pay the freight, yes, sir.

Q. And you sell the product delivered at the California point?

A. At the California point, yes, sir. Our price includes the delivery of it.

Q. Have you ever shipped goods by way of New Orleans?

A. We have, yes, sir.

Q. Not by boat, but by rail?

A. All-rail, yes, sir.

Q. From where?

A. From Reading Mills, and from Pittsburg.

Q. Do you still ship that way?

A. Some, yes, sir.

Q. As much as you used to?

A. No, sir.

Q. What made the change?

A. Don't like the New Orleans gateway.

Q. Did you use to like it better?

A. No, sir, not very well; for the simple reason that they

2270 do not make the time across the river there.

Q. How did it happen that you formerly shipped more that way than you do now?

A. We didn't.

Q. I misunderstood you. I thought you said you did.

A. No. I said we shipped some; and we still ship some, but we don't ship very much there.

Q. Do you ship as much as you ever did?

A. I do not think we do.

Q. What happened to make you decrease your shipments by that route?

A. Nothing special, any more than we wanted to make some changes—divide it up.

Q. Do you remember when Mr. Herring was agent of the Southern Pacific alone?

A. Yes, sir.

Q. How did he solicit your coast business then?

A. He naturally solicited it for the long haul.

Q. By New Orleans?

A. Yes, sir.

Q. You are on very good terms with Mr. Herring, are you not?

A. I have known him for a good many years—25 or 30 years—and we are still good friends.

Q. He is a friend of yours, isn't he?

A. Oh, yes.

Q. And for that reason you were very willing to give him business if you could, weren't you?

A. Yes, sir.

Q. And was not Mr. Herring's solicitation, when he was working that route exclusively, largely responsible for the fact that you shipped more then by the New Orleans route than you do now when he has a divided allegiance?

A. I believe it was.

Q. Did you know Mr. Choate?

A. Yes, sir.

2271 Q. And Mr. Lothrop?

A. Yes, sir.

Q. Did they use to solicit your business?

A. Yes, sir.

Q. For the Union Pacific?

A. Yes, sir.

Q. Did you ever ship Oriental traffic by way of the Pacific coast?

A. No, sir. We have a New York office that attends to that branch.

Q. Has any of it ever gone that way, that you remember?

A. I think we had one car, shortly after I went with our people, that moved by way of San Francisco. It was only one car. It all goes to New York.

Q. And then the other way—by the Suez?

A. Yes, sir.

Cross-examination by Mr. LOVETT:

Q. With reference to this pipe and other oil well supplies that you testified about as having been sold to the Southern Pacific or some oil company in which the Southern Pacific was interested, and which was shipped by the Morgan line—how far was that carried from the point of origin to where it reached the Morgan line?

A. I do not know the exact mileage; but it was Reading, Pa.

Q. Can you approximate it roughly?

A. It is not 200 miles.

Q. It is less than 200 miles, is it not?

A. Yes, less than 200 miles.

Q. To have gone all-rail it would have had to have gone one thousand or fifteen hundred miles, or two thousand miles, before reaching the Southern Pacific line, would it not?

A. The nearest would be New Orleans; fully 1500 miles.

Q. And fully 1500 miles before it would reach even the
2272 Union Pacific too, is it not?

A. Worse than that.

Q. More than 1500 miles?

A. No, I will take that back.

Q. It is about 1500 miles?

A. Possibly that.

Q. Approximately 1500 miles?

A. Yes, sir.

Q. Well, you would not think it very surprising that the Southern Pacific should want to get the longest haul out of it, would you?

A. Why, it is strictly business. I would think it very funny of a man buying goods, if he got a chance to haul them himself, to let somebody else haul them, and pay the other fellow.

Q. So should I. So would Mr. Severance.

Mr. SEVERANCE. Certainly I would. Good business.

Q. When Mr. Choate and Mr. Lothrop were soliciting business for California, such business as they got went ultimately over the Southern Pacific, did it not?

A. It was the only way it could get there. The Salt Lake line was not in operation then.

Q. I suppose that all the lines reaching from your plants to the Mississippi and Missouri rivers and Rocky Mountains actively solicit this business, do they not?

A. Yes, sir.

Q. And you are not interested in the division of the rates between the carriers, are you?

A. All we are interested in is the total amount of the rate that we have got to pay.

Redirect examination by Mr. SEVERANCE:

Q. And of course you are interested in having good service?

A. Certainly.

Q. And it is clear to you, is it not, that if there are
2273 different lines in competition for the business between your factory and a given point, that would have a tendency to keep up the service?

A. I would admit that. But you will find our people in Pittsburg divide up their business very largely, when they find out that there is congestion at certain of your large centres. That is why we have

traffic men to look after those things. And these representatives, such as Mr. Herring or any of the rest of them here, keep you posted all the time as to where it is.

Q. That is what they are for, is it not?

A. Yes, sir.

Q. You regard a man in Mr. Herring's position as very useful to the shipper, do you not—commercial agents?

A. I should say so. If you would get in the business for a little while, you would very soon find out.

Q. That is what I understand. They are very useful. And as far as you know, the various lines have independent solicitors, independent agencies, most of them?

A. Yes.

Q. Does the Canadian Pacific have an agency here?

A. Yes, sir.

Q. The Great Northern?

A. Yes, sir.

Q. The Northern Pacific?

A. Yes, sir.

Q. The Santa Fe?

A. Yes, sir.

Q. They are all separate from each other?

A. Yes, sir.

Q. The Union Pacific and the Southern Pacific used to be?

A. Yes, sir. But, if you will allow me, I would like to say this, that——

Q. Anything that you can say that will help Mr. Herring, just say it; it is all right.

A. I was going to say that Mr. Herring solicits just as
2274 strongly to me to-day for the Union Pacific as it was prior to his taking hold.

Q. I do not doubt it. He solicits just as strongly for both of them, does he not?

A. Yes, sir; and he gives us just as good service, too.

Q. Now, let us see about that—as long as you wanted to say this for your friend. Mr. Herring solicits just as strongly for the Union Pacific now as he used to solicit for the Southern Pacific?

A. Yes, sir; that is, to me. I am talking about myself.

Q. I am talking about you; that is the only one, you know. Does Mr. Herring solicit just as strongly for the Southern Pacific as he used to?

A. I believe so, yes, sir.

Q. In the old days, when Mr. Herring was soliciting, you said he endeavored to route his traffic via New Orleans?

A. Yes, sir.

Q. And does he try now, when he is working for the Union Pacific in this vehement manner that you have testified to, to send the stuff to New Orleans?

A. I am not talking about New Orleans. I am talking about the Southern Pacific road.

Q. Is he working hard now to send stuff by New Orleans?

A. Yes, sir; he is asking for business for New Orleans, too.

Q. Is that when he is working for the Union Pacific?

A. No, sir.

Q. How can you tell when you see Mr. Herring walking down the street whether he is coming to you to solicit for the Union Pacific route or the Southern Pacific route?

A. Mr. Herring does not usually come down the street to
2275 meet me on the street and ask me for business. He usually comes to my office.

Q. How can you tell when you see him walking in the door? Does he look different when he is coming after Union Pacific shipments to the coast than he does when he is coming after Southern Pacific?

A. No; he has got about the same style of smile on, but when he pulls out his papers I can tell you what he is after.

Q. So you don't know what sort of a talk is going to be made when he comes in?

A. No. But I find out. I have to wait until he gets through.

Q. And sometimes he comes in when you have a lot of shipments to make, and says, "I want to get those by the Union Pacific," or words to that effect?

A. Yes, sir.

Q. And sometimes he says, "I want to get them by Southern Pacific?"

A. Yes, sir.

Q. But he does not try at the same time to get them by both the Sunset Route and the Southern Pacific, does he?

A. That all depends on where he gets his tips.

Q. I say, does he try at the same time to get them for both the Southern Pacific and the New Orleans routes?

A. No, sir. He couldn't very well.

Q. I didn't think he could. That is what I wanted to bring out. That is the reason I examined you after you made that voluntary statement.

By Mr. LOVETT:

Q. You don't care which one he is soliciting for, do you?

A. No, sir.

2276 Q. You have the choice of all the lines that he represents?

A. Yes, sir.

Q. I am not in the advertising department of these lines. But, with reference to service, does not the line composed of the Union Pacific and the Southern Pacific west of Ogden give about as good service as any line to the coast?

A. I do not see why they shouldn't. What we have is all right.

By Mr. SEVERANCE:

A. Except sometimes when they are congested, you say?
A. Yes, sir.
Q. Then you use other routes?
A. Yes, sir.
Q. And when the other routes are congested you use that one?
A. Yes, sir.
Q. And you are glad that there is more than one route?
A. I certainly am.
Q. You would be very glad to see them operated independently, so that everybody would try to keep them open, one as against the other?
A. I wouldn't want to say that.
Q. Oh, you would rather there would not be any operated independently, would you?
A. As far as I can see, there is no harm in it.
Q. You would just as soon they would all be under one management, including the Santa Fe, the San Pedro, the Northern Pacific, and the Great Northern?
A. I did not so state.
Q. You say you do not see any harm in it?
A. I do not think I ought to answer that question.
Q. It is in response to a remark made by our friend here.
Mr. LOVETT. No; I beg your pardon.

Mr. SEVERANCE. You were asking about the service over
2277 this joint route.

Q. Do you prefer not to answer that?
A. Yes, sir.
Mr. LOVETT. When there is congestion on the Union Pacific and the Central Pacific line, you can go to other lines? You can go to the Southern Pacific at El Paso or New Orleans, or the Atchison, or the various gateways, can you not?
A. Yes, sir.

2278 E. L. McGREW,

called on behalf of the Complainant, being duly sworn, testified as follows:

Direct examination by Mr. SEVERANCE:

Q. Mr. McGrew, where do you live?
A. Crafton, Pa.
Q. What is your business?
A. I am purchasing agent for the Standard Underground Cable Company.
Q. Where is that company located?
A. Their general offices are here; their factories are in Pittsburg, Perth Amboy, New Jersey, and Oakland, California.

Q. Do you manufacture in Oakland, or do you ship the finished product out there, and distribute from there?

A. We partly manufacture it there. It is partly manufactured at the eastern factories and completed at Oakland, that is, a certain class of our material; the balance is shipped there and distributed to customers—sort of a warehouse for a part of our product.

Q. What kind of cable do you manufacture?

A. We manufacture wire and cable for all kinds of electrical service.

Q. I see your company is called the Underground Cable Company?

A. Yes.

Q. Do you manufacture overhead cables as well as underground?

A. Everything. That name is a little misleading.

Q. Then your factories are in Pittsburg and Perth Amboy, with a finishing plant at Oakland, as I understand you?

A. Yes, sir.

2279 Q. Where is your business, so far as the distribution of your products is concerned?

A. Do you mean the point of destination?

Q. Yes.

A. All over this country.

Q. Is it a large business?

A. Yes, for the kind of business.

Q. As large as any of that class, is it not?

A. I think there are two others as large. There are three large companies; the others are small.

Q. How long have you been with them?

A. Since April, 1900.

Q. All the time as traffic manager?

A. Yes, sir.

Q. Have you during all that time had shipments to the Pacific coast?

A. Yes, sir.

Q. How does the stuff move to the coast—how has it during that time?

A. Do you mean at all times?

Q. No, go back to the time you started in, in 1900.

A. In the early days we sent it via the Santa Fe and the New Orleans gateway principally.

Q. Up to what time?

A. I don't know; four or five years ago, or a little longer, perhaps. I don't recall.

Q. How does it go now?

A. It is pretty equally divided between the Santa Fe and the Southern Pacific. We give the Southern Pacific their proportion, divide it up pretty equally among the lines centering at Ogden—the Union Pacific, Colorado Midland, Denver & Rio Grande.

Q. Do you divide equally between the Denver & Rio Grande, the Midland, and the Union Pacific?

A. No, I do not say equally, I say we give them all a portion of that business. Probably the Southern Pacific gets a little the largest
2280 proportion; I think they do.

Q. How about the Union Pacific?

A. I meant the Union Pacific. I think I said "Southern."

Q. Have you decreased the amount you ship by New Orleans?

A. Yes, sir.

Q. And you send that which way now?

A. Ogden.

Q. By Ogden?

A. The Southern Pacific portion of it, yes, sir.

Q. Do you ship any by New Orleans now?

A. No, sir, not all-rail.

Q. How long ago did you stop sending all-rail by New Orleans?

A. Probably five or six years ago.

Q. How did you happen to do that?

A. Well, one of those psychological events, perhaps.

Q. Who happened on the ground at the time that psychological phenomenon occurred?

A. Everything seems to be blamed on Mr. Herring.

Q. Then the diversion was because of the difference in the attitude of Mr. Herring, was it not? Instead of wanting to send the stuff by New Orleans, he wanted to send it by Ogden?

A. I think mainly so.

Q. You have a factory at Perth Amboy, you say?

A. Yes, sir.

Q. How do your shipments to the coast, if any, go from that factory?

A. The same way, that is, carload shipments.

Q. By all-rail?

A. Yes, sir.

Q. The Union Pacific, usually, or some of the other lines, and the Southern Pacific?

A. Yes, sir.

Q. Does any of it go by the Morgan line?

A. Yes, sir, L. C. L. shipments.

2281 Q. All L. C. L. shipments?

A. Not all of them, no, sir. We do not have many, in fact, since I come to think of it, because that is mostly distributed from the Oakland factory—when we are speaking of transcontinental shipments. The Morgan line we use generally for Texas business, in through there.

Q. So that your carload shipments usually go all-rail?

A. Yes, sir.

Q. And then you distribute locally from your place at Oakland?

A. Yes. We do not like to break bulk, on account of the character of the freight.

Q. Do you remember when the Union Pacific had a separate agency here?

A. Yes, sir.

Q. Who was their agent, if you remember?

A. Well, I have a recollection of Mr. Choate. It is not as clear as I ought to have, perhaps. I do not think that he solicited our business as strong as Mr. Herring did, because I did not know him so well. I learned to know him better later, though.

Q. At that time Mr. Choate and Mr. Herring were soliciting business in competition with each other, were they not?

A. Yes, sir.

Q. And Mr. Herring was successful in getting your business, as a rule, I think you have testified, out by New Orleans?

A. Yes, sir.

Q. And later on, when he was employed by both the Union and the Southern Pacific, he diverted the business, as far as he could, by the Union Pacific and Southern—the Ogden route?

A. It was diverted.

2282 Q. I say as far as he was able he secured its diversion?

A. Yes.

Cross-examination by Mr. LOVETT:

Q. Mr. Herring never indicated any preference for the Omaha-Ogden route as against the New Orleans route, did he? He did not care which way you sent it so you sent it over the Southern Pacific and Union Pacific, did he? I am speaking now of the time this change occurred.

Mr. SEVERANCE. You are speaking of the time of this psychological event?

Mr. LOVETT. Yes.

WITNESS. Prior to 1901, is that what you mean?

Q. No, I am speaking of the later years. Does Mr. Herring now ever indicate any preference for your shipments by way of Omaha and Ogden as against New Orleans?

A. Yes, sir.

Q. Rather have it go that way?

A. I don't know whether he does or not, but I imagine he does.

Q. Does he ever say so? Did he ever indicate to you in any way a preference?

A. He has at times asked, when we said that a shipment had been promised another way, "Can't you give that to the Union Pacific"?

Q. Has he ever asked you to give any to the Southern Pacific, under those circumstances?

A. Oh, yes. Yes, he is a Southern Pacific man.

Q. He will take it either way if he can get it, won't he?

A. He has always seemed willing to get it at Ogden if he couldn't get it at Omaha.

2283 Q. And he also would be willing to take it at New Orleans, would he not?

A. Yes, sir.

Q. That is the point I was making. He has never solicited for Omaha as against New Orleans, has he?

Mr. SEVERANCE. You forget the psychological event.

Mr. LOVETT. No, I am just trying to develop that psychological event.

WITNESS. I am sure he knows that we prefer the Omaha route.

Q. Yes—you prefer it?

A. Yes, sir.

Q. And it is immaterial to him, so long as he gets it at Omaha—that satisfies him. Now, another thing in reference to that psychological moment. Did not the source of your supply have something to do with that? Did you not, prior to five or six years ago, ship most of your supplies from Perth Amboy?

A. Most of it goes from there at all times.

Q. Has that always been true?

A. That has always been, yes, sir.

Q. And no change in that respect had anything to do with this change of routing?

A. No, sir. I might modify that statement a little. I will add to that, after the erection of the Perth Amboy plants, which I think was probably along about 1889. Prior to that time we shipped only from Pittsburg, of course. That was before my time, however.

Q. That was back in 1889, was it?

A. Yes, I think our factories over there were erected along about that time.

Q. When you were solicited by separate representatives of the Union Pacific (Mr. Choate or Mr. Lothrop) which way did the traffic move that was given in response to their solicitation?

A. To the Union Pacific, of course, at Omaha.

2284 Q. And then over the Southern Pacific?

A. Yes, sir.

Q. All the business that they got from you for California went ultimately over the Southern Pacific?

A. Yes, sir.

Q. I suppose all other lines still solicit your business?

A. Yes, sir.

Q. If, during the days when there were separate agencies, Mr. Herring could not get your shipment by way of New Orleans, did you ever know him to try to get you to send it by the all-rail route by way of Ogden?

A. Yes, sir. As I have already testified, Mr. Herring is always willing to take the short haul when we will not give him the long haul. That was true then.

Mr. SEVERANCE. Since he has represented both the Union Pacific and the Southern Pacific he has apparently regarded the Omaha-San Francisco route as a long haul, hasn't he?

WITNESS. Yes, sir.
Mr. SEVERANCE. You so understood it from him?
WITNESS. Yes, sir.
Mr. LOVETT. From where?
WITNESS. From Omaha.
Mr. LOVETT. The long haul from——
WITNESS. I think you [Mr. Severance] said *a* long haul, didn't you?
Mr. SEVERANCE. Yes; one of the long hauls that he was willing to get.
WITNESS. Yes.
Q. Doesn't that apply to shipments from Perth Amboy, too?
A. Yes, sir. We ship from both points.
2285 Q. You do not mean that from Perth Amboy to San Francisco the Union Pacific-Southern Pacific line by way of Omaha and Ogden would be the long haul as against New Orleans, do you?
A. No, sir. My understanding is that it is a longer haul for the Southern Pacific from New Orleans than from Omaha. I do not know positively.

2286 S. B. DEPUEY,

called on behalf of the Complainant, being duly sworn, testified as follows:

Direct examination, by Mr. SEVERANCE:

Q. Mr. Dupuey, where do you live?
A. At Munhall.
Q. What is your business?
A. I am with the Safety Armorite Conduit Company.
Q. How long have you been with that company?
A. Four years.
Q. What are your duties in connection with it?
A. Part of them, as traffic manager.
Q. What kind of goods does your company manufacture?
A. Steel conduits for electric wiring.
Q. Where is your market?
A. All over the United States.
Q. Have you a large concern?
A. About the largest there is in the country of that character.
Q. Do you ship to the Pacific coast?
A. Yes, sir.
Q. How do your California shipments go?
A. Southern Pacific via El Paso; Santa Fe, Union Pacific, and Southern Pacific at Ogden.
Q. Do you know Mr. Herring?
A. Yes, sir.
Q. Does he solicit your business?

A. He and his assistants.
Q. For which route?
A. Any way they can get it.
Q. They do not express any preference as between the Union Pacific and the El Paso routes?
A. No, sir.
Q. Do you ship to Portland?
A. Yes, sir.
Q. How does your Portland business go?
A. Northern Pacific and Great Northern.
2287 Q. Do you give any of that to the Union Pacific and Oregon Short Line?
A. We have. But that Portland business is always routed by the consignee.
Q. And the Northern lines get most of it, do they?
A. The Northern lines get almost all of it; all that I know of within two years, with the exception of one car.
Q. And how did that go?
A. That went Union Pacific and Oregon Short Line.
Q. Where are your factories?
A. At West Pittsburg; 45 miles north.
Q. You say that you do not route any business to Portland yourself?
A. Not to Portland.
Q. Do you get advices from the consignee as to the way to ship?
A. The routing always comes in with the order.
Q. What is that?
A. The routing always comes in on the order.
Q. Do the representatives of the Union Pacific, the Great Northern and Northern Pacific, occasionally come in to check up those orders?
A. Every time there is an order that comes in from the north or the northwest, which ever way the routing is, you will find the agent around to check it up.
Q. He is advised from the other end?
A. He is advised from the other end.
Q. And he comes around to make sure that you respect the routing, does he?
A. Yes, sir.
Q. That is one of the functions of these eastern commercial agents for western lines?
A. Yes, sir.
Mr. LOVETT. You say you have held your position two years?
A. Two years.

2288 W. G. HARD,

called on behalf of the Complainant, being duly sworn, testified as follows:

Direct examination, by Mr. SEVERANCE:

Q. Where do you live, Mr. Hard?
A. Salem, Ohio.
Q. What is your business?
A. I am traffic manager for the Buckeye Engine Company.
Q. How long have you been with that company?
A. Since 1890.
Q. What kind of engines do they manufacture?
A. Stationary, steam and gas engines.
Q. Is it a large concern?
A. Fairly large, yes, sir.
Q. To what parts of the country do they ship their product?
A. Pretty well scattered over the United States.
Q. Do they ship it abroad, too?
A. To some extent, yes, sir.
Q. To what foreign countries do you ship?
A. We have a number of engines in Japan, some few in Russia, New Zealand, South America, Central American points, Mexico.
Q. Are your plants located at Salem?
A. At Salem, Ohio, yes, sir.
Q. And no other place?
A. No other place.
Q. Prior to 1901 did you ship engines to the Pacific coast?
A. We have a few engines on the Pacific coast. Our business on the Pacific coast never was very large.
Q. Did you make shipments over there prior to 1901?
A. I remember of handling possibly half a dozen shipments since 1890.

Mr. LOVETT. From 1890 to date?

2289 WITNESS. Yes, sir.

Q. Do you know Mr. Herring?
A. I do, yes, sir.
Q. Did he ever solicit your business?
A. He has.
Q. Did he solicit your business before he represented the Union Pacific as well as the Southern Pacific?
A. He did.
Q. For which gateway?
A. I do not know that I can recall that phase of his solicitation. I would naturally suppose he would solicit by way of New Orleans. I know we have made some shipments that way.
Q. Did you make shipments in response to his solicitation, by way of New Orleans?
A. Yes, sir.

Q. Was anybody calling on you at that time, representing the Union Pacific and soliciting shipments?

A. I remember a man by the name of Carney, who I think was soliciting for the Union Pacific.

Q. Where was his headquarters, do you remember?

A. I cannot tell you that; I do not remember.

Q. Do they come to see you now—Mr. Herring or his representatives?

A. Mr. Corfield I believe has been to see me once or twice, perhaps. I do not know the man. He has not been often enough so that I know him, but I found his card on my desk.

Q. You do not remember to have seen him?

A. I do not remember that I have seen him; I may have.

Q. Do you ship to Portland at all?

A. I have no shipments to Portland that I know of.

Q. How do your Oriental shipments go? You spoke of having engines in Japan?

A. By way of New York and the Suez Canal.

2290 Q. And New Zealand the same?

A. Yes, sir.

Cross-examination by Mr. LOVETT:

Q. I understood you to say that you thought you had placed as many as half-a-dozen engines on the Pacific coast since 1890?

A. Yes, sir.

Q. Were they all shipped by way of New Orleans, or did some go by way of Ogden?

A. I cannot recall that.

2291 JAMES A. HENDERSON,

called on behalf of Complainant, being duly sworn, testified as follows:

Direct examination by Mr. SEVERANCE:

Q. Where do you live, Captain?

A. In Pittsburg, Pa.

Q. How long have you lived here?

A. All my life.

Q. What is your business?

A. I am president and general manager of the Pittsburg & Cincinnati Packet Line.

Q. What kind of business is carried on by that packet line?

A. The handling of freight and passengers between Pittsburg and Cincinnati, and, in connection with other lines of boats, from Cincinnati to New Orleans, Memphis, St. Louis, Nashville, and various other river points.

Q. You have a line of boats from here to Cincinnati?

A. Yes, sir.

Q. How long have you had that line?

A. I have been connected with it for about 25 years.

Q. Has that been in active operation during that time?

A. During the season of navigation; except when there is low water or ice.

Q. How many months in the year is the river open?

A. About eight months on the average.

Q. Has there been in existence at any time a pro-rate by which your packet line participated in Pacific coast business out of Pittsburg?

A. Yes, sir.

Q. Up to what time was that in force?

A. You mean a through rate?

2292 Q. Yes.

A. I was always interested in the rate to Cincinnati. There or at other points the railroad would take it up and make a through rate.

Q. But the rates were so adjusted that shipments could go by your packet line to Cincinnati and then on, either by boat or rail, to the coast, were they not?

A. Yes, sir.

Q. You had what is called a pro-rate on that business, had you not?

A. Yes, sir.

Q. Have you still?

A. No, sir.

Q. When was that taken out?

A. Along about 1890 or 1891.

Q. 1890, or 1900 do you mean?

A. 1900; and 1901, lastly.

Q. During the time when that pro-rate was in existence did you handle any coast business out of Pitt-burg?

A. Yes, sir; out of East Liverpool I recall.

Q. How did that move?

A. (Referring to a memorandum.) I have a memorandum of a transaction. It moved from Pittsburg to Cincinnati, from Cincinnati to Chicago, thence by the Chicago & North Western and Northern Pacific railroads beyond. That shipment moved to Portland, Oregon.

Q. Did you ever have any business move by New Orleans?

A. To the Pacific coast?

Q. Yes.

A. None that I recall.

Q. Did you ever have any business moving to Colorado points part way by boat?

A. Yes, sir.

Q. How did that move?

A. To New Orleans.

Q. And thence over what line? The Southern Pacific?

A. The Southern Pacific.

Q. Was there a considerable amount of coast business
2293 that moved by the boat lines out of here, or out of these other towns by your line, while that pro-rate was in existence?

A. Yes, sir.

Q. Do you know how it happened to be taken out?

A. Why, the railroads refused to pro-rate with the river lines, with the water lines, about 1900.

Cross-examination by Mr. LOVETT:

Q. That shipment that went by New Orleans—do you remember more than one?

A. No. I recall it because of the peculiarity of the route.

Q. Yes. It was one carload of candles, was it not?

A. No; of nails.

Q. Of what?

A. Wire nails.

Q. That is the only shipment you have ever known to go that way, is it not?

A. From Pittsburg to New Orleans and thence to Colorado points?

Q. Yes.

A. Yes, sir; in that route.

Q. Did it go all the way down to New Orleans by boat?

A. The shipment originated at Salem, Ohio. It went from Salem, Ohio, to East Liverpool, and from East Liverpool to Cincinnati, and thence to New Orleans by boat. We took it by boat from East Liverpool to Cincinnati, and there we turned it over to the Southern Pacific Railroad. The reason I recall it is because of the peculiar route it took. It made a sort of a triangle.

Q. That is the only shipment of the kind you ever knew?

A. Yes, sir.

2294 Q. Did that go by the Southern Pacific or the Texas & Pacific from New Orleans?

A. The rate was made in connection with Mr. Herring, so I presume it went by the Southern Pacific from New Orleans.

Q. What did I understand your answer to be as to freight moving that way to California points?

A. Via New Orleans?

Q. Yes.

A. We had very little that I can recall. We may have.

Q. You cannot recall any, can you, Mr. Henderson?

A. Not specifically, no.

Q. None of it moved that way to California points, that you can recall?

A. No, sir, not via New Orleans.

Q. With reference to this business on which you had a pro-rate, you carried that, as I understand, as far down the river as Cincinnati?

A. Yes, sir.

Q. And there it was taken up by rail lines, who made the through rate——

A. No. You mean by New Orleans.

Q. No; I have left the New Orleans business now. I am speaking of this business that you took from points up the river to Cincinnati, and on which you were allowed a pro-rate by the rail lines out of Cincinnati?

A. Yes.

Q. California business?

A. Portland, I refer to.

Q. Portland?

A. Yes, sir.

Q. Over what line did it go from Cincinnati?

A. The C. H. & D.—Cincinnati, Hamilton & Dayton.

Q. And then by the Northern Pacific?

A. Yes, sir.

Q. And that, you said, was destined to Portland?

A. Yes, sir.

Q. Do you ever have any shipments to California?

A. No.

2295 Q. Oh, you never handled any shipments destined to California, then, by way of Cincinnati?

A. We may have. We have handled with the railroads that tap the Ohio River and the Mississippi River for almost every western point.

Q. But you do not recall any to California?

A. No, sir.

Q. You never had any published rates by your line to California, had you?

A. No, sir.

Q. You never made a rate to California, so far as you know?

A. No, sir; not quoted a rate direct to California.

Q. You could not without acting in conjunction with railroad lines, of course?

A. Not since the Interstate Commerce Commission went into effect.

Q. Well, you never had any at any time in connection with the railroads to California, had you?

A. No, sir.

Mr. SEVERANCE. That concludes our testimony today, your Honor.

The EXAMINER. We will have no further witnesses examined today, and will take a recess for fifteen minutes.

Mr. SEVERANCE. You may excuse any witnesses who have not been called.

The EXAMINER. Any witnesses present who have not been called will be excused.

(A short conference was then held between the attorneys.)

2296 The EXAMINER. We will now take an adjournment until Tuesday, February 9, 1909, at 10:30 o'clock a. m., at the office of the United States Marshal, Cincinnati, Ohio.

UNITED STATES MARSHAL'S OFFICE,
FEDERAL BUILDING, CINCINNATI, O.,
*Tuesday, February 9, 1909, 10.30 a. m.*

Counsel for the respective parties appeared before the Special Examiner, Hon. Sylvester G. Williams, at the above time and place, and thereupon proceeded to Room 322, Federal Building, where the hearing was resumed as follows:

Present on behalf of the Complainant: Mr. C. A. Severance, Mr. G. E. Husted. On behalf of the Defendants: Mr. R. S. Lovett.

## STEPHEN GANO,

called on behalf of the Complainant, being duly sworn, testified as follows:

Direct examination by Mr. SEVERANCE:

Q. Where do you live, Mr. Gano?
A. Cincinnati.
Q. How long have you lived in Cincinnati?
A. Born here.
Q. That is not definite.
A. Well, I have lived here all my life, except from 1874 to 1879.
Q. What is your business?
A. Freight solicitor, G. R. & I. Railroad.
Q. That is a branch of what system?
A. Pennsylvania.
Q. How long have you occupied that position?
A. Since November, 1896.
2298 Q. Previous to that what was your business?
A. I was with the Addyston Pipe & Steel Company.
Q. For how long?
A. About 18 or 19 months.
Q. And previous to that?
A. With the Union Pacific Railroad.
Q. In what capacity?
A. Clerk, principally.
Q. Were you ever freight solicitor for that road?
A. Why, the last two years I was with the company, I was city freight solicitor.
Q. Who was the general agent of the Union Pacific during the time you were with them?
A. James D. Welsh.
Q. Do you remember up to what time Mr. Welsh was the agent of the Union Pacific here?
A. No, I could not tell you the time of his retirement. He was sick the last two years of his life, and I do not know what date he severed his connection with the company.

Q. What year did you sever your connection with the Union Pacific?

A. 1894.

Q. And Mr. Welsh was at that time their representative?

A. At that time still in the employ of the company.

Q. And did he continue to be for some time after?

A. Well, he was sick for two years.

Q. Who succeeded him as general agent of the Union Pacific?

A. W. H. Connor, I believe. Now, just a moment there: I am in doubt about who succeeded Mr. Welsh. There was a man named Smith, I think, who had charge of the office for a short time, but for how long, I do not know.

Q. At any rate, in 1894, when you severed your connection with the Union Pacific, Mr. Welsh was their general agent?

2299 A. Was their representative here, yes.

Q. And was he your superior officer?

A. He was.

Q. During all the time you were employed by that company?

A. During all the time I was employed by the Union Pacific.

Q. At that time who represented the Southern Pacific Company here?

A. W. H. Connor.

Q. Are you acquainted with Mr. Connor?

A. I am.

Q. He is still here, is he not?

A. He is in the room.

Q. And what is his position now?

A. General agent of the Union and Southern Pacific, as I understand it.

Q. During the time when you were with the Union Pacific was there any competition between that company and the Southern Pacific for transcontinental business?

A. Decidedly.

Q. And to what points was that competition directed—that is, to what coast points?

A. All the Pacific coast.

Q. How far north?

A. Portland, Seattle, Tacoma and Puget Sound points.

Q. And all the California points?

A. And all the California points.

Q. What way was the Southern Pacific working transcontinental business?

A. Via New Orleans and El Paso.

Q. And which way did the Union Pacific work business?

A. Through Missouri River, Council Bluffs, Kansas City, Omaha and Ogden.

Q. Which way was the Portland business worked by the Southern Pacific?

A. Why, they had two routes. They had a steamship route from San Francisco to Portland, and they had an all-rail route by
2300 what they call the Shasta line, from Sacramento to Portland.

Q. How did the business move to reach the Sacramento route?

A. Via New Orleans, when the Southern Pacific secured the business.

Q. And then up by the Shasta route?

A. Sent it either way they wanted, I presume. The Shasta route in wintertime, of course, was sometimes out of use, on account of snow; then, I presume, they used the steamship route.

Q. Did the Southern Pacific have that steamship route, or did the Oregon Railroad & Navigation Company have it?

A. I think it was controlled by the Southern Pacific, is my recollection.

Q. Are you sure about that?

A. No.

Q. But the Southern Pacific worked Portland business via New Orleans, did they?

A. They worked Portland business via New Orleans.

Q. And how did the Union Pacific work Portland business?

A. By the Oregon Railway & Navigation Company.

Q. Was there any competition at that time for passenger business to the coast?

A. There was.

Q. Active or otherwise?

A. Very active.

Q. What way was that carried on?

A. How do you mean?

Q. How did they work to get the business?

A. By personal solicitation. People that they heard were going to the Pacific coast, their representatives, passenger men, would go to see them.

Q. That is, the Southern Pacific?

2301 A. Both Southern Pacific and Union Pacific had passenger men in the territory.

Q. And which way did the Southern Pacific endeavor to work its passenger business to the coast?

A. Well, that was optional with the passenger. It depended on how he wanted to go. There were numerous routes to the Pacific coast. To illustrate: a man might want to go by way of New Orleans-San Francisco, to include the Southern California points; he might want to return by way of Ogden and Union Pacific; he might want to continue his route up to Portland. He would come back Northern Pacific, or he could come back Union Pacific.

Q. Which way did they endeavor to send the coast business?

A. Who endeavor to send?

Q. The Southern Pacific.

A. Via New Orleans.

Q. Where is your office at the present time, Mr. Gano?

A. 42 East Fourth Street.

Q. Where is that with reference to Mr. Connor's office?

A. Directly across the street.

Q. Did you ever notice the signs on Mr. Connor's window?

A. Yes.

Q. What are they?

A. I made a memorandum of them this morning. I can read them to you if you want me to.

Q. Well, read them to me.

A. (Referring to memorandum.) They have two windows. On the east window it says "Union and Southern Pacific"—Oh, wait a minute. Over the door extending over both windows there is a large white and blue sign which says "Union and Southern Pacific."

On the east window it says "Union Pacific;" and it has the
2302 Union Pacific shield. "Overland Route" it says in the shield.
Underneath the shield it says "Oregon Short Line. Oregon Railroad & Navigation Company." On the west window it says "Southern Pacific;" a shield, with "Sunset Route" in it. "Houston & Texas Central; Southern Pacific steamship lines between New Orleans and Havana." On the transom it says "Occidental & Oriental Steamship Company; Pacific Mail Steamship Company." And then they have got some Japanese—I don't know what this is—"T-o-y-o" it looks like, and "K-i-s-h-e-n," I think it is. Under that it says "Portland & Asiatic Steamship Company."

Q. What means were used by the representatives of these competing lines, in the days when they were in competition, to get business from each other?

A. Why, they had freight and passenger solicitors traveling through the territory.

Q. And what arguments did these men make?

A. I do not know. I was not there.

Q. You were not here. But do you remember how many men were employed by the respective lines?

A. I know who were employed by the Union Pacific. I could not tell you who were employed by the Southern Pacific.

Q. How many men did the Union Pacific have?

A. J. D. Welsh was the Cincinnati representative; A. G. Sherman looked after the Cleveland territory; T. C. Hirst traveled in the Columbus territory; H. C. Smith, the Cincinnati territory. I was the clerk in the office.

Q. And you say for several years you were also freight solicitor?

A. The last two years I was with the company I was
2303 on the street in Cincinnati soliciting freight and passenger business.

Q. Do you remember the names of the Southern Pacific organization, outside of Mr. Connor?

A. No, I could not tell you but three of them—Mr. Connor, Mr. Shinkle, and Mr. Drake. Mr. Drake, I think, was a stenographer.

Q. Do you remember when it was that Mr. Connor became the joint agent?

A. No; I have no means of knowing.

Q. You do not remember that?

A. I do not remember.

Q. Did these roads at that time work Oriental business?

A. Passenger business, they did; that is, the Union Pacific worked for Oriental passenger business.

Q. By what route did the Union Pacific work Oriental passenger business?

A. Via Ogden-San Francisco.

Q. And what steamship line?

A. I could not tell you from memory. I have drawn prepaid orders on the agents at San Francisco, but I have forgotten the names of the steamship lines now.

Q. How did the Southern Pacific endeavor to work Puget Sound business?

A. Freight, or passenger?

Q. Well, take freight.

A. Puget Sound business they would work either by the Shasta or the steamship line to Portland, Tacoma or Seattle.

Q. And how did it move by rail, when it went by rail only as far as San Francisco?

A. There was only one rail route from Sacramento to Portland, and that was the Shasta line.

Q. No; I mean moving from the East to——

A. Moving from Cincinnati?

2304 Q. Yes.

A. It moved to New Orleans via the L. & N., or Q. & C.

Q. And thence to San Francisco?

A. Then to Sacramento.

Q. And then either by rail or boat to Puget Sound?

A. Then by rail or boat to Puget Sound, if it went by rail; and to San Francisco, if it went by steamer.

Q. And by steamer to Puget Sound points?

A. To Puget Sound points.

Q. Do you remember the name of that steamship company to Puget Sound points?

A. No, I do not.

Q. Which way did the Union Pacific work that business to Puget Sound points.

A. Oregon Railroad & Navigation Company, via Portland.

Q. And how did they work it from there up to Puget Sound—from Portland?

A. That would depend on destination. The steamers run from Portland and Seattle to points in Puget Sound.

Q. There were rail lines there, too?

A. No rail lines that I remember of. We only handled water routes from Portland for Puget Sound points. The Northern Pacific may have touched a few there that we could work with them north of Portland.

Cross-examination by Mr. LOVETT:

Q. You are familiar with the location of the Union Pacific and Southern Pacific railroad lines, I suppose, Mr. Gano?

A. Geographically, only. I have never been over them.

Q. That is what I mean. The Union Pacific lines lie between——

2305 A. The Missouri River and Ogden to San Francisco.

Q. Extend from Kansas City and Omaha to Ogden?

A. Yes.

Q. And then the Oregon Short Line and Oregon Railroad & Navigation Company?

A. From Green River to Granger, and from Umatilla to Portland.

Q. And the Southern Pacific lines extend from New Orleans around through Texas and Arizona?

A. From New Orleans to San Francisco, yes.

Q. Up that way?

A. Yes.

Q. And thence on up the coast to Portland?

A. To Portland.

Q. Then it has a line extending from San Francisco eastwardly to Ogden?

A. To Ogden.

Q. In soliciting freight during the time that the Union Pacific had separate solicitors here, for California points or points south of Portland, Oregon, such freight as was secured by the Union Pacific for those points, moved over the Union Pacific either from Kansas City or Omaha to Ogden?

A. To Ogden.

Q. Thence over the Southern Pacific to the Pacific coast?

A. Yes.

Q. And such freight as the Southern Pacific's solicitors secured moved, if they could, by way of New Orleans, you say?

A. Via New Orleans.

Q. Or Texas junctions?

A. El Paso.

Q. El Paso, or Ogden?

A. Well, they used the Ogden route. The Southern Pacific would sometimes solicit freight via the Ogden route when they could not get it via the New Orleans route.

2306 Q. That is the point I wanted to develop. They preferred——

A. They preferred the Southern Pacific route on account of revenue.

Q. Then if they could not get that, they would take the Ogden?

A. They would use the Ogden route.

Q. So far as the Southern Pacific was concerned, it was a question of division, was it not—that is, of revenue?

A. Division of the rate. They got a greater percentage of the rate via New Orleans than they did via Ogden.

Q. And naturally they preferred the route which afforded them the most revenue?

A. They wanted the longer haul and the greater revenue.

Q. If they could not get that they would then take the Ogden route?

A. Yes.

Q. The competition that you testified about in answer to questions by Mr. Severance, as existing between the Union Pacific and the Southern Pacific at one time, was, so far as business south of Portland was concerned, competition between the all-rail lines—that is, the Union Pacific from the Missouri River to Ogden, and the Southern Pacific from Ogden to the Pacific coast—was it not, on the one part, and the competition by the Sunset Route on the other?

A. The representatives of each line worked by their respective routes, if I understand your question.

Q. Yes. The question is whether that competition was not the competition as between the all-rail line by way of Omaha and Ogden, on the one hand, and the Southern Pacific Sunset Route and its connections, on the other?

2307 A. All-rail route from and to where?

Q. From here to San Francisco.

A. Why, there was competition to the Pacific coast by the all-rail routes between the Union Pacific and the Southern Pacific, yes.

Q. Of which the Southern Pacific was a part?

A. The Southern Pacific was a part, from Ogden to the Pacific coast.

Q. The Union Pacific could not reach, and never did reach, the Pacific coast south of Portland for this traffic that you controlled——

A. Never.

Q. ——except in connection with the Southern Pacific?

A. Except in connection with the Southern Pacific, is correct.

Q. The Union Pacific could not make a rate to any point on the Pacific coast south of Portland without the concurrence of the Southern Pacific, could it?

A. It could not get there.

Q. It was their only outlet?

A. It was their only outlet.

Q. Whichever way the freight went it must ultimately go over the Southern Pacific if it did not go over the Atchison?

A. It had to.

Q. The Union Pacific line and the Ogden line of the Southern Pacific were really competing against the Atchison, were they not?

A. Oh, very decidedly. The Atchison had representatives in this territory.

Q. The various lines extending from this territory westward, and also south and southwestwardly were competing for that traffic, were they not?

A. They were then, as they are now.

Q. They are still competing for it?

A. Oh, decidedly.

Q. The Louisville & Nashville, the Queen & Crescent, and
2308 the Illinois Central, are seeking to move traffic by way of New Orleans, are they not?

A. Via New Orleans.

Q. They were then, and are now?

A. They were then, and are now.

Q. And the Union Pacific——

A. And Wabash and Chicago & Alton.

Q. And Wabash and Chicago & Alton, and the Rock Island system?

A. The C. B. & Q., the North-Western, and the St. Paul.

Q. They are all competing for this traffic?

A. They are all competing for that traffic.

Q. They have solicitors in this territory, haven't they?

A. They have.

Q. And the Missouri, Kansas & Texas, and other lines reaching to the southwest?

A. I am not well posted on that M. K. & T. route at the present time. I do not have anything to do with working that business, and have not had for years.

Q. Is the Texas & Pacific soliciting in this territory, or is it working with the Missouri Pacific?

A. I do not know how the T. & P. R. are really working the business. You see, I have not worked that business for fifteen or eighteen years.

Q. Such business as the Louisville & Nashville, the Queen & Crescent and the Illinois Central secure from this territory for the Pacific coast necessarily goes over the Southern Pacific, does it not, Mr. Gano?

A. Not necessarily, no. The Illinois Central have a Chicago outlet.

Q. So it has. It could send it over the Union Pacific?

A. It could send it over the Union Pacific.

Q. But even then it would have to go over the Southern
2309 Pacific?

A. It would have to go over the Southern Pacific and they would short-haul themselves.

Q. To carry it that way?

A. To carry it via Chicago.

Q. According to the ordinary principles of railroading New Orleans would be their natural outlet?

A. New Orleans would be their natural outlet, on account of revenue.

Q. And then it would have to go Southern Pacific?

A. Then it would have to go Southern Pacific.

Q. Such business as the Rock Island and its connections secure from this territory would also naturally go over the Southern Pacific, would it not, unless they short-hauled?

A. At the present time, or before they had their outlet—let me see: They have got a route which runs southwest there, some place through Colorado down.

Q. El Paso. They connect with the Southern Pacific?

A. Yes; the El Paso. The Rock Island have got the El Paso route now, which they did not have when I was with the Union Pacific.

Q. So now the Southern Pacific would be the natural outlet for the Rock Island?

A. For the Rock Island, via El Paso.

Q. And even before, wasn't it, Mr. Gano—for the reason that they would get the long haul by interchanging with the Southern Pacific rather than with the Atchison.

A. Who?

Q. The Rock Island.

A. When I was railroading, the Rock Island's western terminal was Denver or Pueblo.

Q. But they would then turn it over there either to the Union Pacific or Southern Pacific——

A. No.

2310 Q. ——or the Denver & Rio Grande, would they not?

A. No; they would turn it over to either the Union Pacific or the Denver & Rio Grande.

Q. That is what I say.

A. You see, there were two routes from Pueblo to Ogden: The Union Pacific, via Cheyenne, and the Denver & Rio Grande had their own route. The Southern Pacific got the business at Ogden.

Q. But when either the Union Pacific or the Denver & Rio Grande got it they had to turn it over to the Southern Pacific at Ogden?

A. To the Southern Pacific at Ogden.

Q. So ultimately it passed over the Southern Pacific?

A. Southern Pacific.

Q. That was true also of the Burlington, was it not?

A. The Burlington, and all the other trans-Missouri lines.

Q. So all of those lines extending from this territory to New Orleans and to the southwest and to the Missouri River and the Rocky Mountains——

A. Were feeders for the Southern Pacific.

Q. ——were feeders for the Southern Pacific? And there was no other way that that traffic could get to or from the Pacific coast——

A. No other route.

Q. ——south of Portland, except the Southern Pacific or the Atchison?

A. Or the Santa Fe.

Q. And as between the Santa Fe and the Southern Pacific, they would get the long haul by interchanging with the Southern Pacific, would they not?

A. Who would get the long haul?

Q. These intermediate lines.

A. The lines that extended west of the Missouri would get the long haul.

Q. You did not quite understand my question, I think, Mr. Gano. I did not make it plain. The question was this: These various

2311 lines——

A. When you say various lines, I do not understand what you mean. Chicago & North-Western, St. Paul, Rock Island, Missouri Pacific and Alton—all those lines that run from Chicago west?

Q. Yes; and from this territory west.

A. All right.

Q. Take all of these lines extending from this territory westwardly to the Rocky Mountains, or southwesterly to El Paso and connections with the Southern Pacific lines east of El Paso, or southeast, to New Orleans: Now, the question was, whether those lines would not naturally prefer the Southern Pacific to the Atchison, because they would get the long haul by interchanging with the Southern Pacific, whereas most of them would short-haul themselves if they interchanged with the Atchison.

A. They would not interchange with the Atchison, because they were competitive with them out of Chicago.

Q. Yes; that is right. There were then, and are now, a great many lines by which traffic can move from this territory to the Pacific Coast, are there not, Mr. Gano?

A. A great many of them.

Q. These that I have mentioned, and perhaps others?

A. Yes. There are a great many that you have not mentioned, especially the lines from here to Chicago and Mississippi River points.

Q. The shipper from this territory can send by way of New Orleans, or he can send through the various gateways west of New Orleans?

A. He can.

Q. As far west as El Paso. He can then ship westwardly and reach the Atchison or the Southern Pacific west of the Missouri River?

A. Most certainly.

Q. All of those gateways have been kept open, have they not,

2312 Mr. Gano?

A. Yes; and they are all represented in this territory.

Q. The shipper can select any one of those routes?

A. He can select his own route.

Q. That has been true ever since 1901, as well as before, has it not, Mr. Gano?

A. Ever since I have been railroading. Ever since 1880.

Q. And all of those lines are actively working for business?

A. Actively working, and have solicitors on the street.

Q. What is the chief function of a railroad soliciting or commercial agent, Mr. Gano?

A. To get all the freight he can find.

Q. What does he do to get it? Does he keep the shipper informed? I mean a general agent of a railroad company; does he keep the shipper informed as to the rates, and look after his shipments and trace his shipments for him?

A. Yes; those are about his duties. He has general supervision of all business moving from his territory that his line would be interested in.

Q. And accommodate the shipper in those matters by keeping him informed as to the amount of freight——

A. Expedite the movement of his freight and advise him of its delivery at destination; rates.

Q. And in the adjustment of claims?

A. Well, the general agent does not have much to do with the adjustment of claims, except to secure the information necessary to transmit to the general office.

Q. I understood you to say, in your direct testimony, that
2313 the Southern Pacific had at one time a line of steamers up the coast from San Francisco to Portland or Puget Sound points?

A. Yes.

Q. Are you not mistaken about that?

A. I do not think so. I do not think so, from the fact that it runs in my mind there was a $20-rate there between the points. I may be wrong about that, but I am almost positive that they handled business from San Francisco to Portland via steamer, when the Shasta line was in trouble with snow.

Q. But there were steamers running up there?

A. There were steamers running.

Q. But as to whether they were controlled by the Southern Pacific or not——

A. I do not know who controlled them.

Q. You have no personal knowledge?

A. I think they were operated in connection with the Southern Pacific.

Q. You have no personal knowledge of that, have you?

A. None at all. I would not want to swear to that, because I do not know.

Q. I think you are mistaken.

A. As I said, I do not even remember the name of the steamship company.

Q. The Union Pacific worked business for Portland and Puget Sound over the Oregon Short Line?

A. The Oregon Railroad & Navigation Company.

Q. And from Portland to Puget Sound how, did you say?

A. By water. Steamers operated from there to most of the points. The Northern Pacific touched a few.

Q. And you do not know whether it also interchanged business at Portland with the Northern Pacific to Puget Sound, do you?

2314 A. No; I could not say as to that.

Q. You never knew of any freight moving from this territory to San Francisco over the Union Pacific on the Short Line and then by boat down that way, did you? Did you ever attempt to work business that way?

A. Freight or passenger?

Q. Either.

A. Yes; passenger business was moved that way.

Q. By boat?

A. By boat—if the passenger wanted to go that way.

Q. By boat from Portland to San Francisco?

A. By boat from Portland to San Francisco, if the passenger requested it.

Q. Did you ever attempt to move freight that way over the Union Pacific?

A. No; I do not think they ever used that route for freight, unless it might have been some special case where there was some freight they had to get through in a hurry, and the Shasta line was blocked by snow.

Q. I am speaking now of the Union Pacific.

A. I understand. You are speaking of the Union Pacific via the Oregon Railroad & Navigation Company to Portland, making the destination San Francisco?

Q. Yes.

A. Freight business as a rule was not handled that way except in an emergency case.

Q. I think you have already testified that all of the San Francisco and other California freight from this territory you worked in connection with the Southern Pacific at Ogden?

A. The Southern Pacific via Ogden.

Q. You did not attempt to work freight by way of Portland?

A. Oh, no; we had no way of working that way. The Union

2315 Pacific had no lines running down to connect with the Southern Pacific via New Orleans.

Q. Nor by way of Portland.

Mr. SEVERANCE. I guess he does not understand you.

Mr. LOVETT. I do not think you quite understand the latter question.

Q. I said was it not true that the Union Pacific from this territory worked all California business by way of——

A. Of Ogden.

Q. ——Ogden, and not by way of Portland?

A. Not via Portland. That is freight business. For California.

Q. Yes, for freight business. But you think that they did work some passenger business——

A. If the passenger wanted to travel that way.

Q. ——to San Francisco——

A. To San Francisco.

Q. ——by way of Portland?

A. By way of Portland, and steamer.

Q. You were asked by Mr. Severance about the movement of passenger traffic from this territory—about competition between the Union Pacific and Southern Pacific for that passenger business. I suppose practically all of that business moved on special rates, did it not—excursion rates?

A. Well, they had a Pacific coast round-trip rate that went into effect—now, wait a minute—no: I guess the Pacific coast rate was good the year round; and the passenger had the option of selecting his own route, and paid an additional rate, or a lesser rate, according to the route he traveled.

Q. And how many options do you suppose he had? A great many, hadn't he?

A. He probably had five or six different routes, or possibly more than that.

2316 Q. He could leave on any line from this territory?

A. And go to Chicago.

Q. And go to Chicago?

A. Any line from Chicago through to St. Paul; over the Northern Pacific from St. Paul to the Pacific coast. He could go any route he wanted from Portland or Seattle to San Francisco, or down to Los Angeles, including San Diego and Santa Barbara, and come back Southern Pacific; or he could come back via Ogden and Union Pacific.

Q. Or he could go the other way?

A. Or go *vice versa*.

Q. By way of New Orleans to Texas points?

A. Yes.

Q. Or Atchison?

A. Yes. The rates were made up to accommodate the passenger by any route he wanted to travel.

Q. The competition, so far as that passenger business was concerned, was really in the matter of service, was it not, Mr. Gano?

A. Yes; in most cases. Of course it would be optional with the passenger. There were no special inducements to get a person to go a certain route, unless it was in the way of sleeping car accommodation or through trains; something of that kind.

Q. Well, scenery and attractiveness of the route in that respect?

A. I have never seen the line, except what they tell us in our folders.

Q. They talked about that, did they not?

A. Oh, most assuredly. The Southern Pacific would take advantage of the Union Pacific and say it was a snow-route in the wintertime. The Union Pacific would talk about the sandblasts and sandstorms in the South during the summertime.

2317 Q. But they were all advertising the advantages of their lines, but all these routes being open to passage for the same——

A. All the routes were open. They could go to suit themselves.

Redirect examination by Mr. SEVERANCE:

Q. You were saying that the Union Pacific called attention to the sandstorms along the Sunset Route, and the Sunset solicitors called attention to the snow blockades on the Union Pacific?

A. On the Union Pacific.

Q. And both the Sunset Route and the Union Pacific overland route had publications showing the beauties of the lines, did they not?

A. Certainly. The folders covered that.

Q. The folders; and they also had newspaper advertisements?

A. Yes.

Q. And magazine advertisements?

A. Yes; and periodicals, magazines.

Q. And the effort of the solicitors for the Southern Pacific was to send the passengers, if they could, via the Sunset Route?

A. Via the New Orleans route.

Q. And the effort of the Union Pacific was to send them by the Overland?

A. By the Ogden route.

Q. Judge Lovett called your attention to the fact that business moving to San Francisco over the Union Pacific had to pass over the Southern Pacific from Ogden?

A. Yes.

Q. The business that moved by New Orleans, the way you said the Southern Pacific endeavored to work it, did not move at all over the Union Pacific, did it? The Union Pacific got no part

2318 of that haul?

A. The Union Pacific could not go via New Orleans.

Q. They got no part of that haul; they have no line down there?

A. They have no line, according to my recollection.

Q. You spoke of the different western lines having soliciting agencies, or traffic agencies, in this territory. Did the Northern Pacific and Great Northern have agents here?

A. They had.

Q. Were the Northern Pacific competing for business into Portland?

A. Certainly.

Q. Actively?

A. Very.

Q. And the Great Northern likewise?

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A. I do not remember about the Great Northern in my time. I do not remember what their route was. That was back in 1896.

Q. Was the Canadian Pacific competing for coast business in those days?

A. I think they had a representative here.

Q. Do you know anything about the time that the Canadian Pacific had a boat line and a differential into California points?

A. No, I do not.

Q. You do not know anything about that?

A. No.

Q. You were also asked by Judge Lovett if it was not true that all the lines are now actively soliciting business, and you said they were. You do not understand, do you, that the Union Pacific and the Southern Pacific are now soliciting against each other?

A. I have not worked that business for years. I do not know how the Southern Pacific and Union Pacific are soliciting their Pacific coast business.

Q. You are aware of the fact that Mr. Connor represents them both?

2319 A. Represents them both. Mr. Shinkle is their street man.

Q. So, in the nature of things, you do not see any way, do you, that Mr. Connor or Mr. Shinkle, could very actively solicit against themselves—that is, as to one road against the other, as they represent them both?

A. I do not know how they solicit that business now. I know that Mr. Shinkle is soliciting the business, because I meet him on the street. I met him a week ago.

Q. But you do not know whether he is trying to send it by the Sunset Route or by the Union Pacific route?

A. I do not.

Q. And you have not run across any instances where Mr. Shinkle was trying to send it by both routes, have you?

A. I do not solicit the Pacific coast business now.

Q. They have no separate representative here at the present time?

A. None that I know of.

Q. You were speaking about the soliciting agents accommodating shippers by tracing shipments, and that sort of thing. They are paid by the railroad company, are they not?

A. They are.

Q. And they are employed to get business for the lines they represent?

A. They are.

Q. And they do these things for the shippers to help them get the business?

A. As an inducement.

Q. As an inducement to get business. You spoke about a time that the boat line was used between San Francisco and Portland, when the Shasta route was troubled with snow?

A. With snow.

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Q. You remember that, do you?
A. I do.

Q. When the Southern Pacific business for Portland was
2320 sent by boat from San Francisco because the Shasta route was in trouble by snow?
A. I do.

Recross-examination by Mr. LOVETT:

Q. Mr. Severance asked you if you could see how Mr. Connor or Mr. Shinkle could compete with himself. You do not see how the Southern Pacific Company could compete with itself either, do you, Mr. Gano?

A. How the Southern Pacific could compete with itself?

Q. Yes. The Southern Pacific has several gateways—two lines at least—for reaching the Pacific coast?

A. Yes.

Q. And if the Southern Pacific, having these two lines, and as all the traffic the Union Pacific gets for the Pacific coast south of Portland must pass over the Southern Pacific, the Southern Pacific would be competing with itself, would it not, if——

A. Well, I do not know what route they would send their business, or what their preference is—whether they have any preference for one route or the other.

Q. Even if they have a preference, it is just a matter of division, is it not, whether they get the long haul or the short haul out of it?

A. They get the long haul by way of New Orleans.

Q. And the short haul by way of Ogden?

A. By way of Ogden.

Q. And they get some of it, no matter which way it goes?

A. Provided the Santa Fe does not get the freight, yes, sir.

Q. But as against the Santa Fe, they get some of it, do they not?

A. Or the Rock Island.

2321 Q. Well, the Rock Island does not get the Pacific coast business?

A. The Rock Island gets to El Paso, does it not?

Q. Yes; but it would be Southern Pacific from there?

A. Oh, it would be Southern Pacific from there, oh, yes.

Q. That is what I said: the Southern Pacific gets some of it, no matter which way it goes.

A. It does not make any difference which way it goes, if it does not go Santa Fe.

Q. And it gets some of all that the Union Pacific gets?

A. Bound to.

Q. It gets a good share of the revenue, does it not—or do you know what that is?

A. I do not know what their revenues are. I do not know how they are divided now.

Q. So the Southern Pacific, by reason of its ownership or operation of the line from Ogden to San Francisco, is really a connection

with the Union Pacific, rather than a competitor, is it not, so far as that line is concerned? It is impossible for that line——

A. They are an outlet for the Union Pacific.

Q. Are they not the only outlet for the Union Pacific?

A. Yes, the only outlet. The only outlet for the Union Pacific on California business.

Q. And it is a connecting line of the Union Pacific? That line from Ogden to San Francisco is not a competitor of the Union Pacific?

A. Not a bit.

Q. It is a connecting line?

A. It is the only way the Union Pacific could get their freight to California.

Q. So far as the passenger business is concerned, both of these lines are very extensively advertised, are they not?

2322 A. Oh, yes.

Q. The Ogden route and the Sunset route?

A. They are.

Q. So far as you have observed, are they not as extensively advertised as they ever were?

A. I have seen some of their advertisements lately. They are very expensive; very elegant.

Q. With reference to this diversion of freight by the Southern Pacific to Portland on account of the snow blockade on the Shasta route, is that a matter of your personal knowledge, Mr. Gano, or can you be positive about that, or not?

A. I remember of cases that moved that way.

Q. By boat from San Francisco to Portland?

A. Yes; where they could not use the Shasta line.

Q. Do you know when that was?

A. Oh, my, no. You are going back about twenty-nine years now, since I went with the Union Pacific road, and it is about fifteen years since I left them.

By Mr. SEVERANCE:

Q. One thing, Mr. Gano: you are testifying with reference to the days when you were with the Union Pacific, when you said they had only one outlet to the coast from Ogden?

A. No; I did not say they only had one outlet to the coast.

Q. Well, to California.

A. Oh, California?

Q. Yes.

A. The Union Pacific had only one outlet via Ogden.

Q. You are aware there is another route there—the San Pedro route, the Salt Lake route?

A. Yes. There is a line down through there, but what the route is I do not know.

Q. And that was built since you were with them?

A. Since I left the Union Pacific road.

2323 E. E. WILLIAMSON,

being duly sworn as a witness on behalf of the Complainant, testified as follows:

Direct examination by Mr. SEVERANCE:

Q. Mr. Williamson, where do you live?

A. Cincinnati.

Q. What is your business?

A. I am commissioner of the Receivers' and Shippers' Association.

Q. How long have you occupied that position?

A. Five years.

Q. Previous to that what was your business?

A. I was traffic manager of the Macon, Dublin & Savannah road, at Macon, Georgia, for two years and a half.

Q. Previous to that what was your business?

A. I was connected with the traffic department of the Cincinnati, New Orleans and Texas Pacific Railway Company, or the Queen & Crescent route.

Q. During what years were you connected with that company—the Queen & Crescent?

A. I think I took service with the company in 1886, according to my recollection, and I left the service, I think, in the early part of 1901.

Q. About fifteen years?

A. Yes, sir.

Q. What position did you occupy with that company?

A. I was rate clerk, correspondence clerk, and finally chief clerk for the traffic department.

Q. And where were you located?

A. Cincinnati, Ohio.

Q. Can you state whether prior to 1901 the Southern Pacific and the Union Pacific were in competition for business out of this territory to the Pacific coast?

A. I would say that they were.

2324 Q. And which way was the Southern Pacific endeavoring to route the traffic?

A. In connection with the New Orleans route.

Q. Did the Queen & Crescent participate in that business?

A. Yes, sir.

Q. To what point—to New Orleans?

A. From Cincinnati to New Orleans.

Q. What Pacific Coast business did the Southern Pacific attempt to work by that route? How far north did it extend on the Coast?

A. So far as business moving over the Q. & C. is concerned, there was very little of it, as I recall, that moved very much farther north than San Francisco. We did occasionally handle a Tacoma shipment or a Portland shipment, but there was not much of that, if I recall it; the bulk of it was San Francisco or Los Angeles and such California terminals.

Q. Most of it California terminals?
A. Yes, sir.
Q. Occasionally some as far north as Puget Sound—Seattle?
A. Yes, according to my recollection.
Q. Which way was the Union Pacific moving that business so far as they could handle it?
A. I suppose they took the long haul to Ogden; I suppose that was the way.
Q. That would be on California terminal business?
A. Yes.
Q. Of course to Portland they had their own line—sub-line?
A. Yes.
Q. Now, was that competition between the Union Pacific and the Southern Pacific for coast business active or otherwise?
A. Well, as a Q. & C. man, the competition was very active, because if it would go via the Union Pacific we would not have any haul on it at all; and, considering the whole route, I would
2325 say that it was an active competition as between routes, the Q. & C. route to New Orleans, and the Southern Pacific, and other lines leading from here in connection with the Union Pacific—between the two routes.
Q. If you remember, who were the general agents of the Union Pacific here in Cincinnati during the time you were connected with the Queen & Crescent?
A. Mr. J. D. Welsh.
Q. During all the time?
A. According to my recollection, yes, sir.
Q. And who represented the Southern Pacific?
A. The first representative of that company I was acquainted with was Mr. Asa Kellogg. He was succeeded by Mr. W. H. Connor as commercial agent.
Q. And Mr. Connor is now agent of both companies here?
A. I understand so.
Q. Were you acquainted with Mr. Welsh and Mr. Connor?
A. Both of them, yes, sir.
Q. Did they have men working under their direction?
A. Yes, sir.
Q. Did you know those men?
A. I knew some of them.
Q. Will you state the names of the gentlemen that you knew? And give the roads they were connected with.
A. I knew Mr. Shinkle, working under Mr. Connor; and, if I recollect correctly, there was a Mr. Lyon Liston, working under Mr. Welsh; and I think Mr. Harry R. Smith at one time worked under Mr. Welsh; and I was familiar with the fact that Mr. Stephen Gano, who has just testified, also worked for the Union Pacific.
2326 There were others, but I do not recall their names at this time.
Q. In the old days what were the means taken to get traffic by these respective routes?

A. Each route would have its solicitors, making an active canvas for the business.

Q. And whom would they call on—the shippers?

A. The shippers, yes, sir.

Q. What representations did the solicitors make? That is, what arguments were put forward with reference to the service, or otherwise, to get business?

A. Well, I did not do any of the soliciting myself, but in a general way the instructions to the soliciting men were to indicate to the shipper the service, the character of the service that could be performed, by quoting rates and also by endeavoring to settle claims promptly; and of course praise up the merits of the line in many ways.

Q. Are the solicitors able to assist shippers in getting through cars at times?

A. At times, yes, sir.

Q. That is one element that enters into the soliciting, isn't it?

A. Yes.

Q. And tracing cars?

A. Yes, sir.

Q. Endeavoring to secure prompt deliveries?

A. Yes, sir.

Q. Do you remember whether the other transcontinental lines—the Atchison and the Northern Pacific—had representatives here?

A. In a general way, yes, sir.

Q. And the Great Northern?

A. In a general way only. I do not recall the names of their representatives, but I knew that some of those companies did have agencies here.

Q. Do you remember the Santa Fe agent?

A. I don't know whether it was a Mr. Gunip or not.

2327 Q. Now, in working for the Queen & Crescent, you worked exclusively, I suppose, with the Southern Pacific, didn't you, on transcontinental business?

A. Exclusively, yes, sir.

Q. That was your connection?

A. Yes, sir.

Q. And what was the principal competitor for that business? I mean the principal transcontinental line competing for that business?

A. Well, we of course felt the competition more or less by the different routes, but the principal competitor at that time was, I would say, the Union Pacific, or the routing in connection with the Union Pacific.

Q. Of course the Union Pacific on San Francisco business delivered its business at Ogden to the Southern Pacific?

A. I presume so.

Q. But the Southern Pacific agents here were working the business all they could by New Orleans?

A. Yes; taking the long haul by New Orleans.

Q. And what are your duties in connection with the Shippers' & Receivers' Association, Mr. Williamson?

A. I have general supervision of the work of the Association, looking after the interests of the members of the Association. It is composed of shippers, and it is endeavoring to adjust any differences of whatever nature between the shippers as a whole and the carriers.

Q. In a general way, who are the members of your Association? That is, what lines of business are they engaged in?

A. Oh, they are engaged in practically all lines of business—jobbers of clothing, manufacturers, and almost all the lines we have here—distillers.

Q. Do you have to do with the matter of rates? Are you
2328 brought in connection with the question of rates, I say?

A. Oh, yes, all the time.

Q. That is what I supposed. In the matter of getting satisfactory rates or getting rates adjusted, you represent the members of the Association?

A. Yes, sir.

Q. Do you know whether, since the time Mr. Connor became the representative of the Union Pacific and Southern Pacific, there are any separate solicitors for the two lines, or do they have one set of solicitors for both?

A. As far as I know, only one set.

Q. Are you brought in personal contact with those solicitors?

A. Why, I meet them occasionally only.

Q. Are you personally advised as to the way they endeavor to route the traffic out of here?

A. I am not.

Q. You don't know about that?

A. No.

Q. I didn't know but it might have come to your knowledge in connection with this Association.

A. No, I have not looked into that question at all.

Q. Are you able to state from your experience with the Association as to the way the traffic chiefly moves to California points now as between the Union Pacific and the New Orleans gateway?

A. No. We do not undertake to familiarize ourselves with the way that the traffic of our various members moves; that is a matter that they handle exclusively.

Q. You don't keep any statistics?

A. We keep no statistics of that character. They handle that matter exclusively.

Cross-examination by Mr. LOVETT:

Q. What is the short rail line between Cincinnati and New
2329 Orleans?

A. The Queen & Crescent Route.

Q. About what is the distance via that route?

A. I think it is 827 miles.

Q. About what is the distance from Cincinnati to Omaha?

A. I have never figured on what that distance was.

Q. Can you approximate it fairly well?

A. Something like 340 from here to East St. Louis and some 400 miles from there to the Missouri River.

Q. 400 miles from there to where?

A. From there to Kansas City or the Missouri River.

Q. I asked from Omaha.

A. I don't know what that distance is from the Mississippi River.

Q. Would it go by Chicago to get to Omaha?

A. It may be the short line is that way: I never figured the distance there.

Q. How far is it from here to Chicago via the short line?

A. About 287 miles, I think, by the C. C. & L. Railway.

Q. Do you know about how far it is from New Orleans to San Francisco by the Southern Pacific?

A. No, not the exact mileage. I have never figured it. It might be, in round figures, something like very nearly approximating three thousand miles.

Q. You don't know the distance from Cincinnati to San Francisco by way of the Union Pacific and Ogden route, do you?

A. I never figured it.

Q. You do understand, don't you, that the route via New Orleans to San Francisco from Cincinnati is much greater——

A. It is, yes, sir.

Q. ——than by way of Omaha and Ogden?

A. Yes, sir.

Q. Very much greater?

A. How much more I don't know, but it is greater.

2330 Q. Now, I understood you to testify, in answer to questions by Mr. Severance, that the Queen & Crescent in connection with the Southern Pacific was actively competing for San Francisco and other California business at the time of your connection with the Queen & Crescent?

A. Yes, sir.

Q. And you mentioned the Union Pacific as one of your competitors for that business.

A. Yes, sir.

Q. All lines out of here were competing for that business, weren't they, Mr. Williamson?

A. More or less, yes, sir.

Q. Take the lines competing for it by way of New Orleans at junctions with the Southern Pacific. What were they?

A. The L. & N. competed to New Orleans and the Illinois Central to New Orleans. Those were the principal competitors through New Orleans.

Q. Further west by way of Texarkana and El Paso.

A. They were the lines that lead from here to St. Louis, and thence via the lines leading from St. Louis into Texas.

Q. The Missouri and Iron Mountain?

A. The Missouri and Iron Mountain and those roads.
Q. The St. Louis & San Francisco, the Missouri, Kansas & Texas?
A. Yes, sir.
Q. And the Rock Island system?
A. Yes, sir.
Q. And then I suppose all of the lines leading westwardly to the Missouri River, and their connections, were actively competing for it, weren't they?
A. I would judge so, yes, sir.
Q. Well, during the time of your connection with the Queen & Crescent, aren't you sure that they were?

A. My attention was specially directed to the business mov-
2331 ing by the New Orleans route, and in a general way I know that there was competition by those routes. Just how much there was by each route I could not tell.

Q. But you recognized the Union Pacific as one of the competitors?
A. Yes, sir, and as one of the strongest.
Q. In speaking of the Union Pacific in that connection, do you mean the Union Pacific alone, or do you mean the line of which the Union Pacific was part?
A. I would say the line of which the Union Pacific was a part.
Q. And that was made up how?
A. Made up by various roads up to the eastern terminus of the Union Pacific, and thence by the Union Pacific and any road that it might enter California by.
Q. Well, did it have any other road than the Southern Pacific from Ogden west?
A. I understand not.
Q. The line, then, was made up by the Southern Pacific from the Pacific coast to Ogden, the Union Pacific from Ogden to Omaha and Kansas City?
A. Yes, sir.
Q. And then the various lines connecting with the Union Pacific at Omaha and Kansas City, extending eastwardly toward this territory?
A. Yes, sir.
Q. And when you speak of the competition between the Southern Pacific and the Union Pacific and the Queen & Crescent, that is, when you speak of competition between the Queen & Crescent and the Southern Pacific, on the one hand, and the Union Pacific on the other, you mean the line that has just been described—the line of which the Union Pacific is a part?

A. Yes, sir.
2332 Q. And the Southern Pacific from Ogden to San Francisco is also a part?

A. Yes, sir.
Q. The Atchison was also competing for that business, wasn't it?
A. Yes, sir.

Q. Have you ever been over that line to California, the Union Pacific-Southern Pacific line?

A. None of them.

Q. Have you ever been on the Pacific coast at all?

A. Not at all.

Q. Then you are not familiar at all from personal observation?

A. No, sir.

Q. According to your understanding of the location of the lines, the only outlet for the Union Pacific for California business was over the Southern Pacific from Ogden?

A. Yes, sir; that is my understanding.

Q. Except that since 1905, what is called the San Pedro line has been opened from Salt Lake, down?

A. Yes. I am not testifying to that time.

Q. I was speaking of the conditions prior to that?

A. Yes, sir.

Q. You never knew of any freight to be sent to California terminals over the Union Pacific to Portland, and then by boat down, did you?

A. I have no way of knowing that. I never investigated it.

Q. You never knew of such a case?

A. I never knew that. It may have been.

Q. One way or the other?

A. One way or the other. I have no knowledge.

2333 Redirect examination by Mr. SEVERANCE:

Q. Mr. Williamson, Judge Lovett asked you whether the competition which you mentioned was not between the line made up of the Union Pacific and other lines on the one hand, and the Sunset Route on the other.

A. Yes, sir.

Q. Or something to that effect.

A. Yes, sir.

Q. Now you stated that was a fact—that they had to turn their business over to the Southern Pacific at Ogden?

A. Yes, sir.

Q. But the work that was done to get business to move by that route, so far as the work was done by a transcontinental line—I mean a line west of the Missouri River—was done by the Union Pacific, wasn't it, by their solicitors?

A. Largely; yes, sir.

Q. And the Southern Pacific, so far as they could control the business, sent it by New Orleans?

A. Yes, sir.

Recross-examination by Mr. LOVETT:

Q. I don't think you quite meant what I understood you to say, Mr. Williamson, in answer to the last question. As I understood the question Mr. Severance asked, it was this: If the work to get the

business over the Ogden route was done by the solicitors and only by the solicitors of the Union Pacific.

Mr. SEVERANCE. I said so far as the lines west of the Missouri River were concerned.

Q. So far as the lines west of the Missouri River were con-
2334 cerned?

A. Yes.

Q. Didn't the St. Paul, west of the Missouri River?

Mr. SEVERANCE. West of the Missouri River; that is what I asked.

Mr. LOVETT. You didn't mean to ask with reference to lines east of the Missouri River?

Mr. SEVERANCE. No.

Q. I will ask that, then. Didn't the St. Paul actively work for that business?

A. Well, how active I couldn't say. They may have had solicitors for it.

Q. Didn't all of the lines leading from this territory to a connection with the Union Pacific, including the Chicago & Northwestern, the Chicago, Milwaukee & St. Paul, the Burlington, the Rock Island, the Chicago Great-Western, the New York Central lines, the Big Four, and all those lines, didn't they all actively work for that business?

A. Yes; but I understood Mr. Severance's question to be west of the Missouri River and what was handled by Union Pacific. That was my answer to his question.

Q. You did not mean to say that the lines west of the Missouri River were not actively working for California business; for instance, the Denver & Rio Grande?

A. Oh, I didn't mean that at all.

Q. The Denver & Rio Grande actively works for it, doesn't it?

A. I so understand it; yes.

Q. And the Burlington, and the Rock Island, and the Missouri Pacific and the various companies that do operate lines west of the river actively work California business, do they not?

2335 A. I so understand; yes.

Q. And always have, so far as you know?

A. So far as I know.

Q. And that business must go over the Southern Pacific west of Ogden, must it not, to get to California?

A. Yes, sir.

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Volume IV.

(EVIDENCE FOR COMPLAINANT.)

# TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1911.

No. 846

THE UNITED STATES OF AMERICA, APPELLANT,

vs.

THE UNION PACIFIC RAILROAD COMPANY ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF UTAH.

FILED OCTOBER 9, 1911.

(22896)

No. 993—In Equity.

IN THE

# Circuit Court of the United States

FOR THE DISTRICT OF UTAH.

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THE UNITED STATES OF AMERICA,
*Complainant,*

*v.*

THE UNION PACIFIC RAILROAD COMPANY; THE OREGON SHORT LINE RAILROAD COMPANY; THE OREGON RAILROAD & NAVIGATION COMPANY; THE SAN PEDRO, LOS ANGELES & SALT LAKE RAILROAD COMPANY; THE ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY; THE SOUTHERN PACIFIC COMPANY; NORTHERN PACIFIC RAILWAY COMPANY; GREAT NORTHERN RAILWAY COMPANY; FARMERS' LOAN & TRUST COMPANY; EDWARD H. HARRIMAN, JACOB H. SCHIFF, OTTO H. KAHN, JAMES STILLMAN, HENRY H. ROGERS, HENRY C. FRICK, and WILLIAM A. CLARK,
*Defendants.*

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## EVIDENCE AND PROCEEDINGS BEFORE THE SPECIAL EXAMINER.

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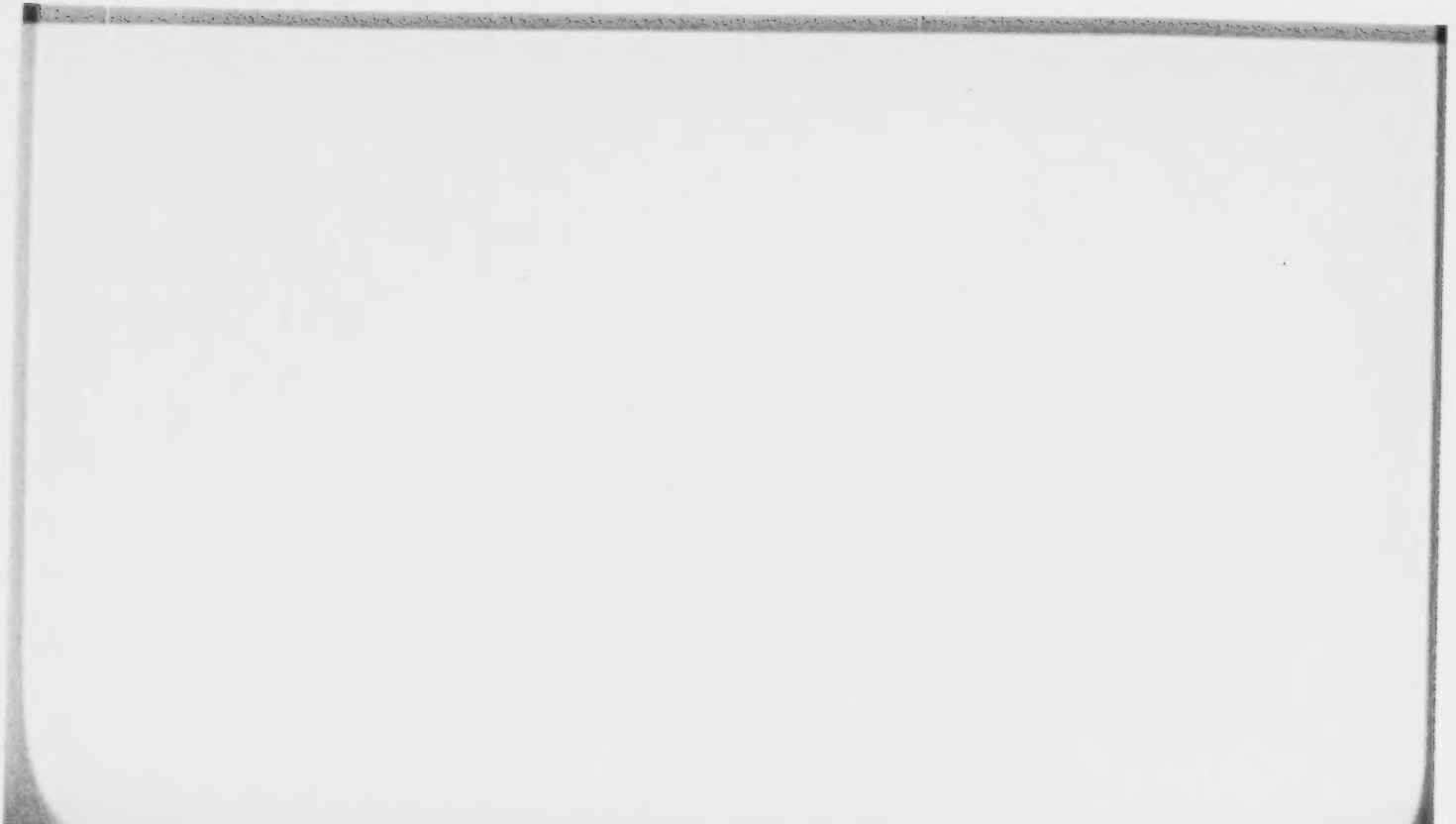
## Volume IV.—Complainant.

WITH LIST OF WITNESSES AND EXHIBITS.



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called on behalf of the Complainant, being duly sworn, testified as follows:

Direct examination by Mr. SEVERANCE:

Q. Where you you live, Mr. Buchanan?—A. Cincinnati.

Q. What is your business?—A. I am the manager of the freight department of the Proctor & Gamble Company.

Q. What is the business of the Proctor & Gamble Company?—A. Manufacturers of soap, chiefly; cottonseed oil, glycerine, candles, red oil.

Q. Is that a large concern, Mr. Buchanan?—A. One of the largest of its kind in the country—perhaps the largest of its particular kind.

Q. And how many years has it been established?—A. Since 1837.

Q. To what part of the country does the Proctor & Gamble Company ship its product?—A. To all parts.

Q. How long have you been the traffic manager of the Proctor & Gamble Company?—A. I commenced my ninth year with them the first of this month.

Q. Previous to that what was your business?—A. I was assistant general freight agent of the Big Four Railroad.

Q. And where were you located?—A. For seven years of the time that I was assistant general freight agent I was at Cincinnati and for about two years up on the Michigan division, with head-
2337 quarters at Benton Harbor, Michigan. However, I was with the Big Four for eleven years. I was for two years as general agent before I was assistant general freight agent.

Q. Did you go immediately from that connection to the Proctor & Gamble Company?—A. Yes, sir.

Q. Where has the Proctor & Gamble Company establishments or plants?—A. Here, at Kansas City and at New York.

Q. You stated that they shipped to all parts of the country. From what plants do their shipments to the Pacific coast usually move?—A. Since the establishment of the Kansas City plant, almost exclusively from there.

Q. How long ago was that plant established?—A. Four years.

Q. Previous to that time from what plant did the shipments to the Pacific coast move?—A. From here, our Ivorydale plant.

Q. What brands of soap do they make? what are their best known brands?—A. The best-known brands are "Ivory," of course, Lenox; those are the two best-known brands. We actually make about twenty-five different brands.

Q. But they make "Ivory" soap?—A. They are manufacturers of Ivory soap.

Q. That is sold very largely everywhere?—A. Yes, sir.

Q. Are you acquainted with Mr. Connor?

A. Yes, sir.

Q. Do you remember the time when the Union Pacific had a separate representative here?

A. Yes, sir.

Q. Who was their general agent?

A. Mr. James D. Welsh.

Q. Do you remember up to what time he was their agent?

A. Well, he was on the retired list for several years. I think I know when he was succeeded.

2338 Q. Who succeeded him?

A. A gentleman by the name of Clifford succeeded him, I think about the latter part of 1901.

Q. And up to what time did he continue in his office?

A. Well, I don't believe he was there more than six or eight months; about the first part of 1902, I should say.

Q. And then what happened?

A. Then Mr. Connor represented both companies.

Q. The offices were consolidated?

A. Yes, as I understand it.

Q. Previous to that time, for about how long had Mr. Connor been the representative of the Southern Pacific only?

A. I should say Mr. Connor personally had been in there about three years before that.

Q. And did you know his predecessor?

A. I did, sir.

Q. Who was he?

A. Mr. Kellogg.

Q. How long was he there?

A. I think about two years; he died in office.

Q. Did you know his predecessor?

A. No, sir. I can't go back that far.

Q. Now, previous to 1901 do you remember whether the Union Pacific and the Southern Pacific were competing for Pacific coast business out of this territory?

A. They were.

Q. Which way did the Union Pacific representatives seek to work that business? Take California terminal points.

A. Via the Ogden route.

Q. And which way did the Southern Pacific agency seek to route it?

A. Via New Orleans preferably; also El Paso, as I understand it.

2339 Q. Did those representatives call on you, soliciting business?

A. Now, you are asking the question since I have been with Proctor & Gamble?

Q. Yes.

A. Well, I have come personally very little in contact with the actual solicitors, but I would say that they solicited us at that time.

Q. When you were with the Big Four were you familiar with the competition that existed?

A. Yes.

Q. Did the Big Four participate in this transcontinental business?

A. Yes, sir.

Q. Where did the traffic move over the Big Four to the coast?

A. Their preference was via Chicago or St. Louis or Peoria in connection with the Union Pacific or Santa Fe. They could take the business via New Orleans, but it was not a preferred route by any means.

Q. How did it move to New Orleans?

A. It could move via Cairo and Illinois Central, that way, or Mobile & Ohio. They practically did not solicit that business, though, via New Orleans.

Q. You tried to work it by the Union Pacific gateway?

A. Union Pacific or Santa Fe.

Q. Union Pacific or Santa Fe, through the Missouri River gateway?

A. Yes, sir.

Q. How does the business of the Proctor & Gamble Company move to the coast? Take that part of the coast south of Portland.

A. South of Portland?

Q. Yes; California terminals or——

A. Why, it moves via the Union Pacific or Santa Fe. You
2340 are speaking now from Kansas City, as I understand it?

Q. Yes, sir. The Union Pacific or Santa Fe?

A. Yes, sir.

Q. And does any of it move via El Paso?

A. No, sir; not that we route.

Q. Do you route most of your goods?

A. Practically all.

Q. How was it prior to the time of the establishment of your Kansas City plant? How did you route the shipments?

A. Then we routed quite a good deal of our business via New Orleans from here.

Q. And the balance of it went what way?

A. The balance of it went by the Union Pacific or Santa Fe in connection with the intermediate roads.

Q. I will confine my question now to the time when you had no Kansas City plant. How did your business move to Portland and Puget Sound points?

A. By the northern gateways—the Great Northern principally, or the Northern Pacific.

Q. How about Portland?

A. I am speaking——

Q. Oh, you are speaking of Portland and Puget Sound?

A. Yes.

Q. Did you ship any over the Union Pacific and Oregon Short Line and Oregon Railroad & Navigation?

A. Some; not much.

Q. Mostly over by St. Paul?

A. Yes, sir.

Q. Was that business solicited by the Union Pacific?

A. Well, yes, I might say it was solicited. Of course Mr. Connor has always been strongly attentive to our needs when requests have been made of him. If you ask if he solicited me personally, I will say it is very seldom that Mr. Connor ever asked me for a particular car. Of course, I knew he wanted the business, but we tried
2341 to divide the business up between those roads as we thought their importance to us warranted it.

Q. And that is your practice, is it not?

A. That is our attitude with all roads.

Q. Now, in the days when Mr. Connor and Mr. Shinkle represented the Southern Pacific, and Mr. Welsh and Mr. Clifford represented the Union Pacific, and you say there was competition between the routes to the coast, was that an active competition?

A. Well, it was during Mr. Clifford's administration. I think for several years prior to that, owing to the unfortunate state of health of Mr. Welsh, that you could hardly call the Union Pacific competition very active.

Q. He had solicitors under him, had he not?

A. Yes, he had solicitors under him.

Q. And they were working for the business?

A. Yes, they were working for the business.

Q. Now at present Mr. Connor represents both lines. How does he and how do his subordinates endeavor to route Pacific coast business, if you know?

A. Now I will have to answer entirely for him because I really do not come in contact with the gentlemen under him.

Q. Well, for him then.

A. Is your question how does he endeavor to route?

Q. Yes; how does he endeavor to have the business move to the coast, representing the New Orleans route and the Union Pacific route? Which way does Mr. Connor endeavor to route business from this territory, if he discriminates at all?

A. Well, I don't think he discriminates.

2342 Cross-examination by Mr. LOVETT:

Q. Mr. Connor's solicitation is more especially as against the Atchison, isn't it, Mr. Buchanan?

A. Yes, I suppose you would say so. That is, on California business.

Q. That is what I mean—California business. Just what do you mean by the Union Pacific route being a competitor of the Southern Pacific for California business?

A. Up to Ogden at least.

Q. Up to Ogden from where?

A. Well, from the Missouri River.

Q. From the Missouri River?

A. Yes.

Q. And from Ogden?

A. Southern Pacific from there on. We understand that the Southern Pacific gets part of the haul on all of that business.

Q. You understand that on all the California business the Union Pacific got, or at least on all it got up to 1905, when the San Pedro line to Los Angeles was opened, that the Southern Pacific got a haul from Ogden——

A. Yes, sir.

Q. To the Pacific coast terminal, to destination?

A. Yes, sir, that is my understanding.

Q. The competition, then, was the all-rail line made up of the Southern Pacific line from the Pacific coast to Ogden, the Union Pacific from Ogden to the Missouri River, and the rail lines extending from the Missouri River eastwardly to this territory?

A. Yes, sir.

Q. Now, with reference to the situation that existed prior
2343 to the establishment of the Kansas City plant of your company .I believe you stated that your company frequently shipped by way of New Orleans to California.

A. Yes, sir. There were several reasons for that. We might want to give traffic to the L. & N. or the Cincinnati Southern road, and that gave them the longest haul; also gave the Southern Pacific the longest haul. We might be influenced more for the purpose of giving it to the L. & N. or the Cincinnati Southern than to the Southern Pacific.

Q. Now, that was the long route to California, of course, by way of New Orleans?

A. Yes, sir.

Q. Do you send any now by way of El Paso?

A. Not from Kansas City, no, sir, nor from here.

Q. You ship westwardly from Kansas City?

A. Yes, sir, via the Santa Fe or Union Pacific.

Q. All the lines extending from this territory westwardly were actively soliciting California business during the whole period about which you testified, weren't they?

A. I take it you mean representatives of the "Q.," the Northwestern, the Milwaukee & St. Paul?

Q. Yes, sir.

A. Yes, sir, they certainly were.

Q. The Northwestern, the St. Paul, the Burlington, the Rock Island and the Missouri Pacific?

A. Yes, all of them.

Q. And then the lines leading out of Cincinnati?

A. Yes, sir.

Q. Now, I believe you said that when the Big Four secured that business to the Pacific coast from Cincinnati, for example, it would naturally prefer the Chicago route for it?

A. Or St. Louis.

2344 Q. Or St. Louis. What is the general direction of the Big Four line out of Cincinnati?

A. It runs from Cincinnati to Chicago, to Peoria, to St. Louis—like the three fingers of your hand.

Q. You have no direct line from Cincinnati to St. Louis, have you?

A. Oh, yes, certainly; its own rails from here to St. Louis, through Indianapolis.

Q. The general course of that line is northwesterly from Cincinnati, isn't it?

A. St. Louis is almost west. The general tendency is a little northwest.

Q. I may be a little confused in my geography, but Indianapolis is northwesterly from here?

A. A trifle northwesterly, yes, sir.

Q. What is the distance?

A. 110 miles by the Big Four.

Q. And Chicago is northwest, or a little north of west?

A. Yes, sir. Of course they had the Peoria, and Peoria was another route practically half way between Chicago and St. Louis.

Q. The general course of the Queen & Crescent is southerly from Cincinnati, isn't it?

A. Yes, sir; directly so.

Q. Out of Cincinnati, then, for a considerable distance, the Queen & Crescent and the Big Four run in opposite directions, do they not?

A. Yes, sir.

Q. Substantially opposite?

A. Yes, sir.

Q. Both of those lines or systems were competing for this California business?

A. Yes, sir.

Q. Carrying it in opposite directions?

A. Yes, sir.

Q. Practically all lines in this territory have always com-

2345 peted for this business, haven't they, Mr. Buchanan?

A. Yes, sir.

Q. So, by competition in the sense that you meant it in your answer to Mr. Severance, practically all lines, even though running in opposite directions, in this territory, were competing for the Pacific coast business?

A. Yes, sir.

Q. That is true, isn't it?

A. Yes, sir.

Q. What other line out of Cincinnati—that is, of which Cincinnati is the southern terminus—runs north and northwesterly from here? The Cincinnati, Hamilton & Dayton, is that one?

A. The Cincinnati, Hamilton & Dayton, the Pan-Handle, this new Chicago Short Line.

Q. All those lines participate in that business when they can get it?

A. Yes, sir. They participate in it as initial roads here.

Q. And then there are a good many other roads that compete for it as intermediate roads?

A. Yes, sir.

Q. Like the Northwestern and St. Paul?

A. Yes, sir.

Q. The Union Pacific?

A. Yes, sir.

Q. You never knew of any business from this territory to California terminals, that is, for any point on the Pacific coast south of Portland, to be routed over the Union Pacific by way of Portland and then by boat down the coast?

A. No, sir.

Q. It would seem to follow, then, Mr. Buchanan, that whatever traffic Mr. Welsh or other agents of the Union Pacific secured in this territory for California points or Pacific coast points south of
2346 Portland, would ultimately go over a portion of the Southern Pacific as well as the Union Pacific?

A. Yes, sir.

Redirect examination by Mr. SEVERANCE:

Q. You mentioned Mr. Connor as being the gentleman who has called on you in reference to business. Without desiring to make Mr. Connor blush, he being here, he is a very useful and efficient railroad man, isn't he?

A. I certainly so regard him, sir.

Q. And a man of that character, who is engaged actively in working for a line of railway, is able to get a considerable amount of business through his personal standing and personal solicitation, is he not?

A. Yes, sir.

Q. So that Mr. Connor, as representing the route to the coast by way of New Orleans, if he was working with his undivided attention to that route, would be able to get a considerable amount of business for his line?

A. I should say Mr. Connor would be successful for any route that he worked for.

Q. But at the present time you say that he is not discriminating as between the Union Pacific, on the one hand, and the Sunset Route on the other?

A. No. Practically he knows that we are going to route the business as we see fit, anyhow, and he is glad enough to get it.

Q. But he does not endeavor to get you to route one way or the other?

A. No.

Q. Did you ever ship anything to the coast from your New
2347 York plant?

A. No, sir, I don't recall—well, we have lately.

Q. And over what route does that move?

A. That would move by the Panama.

Q. By the Panama route?

A. Yes, sir.

Q. Have you ever sent anything by the Morgan line of steamships to New Orleans or Galveston, and thence to the coast?

A. I do not recall that we have.

Q. You control the routing from that plant as well as from the one here?

A. Yes, sir.

Q. And you have used the Panama line?

A. We have in several instances.

Q. Now, over what line of ships does that traffic move?

A. The Panama Steamship Company, I think; I am not sure.

Q. Well, the steamships belong to the Panama Railroad as far as Panama, on the Atlantic side, don't they?

A. Yes.

Q. As far as Colon, rather?

A. I don't remember the name of the steamship company.

Q. Do you remember which line of steamers took the traffic from Panama and the Pacific coast up to San Francisco?

A. No, I don't; I can't tell you.

Q. How long ago did you route that way?

A. Oh, quite recently. I did not personally handle the shipment, I was not familiar with it, and for that reason I am not able to tell.

Q. You have always been aware that that route was open for transcontinental business from the Atlantic seaboard, haven't you?

A. Yes.

2348 Recross-examination by Mr. LOVETT:

Q. So far as your business is concerned, Mr. Connor can represent both the Southern Pacific and the Union Pacific efficiently, can't he?

A. He has.

Q. Would you be in any better situation, Mr. Buchanan, if you had two men, one for the Union Pacific and one for the Southern Pacific?

A. I would like to know who would be back of Mr. Connor, how far they would be separate above him.

Q. Suppose they were separate all the way back.

A. Well, we haven't had any cause to complain yet, but I don't know. You are raising quite a point there, Judge.

Q. You wouldn't like to say, then, that conditions could not arise——

A. I would not like to say—that it would be more important to us to have separate representation.

Q. Well, whatever the Union Pacific got would have to go over the Southern Pacific?

A. Yes.

Q. You understand the Union Pacific could not make a rate to California without the consent of the Southern Pacific, don't you, under the Interstate law?

A. Yes, without the concurrence of the Southern Pacific.

Q. So far as its separate solicitation is concerned, the Southern Pacific would be for the long haul as against the short haul by way of Ogden, wouldn't it?

A. Yes, sir.

Q. You, as a shipper, are not interested in the division of the rates between the different railroads, are you?

A. No, sir.

Q. It is no concern of yours?

2349 A. As long as the through rate is established.

Q. So long as the through rate is established, it is no concern of yours whether the Southern Pacific gets more out of it one way or another?

A. No, sir.

Q. Or any other carrier participating in it? I say it is a matter of no interest to you?

A. No, sir.

By Mr. SEVERANCE:

Q. Judge Lovett asked you whether Mr. Connor had not been a satisfactory representative of the two lines, as far as you are concerned. By that you mean that so far as the personal services that a general agent might perform for a shipper, in tracing cars and getting cars and that sort of thing, Mr. Connor has been efficient, do you not?

A. Oh, yes, and in a much broader field than that—the question of rates, the payment of claims, and classification.

Q. Has he made rates for you?

A. He has not made rates, but we have discussed rates.

Q. Has he been instrumental in getting changes in rates for you?

A. Well, I don't recall immediately that he has, but we have discussed changes in rates—contemplated changes.

Q. Isn't it a fact that your transcontinental rates are higher now than they were seven or eight years ago?

A. They are on two of our commodities, recently so.

Q. Which two?

A. Soap and cottonseed oil.

Q. Then, the rate on Ivory soap is higher now than it was several years ago?

A. Yes, sir.

Q. So that Mr. Connor's efforts, if they were exerted in
2350 the way of reducing rates, have not been successful on transcontinental business.

A. We have not made any particular point asking him not to advance those rates. As a company we are not opposed to a reasonable advance on the part of railroads.

Q. I was trying to find out what the nature of the service was that Mr. Connor performed for you.

A. You touched on it—in tracing our shipments, handling our claims, keeping us advised of the movement of our shipments, when they arrive at destination, and all that sort of work.

Q. Now, if that service—that efficient service—performed by Mr. Connor, was performed for the Southern Pacific line alone, and they were still in competition with the Union Pacific, as they used to be when there was a separate agency here, the chances are that it might result in an increase of traffic for the line by New Orleans; isn't that true?

A. Possibly so.

Q. So that while Mr. Connor from the standpoint of the Proctor & Gamble Company may be as efficient, he is certainly not a factor in competing for business for the New Orleans route any more as against the Union Pacific, is he, because he represents them both?

A. No; I should say that was correct.

Q. How is that?

A. I think that is correct.

Q. Now, Judge Lovett endeavored, I judge by one of his questions, to get you to testify that you don't think that
2351 your company, or any company, would be any better off with a separate representation of roads, but you did not seem inclined to wholly agree with that. You are not of the opinion, are you, that it would be as well for the shippers if all the transcontinental lines from the Missouri River to the coast had one set of officers and representatives?

A. No, sir.

Q. If the Great Northern, the Northern Pacific, the Santa Fe, the Union Pacific and the Southern Pacific, were all under the jurisdiction of Mr. Stubbs, for instance, the incentive to better the service on one line or another, give quicker time and all that, would be more or less taken away, wouldn't it?

A. Well, if it had to be, I don't know any man we would rather have it under than Mr. Stubbs; but I don't know that I would like to see it that way.

Q. That is, if you had to have an autocrat, you can not imagine a better one than my friend, Mr. Stubbs?

A. Yes, Mr. Stubbs.

Q. But you would prefer a more divided authority?

A. Yes, sir.

By Mr. LOVETT:

Q. Just on that point, Mr. Buchanan. The Atchison and the Southern Pacific are competitors on the Pacific coast, are they not? They have lines in position to compete?

A. Yes, sir.

Q. And the Northern Pacific and the Great Northern have lines reaching to the Pacific coast?

A. Yes, sir.

Q. Now, you don't believe that it would be a good idea for
2352 competing lines to be consolidated and have one agent, do you?

A. Now, are you asking me about competing lines, or shippers?

Q. I am asking you about competing lines. You don't believe it from the standpoint of the shipper?

A. I do not, sir.

Q. But in the case of the Union Pacific and the Southern Pacific, isn't there a very radical difference?

A. I think they are about as little objectionable as most shippers could wish.

Q. Isn't there this radical difference as between the Union Pacific and the lines mentioned by Mr. Severance—that the Union Pacific is merely an intermediate carrier, operating a line a thousand miles in length, from Omaha to Ogden, and is dependent on the Southern Pacific for an outlet to the California points, whereas these other lines are——

A. There is that distinction.

Q. Isn't that a substantial one?

A. Well, to a certain extent. There is that distinction. How far it would mitigate any interest the shipper might have is another question.

Q. Now, as Mr. Severance suggested, Mr. Buchanan, you seemed to hesitate in answer to my previous question as to whether the interest of the shipper could be better served by a separate representative of the Union Pacific from the Southern Pacific than by a joint or two or more joint agents. If you are prepared to answer as to that I would be glad if you would answer, because I am curious to know how——

A. Let me see if I understand your question.

2353 Q. Well, may I state it over?

A. Certainly; I would be glad if you would.

Q. The question was, whether the interest of your firm as a shipper, or any shipper, could be better served in any way, so far as you can see by two men, one representing separately the Union Pacific, and the other separately the Southern Pacific, than by one man or two men, if you please, jointly representing the two lines?

A. You are making your question on the basis—say Mr. Connor and another man—that there would not be any higher traffic officials?

Q. Men of equal authority I speak of.

A. All the way through?

Q. Yes.

Mr SEVERANCE. You mean separate organizations?

Mr. LOVETT. Separate management.

Q. In other words, let us assume that the Union Pacific does not own any stock of the Southern Pacific and that it is entirely separate in its ownership and management from the Southern Pacific, and that it has its own representatives here in the field, we will say, as it had before, and the Southern Pacific has its representatives.

A. Own separate higher traffic officials?

Q. All the way through—separate organizations. And it may be that two men can do the work better than one. So my question is not as to the number of men but as to whether they represent the two interests separately.

2354 A. Separate organizations from a traffic standpoint at least?

Q. Yes.

A. I think I understand your question. I think we would prefer the separate organization.

Q. Why, Mr. Buchanan?

A. I think a shipper in a case of that kind, where there are two separate and distinct systems, would stand a better chance of getting liberal, reasonable rate-legislation than they would from the one organization.

Q. Are you keeping in mind in that answer the physical connection and location of the Union Pacific with reference to the Southern Pacific?

A. Yes. That would be perhaps less so with them than with some other systems, but I think even with them my answer would be it would be better that they be separate.

Q. Isn't it true there cannot be any competition between the Union Pacific and the Southern Pacific line west of Ogden?

A. Well now, perhaps you or Mr. Stubbs can answer that better than I.

Q. Well, do you know of any?

A. I should think there was and could be again more competition between the Ogden route and the Southern Pacific direct.

Q. There never was any competition between the Union Pacific and the Southern Pacific line extending from Ogden to the Pacific coast, was there?

A. No.

Q. You mean there was competition between the line thus formed——

A. Up to Ogden at least.

Q. You mean there was competition between the lines thus formed and the Sunset Route of the Southern Pacific; but the

2355 Southern Pacific owns and operates the line from Ogden to California——

A. I understand.

Q. ——and the Sunset Route.

A. Yes, sir.

Q. Thus having two lines—one to New Orleans and the other to Ogden. Now, as I understand, you have testified that as far as the division of the revenue is concerned, the shipper is not interested?

A. No.

Q. That is, as to whether the Southern Pacific gets more revenue by way of New Orleans or by way of Ogden is of no interest to the shipper?

A. Yes, sir; provided through rates are established.

Q. Provided through rates are established. Now, in view of that situation, that the Southern Pacific operates this line between the Pacific coast and Ogden, and that there cannot be any competition as between that particular line and the Union Pacific since they physically connect and form one line, how can separate representation of the Southern Pacific and the Union Pacific benefit the shipper?

A. Well, if you are correct that there can be no real, actual competition as between the Southern Pacific from New Orleans, we will say, and the Southern Pacific from Ogden, in connection with its roads east from there, there might be less reason for it than as between some other systems.

Q. Well, isn't that your view—that there cannot be any competition as between the Union Pacific and that portion of the Southern Pacific at least running from Ogden to the Pacific coast, in view of the fact that the concurrence of both of them is necessary to make the through rate?

2356 A. I should think there might be a little competition there.

Q. How, Mr. Buchanan?

A. I understand, of course, that the Southern Pacific would have to concur in any through rate made, we will say, by the Union Pacific, but if the Union Pacific could show a clear necessity for the justice of making a certain rate by the Ogden gateway, I doubt if Mr. Stubbs, representing the Southern Pacific from Ogden on, would refuse to make it, refuse to be a party to it and concur in it.

Q. Well, I know, but his concurrence in the Southern Pacific would be necessary; of course, as a matter of fact, it does concur, it does constantly. All the traffic of the Union Pacific moves that way.

A. Yes.

Q. But that still does not get away from the necessity of the concurrence by the Southern Pacific, does it?

A. No. The necessity is there under the law. I think it might be given in some cases.

Q. What I am trying to develop, Mr. Buchanan, really, is any reason that you may have, not generally as between competing lines, but as betwen the Union Pacific and the Southern Pacific, considering their relations at Ogden—how a shipper could be any better served by two men representing the two companies separately than by two men representing them jointly.

A. Well, I don't know that the shipper here would be particularly benefited by Mr. Connor representing only one road. But I am not prepared to say that the shipper would not be better off if the Union Pacific and Southern Pacific had separate traffic organizations.

Q. But are you prepared to state in what respect he could be
2357 better served by separate traffic organizations?

A. I think he would be better served; he would be less likely to have unreasonable rate legislation, unreasonable advances, unreasonable rules and regulations. I think that he would be apt to get a fairer, quicker hearing on a matter of that kind than if they only had one. As I say, we have had no reason to complain of this organization on our part at all. It has been entirely satisfactory to us so far. You are asking me a somewhat theoretical question in the beginning, as I understand it.

Q. Yes. It is asked to develop, if possible, any instance where he could be better served since these lines physically are on the ground, forming a part of a through line, the Southern Pacific operating about 850 miles, the Union Pacific about 1,000 miles, the Union Pacific being intermediate and having no other outlet than the Southern Pacific, and being dependent on the concurrence of the Southern Pacific in any lawful rate that it makes, and in view of that situation my whole purpose has been to develop how possibly——

A. It is somewhat theoretical with me, I will say, but that is the way I feel about it.

Q. Well, let us take a concrete case. The Denver & Rio Grande system, until recently, as I understood, operated a line from Denver to—what is it? Grand River Junction?

Mr. SEVERANCE. Grand Junction.

Q. To Grand Junction, and then the Rio Grande Western operated from Grand Junction to Salt Lake City and Ogden. They
2358 were recently consolidated. Being connecting lines, they were consolidated. That situation, as I see it on the ground, is parallel to the situation of the Union Pacific and Southern Pacific, except in the length of the two lines.

Mr. SEVERANCE. Well, what about the Sunset Route?

Mr. LOVETT. I don't know. Wait until I state this question, and then you will have your turn. Now, how could the shipper be any better served by those two companies, the Rio Grande and Western and the Denver & Rio Grande—having separate men?

A. Well, isn't that forming more of a continuous line than the other?

Q. Why? If you look at the map you will observe that the other is a straight line, practically, from San Francisco by the Southern Pacific to Ogden, and by the Union Pacific from Ogden to Omaha?

A. Well, if that is a parallel case, I would still think that the shipper might be served better with a separate organization.

Q. Could you specify in what respect? I don't want to annoy you with any unnecessary questions.

A. Well, I will have to reiterate what I have said. I think where there are strong systems that are separate the shipper stands a better chance—I think it is obvious that he would even with the best intentions on the part of the traffic managers of the larger systems—that he stands a better show of getting a fairer hearing on any question that he will bring up, less chance of an unreasonable rate, or unreasonable rules and regulations.

Q. According to your opinion, then, the shipper would be better off—or that is, that it is not against the interest of the shipper to consolidate or bring under common management even connecting lines?

2359 A. Not always, where they are actually connecting, forming part of a continuous system. It is a big question.

The EXAMINER. Gentlemen, do you think you will finish with this witness before recess?

Mr. LOVETT. I think I am finished now.

Mr. SEVERANCE. I want to ask Mr. Buchanan a few questions.

The EXAMINER. Then we will adjourn until 2 o'clock.

A recess was thereupon taken until 2 o'clock P. M., at which time the witness was recalled and examined as follows:

By Mr. SEVERANCE:

Q. Just before recess Judge Lovett was questioning you with reference to the advantage possessed by the Southern Pacific in preventing competition between the Union Pacific and the Sunset Route by reason of controlling the line from Ogden to San Francisco, thereby having a great influence in making the through rates. How are the transcontinental rates made—by whom?

A. I don't know that I am competent altogether to answer that question, but they are made, as I understand it, by the roads who are members of the Transcontinental Association, chiefly, I would take it, the Southern Pacific, the Union Pacific, and the Santa Fe.

Q. And those different lines all maintain the same rates, don't they? That is, they meet in the transcontinental meetings and make up the rates, and they are all put in effective over all lines, from this territory?

A. Well, I don't know the details of that. Certainly the same rates are published by all roads.

2360 Q. Published on all tariffs, aren't they, with the names of all the roads printed on them?

A. As I understand, yes.

Q. Now, you are aware, are you not, that the Union Pacific, through its ownership of the Oregon Short Line and the Oregon Railroad & Navigation, have a through line from the Missouri River to tidewater at Portland?

A. Yes, sir.

Q. And have had for many years?

A. Yes, sir.

Q. You are also aware, are you not, that the Oregon Railroad & Navigation Company for many years has had a line of steamers from Portland to San Francisco?

A. I am not familiar with that.

Q. Are you aware of there being a boat line there? Has that been brought to your attention?

A. In an indefinite way I am.

Q. In your judgment, would not the ownership of this through line from the Missouri River gateway to Portland give the Union Pacific a greater voice in the adjustment of through rates than it would possess if its line stopped at Ogden?

A. Do you mean in the adjustment of rates to what points?

Q. To the coast points.

A. To California?

Q. To California, yes, sir.

A. I should think it would exercise some influence, of course.

Q. You are aware, are you not, that the Pacific Coast Steamship Company has a line of boats from Puget Sound to San Francisco?

A. I believe I so understand.

Q. And has handled traffic in connection with the Great Northern and Northern Pacific to San Francisco?

A. I am not familiar with that.

Q. You don't know about that?

A. No, sir.

2361 Q. Would the fact that such a line of steamers exists in your opinion give the Great Northern and Northern Pacific an influence in the adjustment of through rates from the east to California?

A. It might have an influence.

Q. You are aware that the Canadian Pacific reach tidewater at Vancouver, are you not?

A. Yes, sir.

Q. Do you know that they have at times maintained a boat-line from Vancouver to San Francisco?

A. I am not familiar with that fact.

Q. Do you know that the Pacific Coast Steamship boats start from Vancouver for San Francisco?

A. I believe I can say that I know they have a line there at times.

Mr. LOVETT. That who has the line?

Mr. SEVERANCE. The Pacific Coast Steamship Company.

Q. Did you testify before luncheon that you had made shipments by the Panama route, or was that another witness?

A. No, I testified to that.

Q. I thought you did.

A. From New York, you mean?

Q. Yes, the Atlantic seaboard. In your opinion would the existence of the Panama route have an influence on transcontinental rates?

A. I think it would.

Q. Are you familiar with the American-Hawaiian Steamship line?

A. No, sir.

Q. Judge Lovett asked you if shippers had any interest in the divisions of a through rate. You testified that they did not. Now, assuming that a through rate is in force from the Missouri
2362 River gateway to the coast, which applies over the Union Pacific and Southern Pacific by way of Ogden, and the Union Pacific desired to reduce the through rate, it would be very easy for it to communicate to the Interstate Commerce Commission the fact that they were willing to take for the haul from Omaha to Ogden less than the amount of the division that they had had theretofore, and ask to have that through rate reduced to that extent, without touching the Southern Pacific division.

A. I don't know whether that could be worked that way or not.

Q. You don't know about that?

A. No.

Q. Assuming that the Commission had jurisdiction over joint rates, it could, couldn't it?

A. As I understand your question, if the Union Pacific were desirous of reducing their division of an already-established through rate, that the Commission would see to it that that was done?

Q. Well, I guess I did not make myself clear. Judge Lovett was trying to draw out from you that it was impossible for the Union Pacific to compete with the Sunset Route because the Southern Pacific own the line from Ogden to the coast. Now, take a concrete case. Suppose that the through rate from the Missouri River to San Francisco is 50 cents, the Southern Pacific getting 30 and the Union Pacific 20, or however it may be divided. If the Union Pacific wanted to reduce that through rate, and its general influence on rates by reason of having the line to Portland, and by reason of having a voice in the Transcontinental Bureau, was not sufficient, because the Sunset Route was owned by the Southern Pacific, and they stood there and refused to allow that rate to be reduced,
2363 it would be very easy, wouldn't it, for the Union Pacific to go to the Interstate Commerce Commission and offer to take 15 cents instead of 20 and make the through rate 45 cents?

A. Certainly, it would be very easy for them to go to the Interstate Commerce Commission.

Q. You haven't heard of the Commission refusing to put in——

Mr. LOVETT. He hasn't finished yet.

Q. Pardon me.

A. It would all depend on the view that the Commission would take of it, as to the reasonableness of the through rate and the divisions of the rate. I should think if it was a reasonable rate and a reasonable division, the Commission might look on it with favor.

Q. But irrespective of that, the fact that the Union Pacific had a through line and there is a boat-line, and these other lines have a through line, the Northern Pacific and the Great Northern and the Atchison, Topeka & Santa Fe go through, and all these roads unite

in these rates, it is not possible for any one road to dictate what the rate shall be, is it?

A. I should think not.

Q. Counsel was asking you whether the acquisition of the Rio Grande & Western from Grand Junction to Ogden by the Denver & Rio Grande was not a parallel case to the acquisition of the Southern Pacific line from Ogden to San Francisco by the Union Pacific. There is a marked difference in the two, is there not, in the fact that the Southern Pacific has the Sunset Route, which was in active competiton with the Union Pacific while the Rio Grande had no other line in competition with it on transcontinental business?

2364 A. I think there is a difference.

By Mr. LOVETT:

Q. In reference to the last question asked by Mr. Severance: it isn't any more possible for the Southern Pacific to compete with itself than it is for the joint agent to compete with himself, is it? Doesn't the Southern Pacific, by reason of its control of the line from Ogden to San Francisco, have the decision as to what the rail rate to or from California shall be as against everybody except the Atchison?

A. They undoubtedly have a decided influence. Whether it is controlling I am not prepared to say.

Q. Now take the case that Mr. Severance suggested. Assuming that the Union Pacific would be satisfied with a less percentage of the through rate to California than it actually gets, and should apply to the Interstate Commerce Commission for a reduction of the through rate, taking the reduction out of its proportion. Did you ever hear of a case of that sort, Mr. Buchanan?

A. I do not recall having heard of a case of that kind, no, sir.

Q. Don't you know from your experience as a railroad man, from your knowledge of rates, that if the Union Pacific were to attempt to do as foolish a thing as that, that the Southern Pacific would at once increase its share of the through rate, or cancel the through rate?

A. If they were permitted to do so, yes.

Q. Well, do you know of any reason why they are not permitted to do so?

2365 A. I think everything would depend upon the reasonableness of the rate that the Union Pacific desired to put in, and the divisions of that rate.

Q. Well, you don't understand, do you, that the Union Pacific could put in a rate to California without the concurrence of the Southern Pacific?

A. Not initially.

Q. How is that?

A. Not initially.

Q. Then, if it cannot do it initially, can it lawfully reduce it without the consent of the Southern Pacific?

A. Not until it obtained, either voluntarily or otherwise, the concurrence of the Southern Pacific.

Q. Well, as a railroad proposition, and in taking the action of ordinary people, wouldn't you say that if the Union Pacific were to make such an application as Mr. Severance suggests, that the Southern Pacific would at once increase its proportion of the through rate——

A. I think they would.

Q. ——or cancel the rate altogether?

A. Yes, sir.

Q. The Denver & Rio Grande also connects with the Southern Pacific at Ogden, and extends then eastwardly to Denver, and the testimony of its president and agents shows that it has suffered by reason of the relations of the Union Pacific and the Southern Pacific. It has in joint rates with the Southern Pacific. Do you know of any reason why it should not do what Mr. Severance suggests the Union Pacific might do as effectually as the Union Pacific could?

A. No.

Q. If it were a practicable proposition, as Mr. Severance suggests, any connection that was discriminated against by reason of this relation between the two, would probably resort to it, don't you think, Mr. Buchanan?

2366 A. If there were a proper remedy?

Q. Yes.

A. I should think so.

Q. I think in answer to the first question asked by Mr. Severance since the noon recess, as to how rates to the Pacific coast were made, you stated that they were made by the Transcontinental Association—was it?

A. I stated that I did not feel altogether competent to answer that question; as I understood it, they were made by the roads members of the Transcontinental Association.

Q. And principally, I think you said, by the Atchison and the Southern Pacific and Union Pacific?

A. Yes, sir.

Q. Now, isn't it principally by the Atchison and the Southern Pacific, being the only lines reaching the coast with their own rails?

A. I don't know but I am willing to amend to that extent.

Q. The Union Pacific, aside from its relations to the Southern Pacific through the ownership of stock and common officers, etc., has no more power in that respect than the Denver & Rio Grande or any other intermediate carrier, has it, Mr. Buchanan? Or, in other words, the Atchison system and the Southern Pacific system have the lines on the Pacific coast, and eastwardly they have various connections?

A. Yes.

Q. The Union Pacific being one of them, the Denver & Rio Grande another, the Burlington and the Rock Island and various other lines being others. Now, in fixing rates to the Pacific coast, the Union Pacific has no more power, as far as you can see, and no reason why it

should have any more power, than the Denver & Rio Grande,
2367 or the Burlington, or the Rock Island, has it?

A. Well, I should think it had, and ought to have.

Q. Why?

A. Reaching with its own rails the Missouri River straight to Ogden, with direct connection with the Southern Pacific, I should think it would be stronger than the D. & R. G., or even stronger than the Rock Island or the "Q" in having a voice in the making of through rates. I think it is a more prominent, stronger system.

Q. Is it on account of the physical condition of its road, or on account of its location?

A. I think it is a stronger road—I would regard it at least as a stronger road, reaching from the Missouri River to Ogden, than the D. & R. G., say from Denver or Pueblo, to Ogden.

Q. Take the D. & R. G. in connection with the Burlington or the Missouri Pacific?

A. Then you split the ownership up. Here is one road, under one ownership, from the Missouri River to Ogden.

Q. But I am asking this question aside from the ownership of the Union Pacific by the Southern Pacific, treating it as if it were entirely separate.

A. I was trying to answer along those lines.

Q. You think the fact that it owns a line of a thousand miles from Omaha gives it a greater influence than the Denver & Rio Grande?

A. I should think it would.

Q. Well, how about the Rock Island that owns lines from Chicago to Denver and to El Paso?

A. I should think they would be more in position than the D. & R. G.

Q. Be more in position than the D. & R. G.?

A. Yes.

2368 Q. Why?

A. Because they are not a through road from the Missouri River to a direct connection at Ogden or other points with the Southern Pacific.

Q. Do you think the fact that the Union Pacific directly connects with the Southern Pacific gives it an advantage over the Rock Island; is that it?

A. And reaching from an important territory like the Missouri River.

Q. Well, the Rock Island reaches from the Missouri River and also from Chicago.

A. Yes, but it only goes to Colorado.

Q. And to El Paso?

A. Well, to El Paso. It ought to be stronger with the El Paso route.

Q. Well, is there anything in the fact that the Union Pacific line happens to be located from Omaha to Ogden, with no connection beyond Ogden except the Southern Pacific for California points—in

what respect can that give it any advantage over any other line forming a link?

A. Well, I would say that the obvious advantage it would have is that it is one road; if it were under one management, having its own rails from the Missouri River to Ogden, it ought to have a more important voice in rate-making than would the D. & R. G. or the Rock Island.

Q. Can you give any illustration at all to distinguish it?

A. Because I think it is more important.

Q. You think it is 1,000 miles as against a line of 500 miles?

A. Not only its actual mileage, but the territory it serves, its connections at the Missouri River.

Q. Now, take the Burlington, that has a through line from Chicago to Denver in connection with the Denver & Rio Grande.
2369 That is considerably longer than the Union Pacific line from Omaha to Ogden. Now, is the Union Pacific more important in that situation than the Burlington?

A. I would still think that the Union Pacific would have a more important voice.

Q. Why?

A. For the very fact that, as I have said before, the Union Pacific reaches from the Missouri River, with all the important connections there, clear through to Ogden. I am only giving, of course, my personal opinion of it.

Q. And the Burlington reaches from Chicago, with its important connections there, to Denver?

A. Yes; but it stops there.

Q. Well, the Union Pacific stops at Omaha, eastwardly?

A. The Union Pacific?

Q. The Union Pacific doesn't extend east of Omaha?

A. Well, Omaha and Kansas City; yes.

Q. And the Burlington extends from Chicago, where it has many important connections, to a connection with the Denver & Rio Grande at Denver.

A. Yes.

Q. And so does the Rock Island. But you still think the Union Pacific would have a more important influence?

A. I do, on the fact that it is one road—one management.

Q. There is a great deal of value in that, you think, Mr. Buchanan?

A. I have found it so in my railroad experience.

Q. Don't you think that also operates for the Southern Pacific, too, it having the only western outlet of the Union Pacific?

A. It certainly does.

Q. Under what conditions can the Union Pacific have any voice in making transcontinental rates as against the Southern Pacific? Can you conceive of any conditions under which it would
2370 have any voice in making rates to California without the consent of the Southern Pacific?

A. It would have to have the consent of the Southern Pacific: yes.

By Mr. SEVERANCE:

Q. There is a difference between the situation of the Union Pacific and the Denver & Rio Grande, for instance, is there not, in the fact that the Union Pacific reaches Portland?

A. That would be an additional reason.

Q. And the lines of road centering at Omaha control a very large traffic that they turn over to the Union Pacific at that point, do they not?

A. I think so.

Q. And that is a traffic that the Southern Pacific must take into account in adjusting the through rate to the coast, isn't it?

A. I should think so.

By Mr. LOVETT:

Q. That traffic would have to go over the Southern Pacific to get to the coast, wouldn't it?

A. Yes, sir.

2371 JOSEPH KEAVY,

being duly sworn as a witness on behalf of the Complainant, testified as follows:

Direct examination by Mr. SEVERANCE:

Q. Where do you live, Mr. Keavy?

A. Indianapolis.

Q. What is your business?

A. I am commissioner of the Indianapolis Freight Bureau.

Q. How long have you occupied that position?

A. Since June, 1906.

Q. Previous to that time what was your business?

A. I was in the service of the railroads, in the freight traffic departments.

Q. Just give your railroad experience, if you please?

A. Beginning in 1872 or '3, I was in the service of the Michigan Central road, at Saginaw; chief clerk in the general freight office of one of its divisions. Following that I was commercial agent for the Fort Wayne & Jackson Railroad. Following that I was local agent for the Detroit, Lansing & Northern, at Detroit. Then with the C. H. & D. Railroad as general agent, located in Michigan. After that, with the Chicago & Eastern Illinois, as commercial agent in the territory of Michigan. That brought it up to 1892, when I entered the service of the Big Four Railroad as general agent in Michigan, located at Grand Rapids. From 1896 to 1898 I was division freight agent of that road, located at Benton Harbor. January 1st, 1899, I moved to Indianapolis, still as division freight agent, and in 1901 I was
2372 appointed assistant general freight agent, which position I held until I resigned in November, 1905.

Q. Your railroad experience, then, has all been in the traffic department—not in the operating?

A. In the freight traffic department; yes sir.

Q. Do you know Mr. Connor?

A. Yes, sir.

Q. How long have you known Mr. Connor?

A. I should say eight or nine years, or thereabouts.

Q. Did you know him at the time he represented the Southern Pacific Company, before he became the joint agent of the Southern and Union Pacific?

A. I did.

Q. Was Indianapolis within his jurisdiction?

A. Yes, sir; as I recollect it.

Q. Did the Union Pacific have a separate representation in that field?

A. Yes, sir.

Q. What was the fact as to whether there was competition for transcontinental business between the Southern Pacific and the Union Pacific, prior to 1901, in that district?

A. It was quite well understood that there was that competition between those two routes; in other words, when dealing with the representative of the Southern Pacific, it was known that you were treating with a rival of the Union Pacific, and vice versa.

Q. Which way did the Southern Pacific agents, Mr. Connor and his subordinates, endeavor to route their transcontinental traffic?

A. Via New Orleans.

Q. And the Union Pacific?

A. By the Missouri River gateway.

2373 Q. By the Missouri River gateway you mean Kansas City and Omaha, do you not?

A. And St. Joe.

Q. And St. Joe?

A. Yes, sir.

Q. What was the fact as to whether competition continued between those two lines after Mr. Connor became the joint agent?

A. I could not testify as to any specific incidents or grounds giving me direct knowledge on that point, other than the impression that the reorganization and joint agency and representation in the districts naturally would tend to lessen the aggressiveness of the separate representation which existed before.

Q. Not only lessened it, but eliminated it, didn't it?

A. Well, that would bear on a little different line of thought. Its tendency would be to eliminate any actual competition.

Q. Now, in competing for that business, prior to this amalgamation, what way did that competition manifest itself?

A. In the solicitation of the representatives of the two distinct routes.

Q. Was that active or otherwise?

A. I always considered it quite pronounced and active.

Q. Do you know any time when the through rates differed by different transcontinental lines?

A. I can not say that I have any such knowledge, for the reason that in my position during that period the representatives of the Pacific coast lines, if there were any differences in rates, did not communicate them to me.

Q. They were private differences, if any existed?

2374 A. Well, if any existed, they would deal with the shipper or consignee directly.

Q. The published rates were always the same?

A. Always the same; yes sir.

Q. And the competition that existed was in the way of solicitation, as you say?

A. All that I observed or have knowledge of.

Q. Now, what is the fact as to the kind of service rendered being a factor in the competition?

A. That is always a factor.

Q. And what elements of service do you take into account?

A. Why, the despatch usually, and the facilities for getting information promptly, and the treatment of questions like claims; such matters as that.

Q. The supply of cars?

A. The car supply is a very important element, although there are features of that that are in the hands largely of initial roads.

Q. Isn't it a fact that transcontinental lines at times work their equipment in different parts of the territory east of the Missouri River for the purpose of getting return business?

A. Why, I understand they always endeavor to provide a fair quota of their equipment for traffic as an aid in securing it.

Q. As an aid in securing business?

A. Yes.

Q. And particularly in times of congestion, when the traffic is very heavy, isn't the ability to furnish cars an important item in getting business?

A. Do you mean in times of congestion or shortage of car supply?

2375 Q. That is what I mean—shortage of car supply because of congestion of business.

A. Yes, ability to furnish cars promptly then would be pretty sure of securing traffic.

Q. Well, isn't it a fact that at all times that has been a recognized form of conducting competition?

A. That is one strong element in competition—the facilities for caring for the traffic.

Q. Do you regard the personality of the general agent or soliciting agent as of importance in getting business for the lines the agent represents?

A. In many instances I have known that to be of great potency and influence.

Q. Over what routes did the business to Portland and Puget Sound points chiefly move from your Indianapolis territory, previous to 1901?

A. There were several routes open for that. It would move naturally via the Union Pacific or the northern routes in preference to the long route through New Orleans.

Q. Did any move by Ogden and Sacramento?

A. I am not familiar with that. I do not know how the lines distributed or routed their traffic in that respect.

Q. You merely know the geographical location of the lines?

A. Yes, and the routes.

Cross-examination by Mr. LOVETT:

Q. In what territory did you observe this competition between the representatives of the Southern Pacific and the Union Pacific, Mr. Keavy—this territory?

A. In Indiana.

2376 Q. In Indiana?

A. I was in charge of the Michigan division, running from Benton Harbor down to Louisville; and later, still having jurisdiction of that division, was given the Indianapolis division, running eastwardly from Indianapolis to the state line—to Union City.

Q. That is the Big Four?

A. Yes; that covered the gas belt, and there was a good deal of traffic there and a good deal of activity in solicitation.

Q. Did your line have any choice as to routing, as to whether it would go by way of Ogden or New Orleans?

A. No, sir.

Q. It was immaterial which way it went, I suppose?

A. Quite so.

Q. Over what lines to New Orleans did this traffic secured by Mr. Connor and other representatives of the Southern Pacific, from this territory, move?

A. It could move through Louisville or through Cairo.

Q. Over what lines?

A. Illinois Central, through Cairo, Illinois Central through Louisville, or the L. & N. It would not go via Cincinnati from the Indianapolis territory, very likely.

Q. It could go that way?

A. It could, and I don't know but what portions of it did. I am not familiar now with just how the divisions ran.

Q. It did move over the Illinois Central and the Louisville & Nashville, and could have moved over the Queen & Crescent from this territory to New Orleans?

A. Yes, sir.

Q. And thence over the Southern Pacific?

A. Yes, sir.

2377 Q. Were the Louisville & Nashville and the Illinois Central and the Queen & Crescent soliciting that traffic?

A. Yes, sir.

Q. Soliciting it by way of New Orleans?

A. Yes.

Q. Over what lines would traffic from the same territory, secured or routed by the Union Pacific, move from point of origin to Omaha or Kansas City?

A. Through St. Louis, Peoria, or Chicago, and thence through the Missouri River gateways.

Q. By all the various railroad lines operating in that territory?

A. Yes, sir.

Q. The Louisville & Nashville does not extend north of the Ohio River, does it?

A. They have a division running to St. Louis from Evansville.

Q. And the Queen & Crescent does not extend north of Cincinnati, does it?

A. No, sir.

Q. The Illinois Central and the Louisville & Nashville and the Queen & Crescent run in a southerly direction from this territory, don't they?

A. Yes, southerly and west.

Q. Which direction from the Ohio River, or from what connection with the Queen & Crescent or the Louisville & Nashville does the Big Four run?

A. It runs westerly and northwesterly.

Q. And the Pennsylvania has lines from Cincinnati, Ohio, running northerly, doesn't it?

A. Yes, sir, and in connection with the Vandalia westwardly.

Q. And the C. H. & D. running from Cincinnati northerly and westerly?

A. They run westwardly from Indianapolis.

Q. The C. H. & D.?

A. Yes, sir.

Q. I spoke of from Cincinnati—it runs northerly and north-
2378 westerly?

A. It runs north-westwardly to Indianapolis, and due westward from there to Springfield, Illinois.

Q. To Chicago it runs in connection with the Monon, doesn't it?

A. That is one of its connections. I don't know whether it is a traffic route or not. It is a strong connection.

Q. Then, the Chicago, Cincinnati & Louisville was one of the lines mentioned as extending northerly?

A. The Chicago, Cincinnati & Louisville runs directly from Cincinnati.

Q. Runs from Chicago to Cincinnati?

A. To Cincinnati. It doesn't run to Louisville. Just Cincinnati to Chicago.

Q. It and the C. H. & D., and other lines in this territory, solicited that business to the Pacific coast, didn't they?

A. Well, the C. C. & L. are a newcomer in the field, up in the gas-field or in the territory of the whole. The C. H. & D., within the last few years, have acquired lines west from Indianapolis. But now they would solicit from Indianapolis and interior Indiana. Wherever their lines reach they would solicit this business.

Q. These lines I have mentioned would solicit from Cincinnati and Ohio River points?

A. Yes, sir.

Q. And points in Southern Ohio?

A. Yes, sir.

Q. As against the lines leading to New Orleans, wouldn't they?

A. Certainly.

Q. And they would seek to move it northwesterly or westerly to a connection with the Union Pacific at Omaha, or the Atchison?

A. Yes, sir; that would be their route.

2379 Q. And they would be competing with the lines south of the Ohio River?

A. Yes, sir.

Q. The lines to New Orleans?

A. Yes, sir.

Q. Although running in the opposite direction?

A. Yes, sir.

Q. You are familiar with the location of Union Pacific lines, are you not, Mr. Keavy?

A. Yes, sir, I know the lay of their system.

Q. Such business as the agents of the Union Pacific secured from this territory about which you testified, for California points, would have to go over the Southern Pacific from Ogden to the Pacific coast, wouldn't it?

A. West from Ogden? Yes, sir, that would be their route for California.

Q. The Southern Pacific was the only outlet for the Union Pacific for California business, wasn't it?

A. Yes, sir, that was until the San Pedro route was opened.

Q. Up to that time the Southern Pacific was the only outlet for the Union Pacific for California business?

A. Yes, sir.

Q. The various lines from this territory to the Missouri River and westwardly, including the B. & O., the Pennsylvania lines, the Rock Island, the Missouri Pacific, the Atchison, the Union Pacific, the Burlington, the Chicago & North-Western, the St. Paul, and perhaps others, have all the time been actively soliciting this California business in this territory, haven't they?

A. Yes, sir.

Q. I believe you testified, in answer to questions by Mr. Severance in reference to the importance of car supply. The car supply is practically in the hands of the initial line, isn't it?

2380 A. No, I don't think I testified it was practically. I said sometimes the question would rest with them and not be a bur-

den wholly upon the Pacific coast road to furnish their own cars, because there are various intermediate lines, or the initial road itself might have equipment which they would be willing to supply; but the large special equipment was a factor, whoever supplied it.

Q. The initial line will always furnish cars, if it has them, in order to get the traffic, won't it—either its own or some foreign car moving in that direction?

A. As a general thing, yes, sir. They place some limitations upon their own large equipment at times.

Q. At times?

A. Yes, sir.

By Mr. SEVERANCE:

Q. Mr. Keavy, one or two things I forgot to ask you about on direct examination. Do you remember the time when the Canadian Pacific had in a differential to California points by boat-line from Vancouver?

A. No, sir, I cannot recall specifically any such basis of rates.

Q. You don't remember that?

A. No, sir.

Q. Do you remember of traffic moving that way to California points by the Canadian Pacific to Vancouver, and thence by boat?

A. I could not testify that I have such knowledge, no, sir.

2381 JOSEPH G. McDOWELL,

being duly sworn as a witness on behalf of the Complainant, testified as follows:

Direct examination by Mr. SEVERANCE:

Q. Where do you live, Mr. McDowell?

A. Indianapolis.

Q. What is your business?

A. I have been traffic manager for the Atlas Engine Works.

Q. For how long?

A. About thirty years.

Q. What kind of product does the Atlas Engine Works manufacture?

A. Engines and boilers.

Q. What kind of engines? I don't mean technically, but in general what kind of engines?

A. The ordinary stationary steam engine.

Q. How is that concern as to being a large or small institution?

A. Well, sir, it has been one of the largest institutions of the country, perhaps the largest.

Q. Do you know Mr. Connor?

A. Yes, sir.

Q. To what parts of the country has the Atlas Engine Works shipped its product?

A. All over the United States, sir.

Q. You have considerable shipments to the Pacific coast?

A. Yes, sir.

Q. To what points in California do you ship?

A. Principally to Los Angeles and San Francisco.

Q. Do you ship to jobbers or to agents?

A. Ship to agents.

Q. Who has controlled that routing?

2382 A. Well, that is a little mixed. Sometimes the agent did, and sometimes it was shipped without any suggestion from them; sometimes they requested special routing; perhaps in the majority of cases they did not, and it was controlled at the point of shipment.

Q. And that was controlled by you?

A. Yes, sir.

Q. Do you remember the time when Mr. Connor represented the Southern Pacific and did not represent the Union Pacific?

A. Yes, sir.

Q. You knew him then, did you?

A. Yes, sir.

Q. Who represented the Union Pacific in your territory at that time?

A. My recollection is not very clear. I think it was Mr. Liston—I think it was; I am not entirely clear on that.

Q. You recall that they had a separate soliciting agency?

A. Yes, sir.

Q. At that time did you receive calls from Mr. Connor or his subordinates and from the representatives of the Union Pacific?

A. Yes, sir.

Q. Were those two lines competing with each other for business then, for shipments out of Indianapolis?

A. Well, by competing do you mean offering——

Q. I mean soliciting business against each other.

A. Soliciting business against each other, yes sir.

Q. And which way did Mr. Connor and his subordinates endeavor to route the traffic that they secured?

A. Southern Pacific.

Q. Via what gateway?

A. Via New Orleans.

Q. New Orleans?

2383 A. New Orleans or sometimes El Paso; they preferred it via New Orleans.

Q. And which way did the Union Pacific endeavor to route their traffic?

A. By the Missouri River gates.

Q. Do you make shipments to Portland, Oregon?

A. Yes, sir.

Q. Over what routes?

A. Sometimes Union Pacific, sometimes Great Northern, sometimes Northern Pacific. That business is very largely controlled by the consignees.

Q. Did the business that went over the Union Pacific go to Portland over the Oregon Short Line, or was it divided at Ogden?

A. I think it went over the Oregon Short Line; that is my recollection of it, sir.

Q. Did Mr. Connor endeavor to secure business into Portland from you?

A. Well, I cannot answer that, sir; it has been so long ago that I am a little rusty.

Q. Do you receive calls from Mr. Connor now?

A. Yes, sir.

Q. Or have you since he became joint agent?

A. He occasionally comes to see me.

Q. Has he any subordinates who come to see you?

A. Mr. Liston sometimes calls in.

Q. Which way do they solicit coast shipments now?

A. Well, I can't recall that they express a preference.

Q. That is, they express no preference between the Southern and the Union?

A. Yes.

Q. They express preference between themselves and the Northern Pacific, for instance, and the Santa Fe, don't they?

A. Oh, yes, yes. I am speaking of the Union Pacific and the Southern Pacific.

2384 Q. They do not express any preference between those two. I understood that was what you meant. I didn't mean to be jocular. I simply wanted to make clear what you meant by your answer.

A. Mr. Connor usually comes in and makes himself very agreeable for a few minutes, and goes out.

Q. Well, you are very glad to give business to a company or a combination of companies that has so charming a representative, aren't you?

A. Yes.

Q. As a matter of fact, Mr. McDowell, the ability and the personality of the soliciting agent has a good deal to do with securing business, hasn't it?

A. That is my experience.

Q. Since Mr. Connor has represented both lines, which way has the most of your business moved to California points, that is, the business that went over the Union Pacific or the Southern Pacific?

A. You mean as divided between the two lines?

Q. Yes, sir. Since he has represented both lines, how does the bulk of your business move? Which way does the most of it move?

A. I should say over the Southern Pacific and via New Orleans.

Q. Still moves that way?

A. Yes, sir.

Q. How was it before the——

A. Now, perhaps I should qualify that, sir. We have done more business in Los Angeles than we have in San Francisco, and a more natural route for Los Angeles would be over the Southern Pacific rather than for San Francisco over the Southern Pacific.

2385 Cross-examination by Mr. LOVETT:

Q. You understood, I presume, Mr. McDowell, that such business as was secured by the representatives of the Union Pacific, before the agencies were consolidated, for California, moved ultimately over the Southern Pacific, did you not—that is, from Ogden westward?

A. Yes, I think so, sir.

Q. That is to say, you understood that the only outlet for the Union Pacific to California points was by way of Ogden over the Southern Pacific or Central Pacific line?

A. Yes, sir.

Q. I presume all of the lines reaching your territory solicit business actively for California points, do they not?

A. All westbound lines.

Q. And southerly lines? Doesn't the Illinois Central, the Louisville & Nashville, the Queen & Crescent, and the Missouri Pacific lines actively solicit that business?

A. Yes; they were always glad to get it.

Q. The Illinois Central and——

A. The Illinois Central at that time, you know, were not represented with us and were not very active in their solicitation.

Q. They were not?

A. No, sir.

Q. The Louisville & Nashville?

A. More so than the Illinois Central.

Q. The Queen & Crescent?

A. I never encouraged the Queen & Crescent business, going that way.

Q. How about the Missouri Pacific?

A. They were very glad to get it via T. & P. and El Paso.

2386 Q. And by way of Denver, too, weren't they?

A. Yes, sir.

Q. They had the two lines. And the Rock Island system?

A. I never did much business with the Rock Island on the coast business.

Q. Did their solicitors ever call upon you?

A. Yes.

Q. And the Burlington's, I presume?

A. I never did very much business with the Burlington.

Q. Did they have solicitors in your neighborhood?

A. Oh, yes.

Q. I am not speaking of those you did business with, but I am speaking of those who were soliciting business.
A. Yes, sir. The Burlington solicited.
Q. And the North-Western?
A. Yes, sir.
Q. The St. Paul?
A. Yes.
Q. And practically all of the important lines extending from your territory, lying between Indianapolis and the Rocky Mountains and New Orleans?
A. You are speaking now prior to 1901, are you?
Q. Yes, sir, and since.
A. Well, there hasn't been very much since.
Q. They have not been as active in recent years?
A. No, sir.
Q. You mean none of the lines has been? or all of them? How is that?
A. Well, I don't want to make any very distinct statement. My statement is that they have not been. Just in a general way.
Q. They have been less active in solicitation?
A. Less active.
Q. I am not speaking merely of the Union Pacific and the Southern Pacific, but of all lines in your territory?
A. I think it would be true to say that all of them have been less active.

2387 CHARLES S. BARKER,

sworn as a witness on behalf of the Complainant, testified as follows:

Direct examination by Mr. SEVERANCE:

Q. Where do you live, Mr. Barker?
A. Indianapolis.
Q. What is your business?
A. Traffic manager of E. C. Atkins & Company.
Q. What is their business?
A. Saw manufacturers.
Q. Is that a large concern?
A. Yes, sir; it employs about 1200 men.
Q. How long have you been traffic manager for that company?
A. I have been connected with the company 23 years, and had the office of traffic manager for about eight or nine.
Q. Previous to that what was your position?
A. Shipping clerk.
Q. Are you the gentleman that solicitors call on in soliciting traffic?
A. Yes, sir.
Q. How long have they done that?

A. Well, only since the office of traffic manager has been established.

Q. To what parts of the country do you ship?

A. From the Atlantic to the Pacific seaboard, and from Canada to the Gulf of Mexico, and export.

Q. And export?

A. Yes.

Q. You have one of the largest saw manufactories in the country, have you not?

A. Yes, sir.

Q. Do you know Mr. Connor?

A. I do, yes, sir.

Q. Does he call on you, looking after business?

2388 A. Occasionally.

Q. You know that he represents both the Union Pacific and the Southern Pacific, do you not?

A. Yes, sir.

Q. Does he express any preference for one route over the other, or endeavor to route the traffic one way or the other?

A. No, sir, I don't know that he does.

Q. Were you traffic manager in the old days when Mr. Conner represented the Southern Pacific, and the Union Pacific had separate representatives?

A. I do not think I was. I think the merger has been since then.

Q. That is, you took your position about the time of the merger?

A. Yes, sir, about that time.

Q. So that you do not know anything about the former solicitation of business?

A. No, sir, I could not say as to that.

(No Cross-Examination).

2389 H. H. BEAN,

being duly sworn as a witness on behalf of the Complainant, testified as follows:

Direct examination by Mr. SEVERANCE:

Q. Where do you live, Mr. Bean?

A. Springfield, Ohio.

Q. How long have you been in Springfield?

A. Since my birth, in 1859.

Q. What is your business?

A. I am a manufacturer of farm machinery.

Q. What is the name of the company?

A. Thomas Manufacturing Company.

Q. Is that an old concern?

A. Yes.

Q. What kind of farm machinery do you manufacture?

A. We manufacture machines for cutting and gathering hay, seeding machines and harrow machines for harrowing, grain drills and seeding machines.

Q. In what parts of the country is your product used?

A. All parts of the United States pretty generally.

Q. Do you ship to the Pacific coast?

A. Yes, sir.

Q. How long have you been doing so?

A. Oh, for a good many years.

Q. How long have you been with the company?

A. Thirty-three years. I went with the company in 1877, when quite a boy.

Q. What connection have you had with the routing of traffic?

A. Well, I have been in touch with it more or less. The solicitors generally come to see me. I rather direct the move-
2390 ment of the freight to a certain extent.

Q. Are you acquainted with Mr. Connor?

A. Yes, sir.

Q. How long have you known Mr. Connor?

A. For quite a long time; I don't know exactly how many years.

Q. Did you know him when he represented the Southern Pacific before he represented also the Union Pacific?

A. Yes, sir.

Q. Did he use to come to see you?

A. Yes, sir.

Q. Often?

A. Yes, rather frequently during the shipping season, when the movement was active in our line.

Q. Did he come to see you to solicit business?

A. Yes, sir.

Q. Which way did he endeavor to route Pacific coast traffic?

A. By the Southern Pacific, New Orleans.

Q. Did the Union Pacific Railroad Company also have a soliciting agency in this field at that time?

A. Yes, sir.

Q. And how did they endeavor to route their traffic?

A. Through the Missouri River gateways—Omaha and Kansas City.

Q. How was the competition between Mr. Connor and his agency and the Union Pacific agency for this coast traffic? Was it active or otherwise?

A. It seemed to be quite aggressive, particularly on Mr. Connor's part.

Q. Particularly on Mr. Connor's part?

A. Yes, sir. The other side as well, I may add. They were both aggressive in the business.

Q. Do you remember of some years ago when Mr. Connor took over the agency of the Union Pacific also?

A. Yes, I recall the time.

2391 Q. The fact, I mean.

A. The combination, yes.

Q. You recall the fact?

A. Yes.

Q. Since then has he been to see you about traffic?

A. Well, I think in person he possibly may have been up once. I don't recall. He has an assistant who solicits business.

Q. Who is that?

A. Mr. Sigbee, I believe, is his name.

Q. What is it?

A. Sigbee.

Mr. CONNOR. Sigler.

WITNESS. Yes, Mr. Sigler.

Q. Now, since this joint agency was established does Mr. Sigler express any preference between the Union Pacific and the Southern Pacific route by New Orleans on Pacific coast business?

A. No, I can't say that he has ever expressed any preference as between the two routes.

Q. In what way, if at all, do you regard freight solicitors as of value to the shippers?

A. Well, I think that they are important in the sense that they bring you in direct contact with the railroad. You have that personal contact that is always effective in business transactions. And then they are generally men who are looking out for the interest of their lines, and in that way trying to benefit the shipper all they can, in the way of good service, and in many ways they are very useful to both sides; in fact, we could not get along very well without them.

Q. Do you think they are useful to the railroads as well as to the shippers?

A. I most assuredly do.

Q. Are they useful in the way of getting business for the railroads?

A. Decidedly—decidedly.

2392 Q. What is the important element in competition between railroads, to your mind?

A. The rates being equal, I think the first element is service; that is to say, the line that seems to be freer and in position to carry your freight with the best despatch, particularly when you are in a hurry; they would be more apt to get the business. But, all conditions being equal, I think the personnel of the solicitor has considerable to do with it.

Q. I think you have already stated that the solicitor is valuable in securing good service?

A. Yes.

Q. And in that way securing business for his line?

A. Yes, sir.

Q. Have you shipped over both routes to the coast, both by New Orleans and by Ogden?

A. We formerly shipped via New Orleans, but of late we have not shipped much of anything that way.

Q. You have not been importuned by Mr. Connor to do that as much as you used to be?

A. I can't recall that he has—you mean since 1901?

Q. Yes.

A. No, I can't recall that we have been importuned to ship either way specifically.

Q. But you were before that?

A. Oh, yes.

Q. How did you formerly ship, during the days of active competition?

A. I think during Mr. Connor's period with the Southern Pacific, if he happened to come along at the right time he had a good chance to get the business, everything else being equal.

Q. Well, he had a good chance, and he got it in many cases, didn't he?

2393 A. Yes. We aimed to divide our business, naturally, with all the lines.

Q. But at the present time you do not ship by New Orleans?

A. No.

Q. How do you ship to Portland and vicinity?

A. Our coast business to a certain extent is routed by the buyer. Where he leaves it open we use our own judgment. To Portland we would have the option of the Northern Pacific, the Great Northern—the Northern Pacific chiefly—the Union Pacific, and the O. R. & N., from Ogden up.

Q. Do these various lines have agents who call on you and solicit that traffic?

A. Oh, yes, sir.

Q. So all the Portland business is solicited by three, is it,—by Mr. Connor's agency, the Northern Pacific, and the Great Northern?

A. Well, I don't know whether the Great Northern solicit Portland business. They solicit Seattle business more particularly, because that is their terminal, I believe. But the Great Northern, of course, solicit Portland.

Q. You mean the Northern Pacific, don't you?

A. The Northern Pacific, yes; and the Burlington also in connection with the Northern Pacific, and also the Union Pacific with their connection from Ogden up.

Q. I don't know whether I asked you, but it is a fact, is it not, that your company is one of the large companies of the kind?

A. Well, we are one of the old companies. We are not as large as some and not as small as some others.

Q. You are much larger than some others, aren't you?

A. Oh, yes, I should say possibly.

2394 Cross-examination by Mr. LOVETT:

Q. You never shipped to Portland by way of New Orleans and the Southern Pacific, did you, Mr. Bean?

A. Not that I can ever recall.

Q. You stated in answer to Mr. Severance that you had not been importuned for shipments by Mr. Connor since 1901. You have been solicited by his assistants?

A. Oh, yes. We have had letters from Mr. Connor, chiefly containing routing requests that they have gotten from the Pacific coast. It is quite customary out there to be solicited, and then get the routing instructions and then send them on to the factories.

Q. Mr. Connor has more assistants working for him since 1901 than he formerly had?

A. I don't know as to that. I would suppose he would have to have, with a larger business to look after.

Q. You have seen assistants of his since then?

A. Oh, yes.

Q. Who have solicited your business?

A. His solicitor comes to us very frequently.

Q. In your statement you did not mean to say you had not been solicited at all?

A. Oh, I don't think I said that.

Q. No; you said you had not been solicited by Mr. Connor.

A. Not by Mr. Connor in person, that is what I meant. Possibly he has been up once or twice to pay a social visit, as far as I can remember.

2395 Q. The routes via New Orleans and El Paso and all these different gateways are still open, aren't they?

A. As far as I know they are, yes.

Q. You can ship by any of these routes that you want to.

A. If we choose, yes.

Q. Such business as was secured by the agents of the Union Pacific or as shipped by the Union Pacific in the days before the merger, so-called, moved by way of Kansas City or Omaha to Ogden, did it not?

A. Generally.

Q. And thence over the Southern Pacific.

A. Well, if it went down into California, of course it would have to go that way.

Q. All business south of Portland had to go over the Southern Pacific?

A. Prior to the building of this new road from Salt Lake.

Q. The San Pedro?

A. Yes.

Q. Prior to that?

A. Yes, as far as I know; I don't know as they ever shipped it up by way of Portland.

Q. You never knew of it to be carried?

A. I never knew of any to my knowledge.

Mr. SEVERANCE. Pardon me, I did not hear the last. I was interrupted by Mr. Husted speaking to me.

Mr. LOVETT. He said it all had to go over the Southern Pacific prior to the construction of the San Pedro line unless it went round by way of Portland, and by boat, and he never heard of any going that way.

By Mr. SEVERANCE:

2396 Q. In the old days, when Mr. Connor was soliciting for the Southern Pacific, did he in connection with the Union Pacific or the Denver & Rio Grande ever attempt to get business into Portland by the Sacramento gateway—from Ogden to Sacramento and over the Shasta route?

A. Well, that has been so long ago I do not know as I could recall it if he ever solicited business that way.

Q. Do you remember business moving from your plant that way?

A. I can't recall it at this time.

2397 S. D. MAYER,

sworn as a witness on behalf of the Complainant, testified as follows:

Direct examination by Mr. SEVERANCE:

Q. Mr. Mayer, where do you live?

A. Hamilton, Ohio.

Q. How long have you lived there?

A. I have lived there since 1891.

Q. What is your business?

A. I am assistant treasurer and office manager of the Mosler Safe Company.

Q. How long have you been with the Mosler Safe Company?

A. Since 1889. Prior to our removal to Hamilton we were located here in Cincinnati, and moved to Hamilton in 1891—1889 was the year I went with them.

Q. And you were then located at Cincinnati?

A. Yes, sir.

Q. And moved to Hamilton in 1891?

A. Yes, sir.

Q. Two years afterward?

A. Yes, sir.

Q. Have you charge of the traffic?

A. It comes under my supervision, yes, sir.

Q. And how long have you had charge of the movement of their traffic?

A. Well, ever since I have been—well, not ever since. I will modify that. Prior to 1895 we had a traffic manager. He is no longer with them. When he stepped out it was thrown upon my shoulders.

Q. So you have had charge of it for 14 or 15 years?

A. Yes, sir.

2398 Q. As compared with other companies in the business, what is the size of the Mosler Safe Company?

A. Well, I do not want to say that we are the largest; but we are one of the largest in the manufacture of safes and vaults.

Q. Your company and the Diebold Company are the largest, are you not?

A. I would say, yes. I think they rank about equal in capacity.

Q. They are the two leading companies in that line of business?

A. I would say so—that is, in capacity. I would not say in quality of goods; I would not want to——

Q. Well, I am speaking about the capacity.

A. Yes, in capacity; output.

Q. To what part of the country does your output go?

A. The entire United States. We do quite a business in Mexico, some little in London, and some little in Canada; but our biggest field is the United States and Mexico.

Q. Do you send safes to the Pacific coast?

A. Yes, sir.

Q. How long have you been in that field—from the time you have been with them?

A. Yes.

Q. Is your business exclusively the manufacture of safes and vaults?

A. Exclusively, yes, sir; that is, bank vaults and deposit boxes; everything that appertains to a bank outfit, in the steel and structural part of it.

Q. Are you acquainted with Mr. Connor?

A. I am, sir.

Q. How long have you known Mr. Connor?

A. I could not specify the number of years. I guess I have known him ever since he has been on the street.

2399 Q. Did you know him prior to the time that he represented the Union Pacific?

A. Prior to the time he represented the Union Pacific?

Q. Yes; when he represented only the Southern Pacific.

A. I did, sir.

Q. You knew him then, did you?

A. I did; yes, sir.

Q. Do you remember when the Union Pacific had a separate agency here?

A. I do, sir.

Q. Was your business solicited by Mr. Connor?

A. Not personally. I do not remember of——

Q. Well, by his agency?

A. Yes, sir.

Q. And also by the Union Pacific agency?

A. Yes, sir.

Q. Which way did Mr. Connor's agency, when he represented only the Southern Pacific, endeavor to route traffic to the coast?

A. By the Southern gateway; New Orleans.

Q. And the Union Pacific, by the Missouri River gateway?

A. Sure.

Q. How was the competition between these two companies at that time; was it active or otherwise?

A. It was very active.

Q. Did other lines also solicit your business?

A. Yes, sir.

Q. Which other transcontinental lines?

A. The Santa Fe.

Q. Since the amalgamation of the offices here under Mr. Connor, have they called upon you for business?

A. His representative has.

Q. That is what I mean—his representative.

A. Yes, sir.

Q. Does he express any preference as between the two routes?

2400 A. I think he has in one or two instances: he asked for the shipment via New Orleans.

Q. Was there some special reason for that, do you know?

A. Well, to get the long haul. That is the only reason I would know of.

Q. Do you remember on any other occasions that he has expressed any preference one way or the other?

A. No. It is quite natural that a representative wants to get the longest haul possible. I could not specify just what case, but I know that he has expressed a preference. Of course if he cannot get it that way he would take it the other.

Q. Do you remember whether that was since the offices have been consolidated?

A. Oh, yes, recently.

Q. Oh, recently?

A. Prior to the consolidation, I wish to state that we did very little shipping by the Southern gateway; in fact, I do not think that we gave the Southern Pacific anything unless it was routed that way by the purchasers.

Q. But they were after it?

A. Oh, yes; they solicited the business. Also their intermediate lines—the L. & N., and lines leading from Hamilton, south.

Q. How does most of your business go to the coast?

A. The most of it goes the northern gateway—that is, the Missouri River route.

Q. Which way?

A. The Missouri River, or through the Chicago gateway.

Q. Do you ship by the Union Pacific?

A. Do we ship?

Q. Yes.

Mr. LOVETT. The gateways, he said. He did not say via the Missouri River.

Q. Oh, the Missouri River gateways?

A. Yes.

2401 Q. That is what confused me. I did not catch it. Most of it goes by the Missouri River gateways?

A. Yes.

Q. And how do you ship to Portland?

A. At the present time?

Q. Yes.

A. We ship over the Iowa Central now, and the Minneapolis & St. Louis, and the Great Northern, and the Seattle, Portland & Spokane—that is a new route recently opened.

Q. That is what is called the North Bank route?

A. I don't know what it is called.

Q. That is the new line.

A. Prior to that we used to ship by the Chicago & North-Western and the Union Pacific, and often over the Northern Pacific, but principally over the Union Pacific.

Q. Did you know Mr. Liston?

A. I do, sir.

Q. Before the amalgamation of these offices, which company did he represent?

A. The Union Pacific.

Q. Did he use to call on you for business?

A. He does yet.

Q. He does yet?

A. He is the only gentleman that does call.

Q. But before that he represented the Union Pacific, while Mr. Connor represented the Southern Pacific?

A. Yes.

Q. Now Mr. Liston, with Mr. Connor, represents them both?

A. Yes, sir.

Mr. LOVETT. What was that last answer?

The following answer was read by the reporter:

"He is the only gentleman that does call."

WITNESS. I mean of that line.

Cross-examination by Mr. LOVETT:

2402 Q. You are actively solicited by representatives of all the lines, are you?

A. Of all the lines, yes, sir.

Q. For your California business?

A. Yes, sir.

Q. I believe you testified that you have been actively solicited by lines leading from your plant to New Orleans?

A. By the intermediate lines, yes, sir.

Q. Such as the Louisville & Nashville and Illinois Central?

A. And the Illinois Central.
Q. And the Queen & Crescent?
A. Q. & C.
Q. And their connections?
A. Yes, sir.
Q. That is true also of the lines leading toward El Paso, I presume?
A. Well, not so much.
Q. The Rock Island and the Missouri Pacific?
A. Yes, the Rock Island and the Missouri Pacific.
Q. The Missouri, Kansas & Texas?
A. The M. K. & T. never entered into the competition much, but the Chicago gateway lines did, and the Chicago & North-Western, and the Burlington.
Q. The Atchison?
A. The Atchison.
Q. The Burlington and Rock Island?
A. All of these lines have representatives.
Q. The Denver & Rio Grande?
A. Well, the Denver & Rio Grande has not anybody here that calls on us; but they work in connection with the Missouri Pacific. Their representatives, of course, solicit that freight.
Q. Such shipments as your company made to the Pacific coast south of Portland, over the Union Pacific, always passed over the Southern Pacific west of Ogden, did they not, Mr. Mayer?
A. Oh, yes.
Q. It was the only outlet prior to the opening of the San Pedro line?
A. At that time, yes, sir.
2403 Q. You never attempted to ship to California by way of Portland and boat down, did you?
A. No, sir; never shipped anything by water—that is, in this country.

Redirect examination by Mr. SEVERANCE:

Q. Do your goods require any particular size or kind of cars?
A. Yes, at times. That is, the large safes, or large vestibules, such as are used in banks, require an extra high and wide door.
Q. Is the movement of traffic sometimes affected by the ability of one road or another to furnish a particular kind of equipment?
A. Oh, yes. There are some roads that have not large equipment; they have to borrow it, or steal it, as they call it, and use it.
Q. In working for your business is that one element that the solicitors offer, or one thing they endeavor to do—to secure for you particular kinds of equipment when you need them?
A. Oh, I do not think they hold out that inducement. Of course we are located principally on the Pennsylvania tracks, and we look to the initial line to keep us furnished. I do not know where they

get their equipment, but there may be times when some of these soliciting gentlemen come around and they know that we are going to give them a shipment, and they have a car in Cincinnati, and they will ship it up there to save using the local car—save that mileage. They may say "We have got a car down in Cincinnati just to suit this shipment, and we will run it up to you."

Q. That is what I want to get at.—A. Yes; they do that.

2404 Q. They do that at times to secure business?—A. They do that, yes, sir.

2405 PAUL NICHOLS,

called on behalf of the Complainant, being duly called, testified as follows:

Direct examination by Mr. SEVERANCE:

Q. Where do you live, Mr. Nichols?—A. Hamilton, Ohio.

Q. What is your business?—A. Traffiic manager for the Long & Allstatter Company.

Q. What is the business of that company?—A. Manufacturers of power punchers and shears, and agricultural implements.

Q. Is that a large company? Does it do a large business?—A. Yes, I should say so.

Q. To what parts of the country do their products go?—A. We do not have very much western business. Mostly Eastern States, Southern States and Central States.

Q. Do you ship some to the coast?—A. We ship occasionally to the Mare Island Navy Yard, and western railroad shops.

Q. That is, California railroad shops; shops in California?—A. No; not that far out.

Q. So your coast shipments are not very important?—A. Well, we do not have very many of them.

Q. That is what I mean; you have not very many of them. Do you known Mr. Connor and Mr. Liston?—A. Yes, sir.

Q. Do they ever call on you and solicit coast shipments?—A. Yes, sir.

Q. Via what line?—A. They do not have any preference. If we want to give them the business, we can send it whichever way

2406 we want.

Q. That is, over either of their lines?—A. Either via New Orleans or via the western route.

Q. Have you any of their business cards?—A. Yes, sir.

Witness hands two cards to Mr. Severance, which were marked "Complainant's Exhibit 115 (Nichols)" and "Complainant's Exhibit 116 (Nichols)."

Q. I show you Complainant's Exhibit 115: Is that Mr. Connor's business card?—A. Yes, sir.

Q. I show you Complainant's Exhibit 116: Is that Mr. Liston's business card?—A. Yes, sir.

Mr. SEVERANCE. I will offer Complainant's Exhibits 115 and 116 in evidence, and particularly include the map on the back of Petitioner's Exhibit 116, which shows the San Pedro route with the rest of your system.

Mr. LOVETT. No objection.

Said Complainant's Exhibits 115 (Nichols) and 116 (Nichols) are as follows:

2407 COMPLAINANT'S EXHIBIT 115. (Nichols.)

W. H. CONNOR,
General Agent,
Union Pacific R. R.
Oregon Short Line R. R.
Oregon Railroad & Navigation Co.
Southern Pacific Company.
53 East Fourth Street,
Cincinnati, Ohio.

COMPLAINANT'S EXHIBIT 116. (Nichols.)

LYON LISTON,
Traveling Freight Agent,
Union Pacific R. R.
Oregon Short Line R. R.
Oregon Railroad & Navigation Co.
Southern Pacific Co.
53 East Fourth Street,
Cincinnati, Ohio.

On the reverse side of Complainant's Exhibit 116 is the following map:

2408 Q. You were not traffic manager of that company, were you, Mr. Nichols, at the time that Mr. Connor and the Union Pacific had separate agencies here?—A. No, sir.

Q. What is your opinion as to the usefulness of freight soliciters to shippers, in your experience?—A. Well, they can assist you in getting your stuff through; furnish you special equipment, quote you rates; things along that line.

Q. You think they are useful to shippers, then?—A. Yes, sir.

Q. And by reason of being useful to shippers they are able to get business for their lines?—A. Yes, sir.

Cross-examination by Mr. LOVETT:

Q. Both Mr. Connor and Mr. Liston have served your purpose, so far as solicitors are concerned, for both the Union Pacific and Southern Pacific, have they not, Mr. Nichols?

A. Well, as long as I have known them they have represented both lines. That has been eight years or so.

2409 HARRY C. SMITH,

called on behalf of the Complainant, being duly sworn, testified as follows:

Direct examination by Mr. SEVERANCE:

Q. Mr. Smith, where do you live?

A. Hyde Park, Cincinnati.

Q. What is your business, Mr. Smith?

A. I am in the mill and factory supply business.

Q. How long have you been in that business?

A. About four or four and a half years.

Q. Were you ever in the railroad business?

A. Yes, sir.

Q. When did you begin, and with what company, and state fully your railroad experience—that is, with the companies with which you were engaged.

A. Well, sir, I have always figured it out, since I left the railroad business, that all the time I spent in the railroad business was that much time wasted, and necessarily and consequently I am trying to forget. I commenced with the old Dayton Short Line, as a messenger, when it first entered Cincinnati, in 1872, May 1st. I worked through different positions with that company until I became bill clerk—local bill clerk—and my health failed and I went east to my relatives for a year and a half, and I came back here and took the same position that I left, and staid about three or four months, if I remember correctly, and was then made chief clerk of the C. H. & D. I was with the C. H. & D. three years. From that I went to the Union Pacific.

2410 Q. What year did you go with the Union Pacific?

A. That I really cannot remember, what year it was.

Q. Can you give us within——

A. It was somewhere about 1884, I think.

Q. How long did you continue with them?

A. I continued with the Union Pacific up to about nine years ago, I think it was.

Q. About nine years ago; that would be about the year 1900, then?

A. Somewhere along there. Then after I left the Union Pacific—they consolidated the offices here and let me out—I then went with the Big Four in Chicago as traveling freight agent; and then they sent me back to Cincinnati to open up the office of the Lake Shore, Lehigh Valley Fast Freight Route. That was my last railroad experience, when I resigned to go into business.

Q. What were your positions with the Union Pacific during the fifteen years?

A. Traveling freight and passenger agent.

Q. And you were with them, you say, from about 1884 to about 1900—about sixteen years?

A. Something like that, yes sir.

Q. As traveling freight and passenger agent what were your duties, Mr. Smith?

A. I traveled around through Ohio, Indiana, Kentucky, part of Pennsylvania, and West Virginia, soliciting from shippers business destined to points on the Union Pacific road west of the Missouri River, of course.

Q. Including transcontinental traffic to the coast?

A. Oh, yes, yes; coast business.

2411 Q. You said that you were traveling freight and passenger agent?

A. Yes, sir.

Q. What did you have to do in the way of passenger business?

A. Well, to tell the truth, I did very little.

Q. Your business was chiefly freight?

A. I never took much stock in the passenger business.

Q. Your work was getting freight?

A. Yes, sir.

Q. From what classes of shippers, if there were any special classes, did you solicit shipments?

A. All classes.

Q. During those years, from 1884 to 1900, did the Southern Pacific have an agency here?

A. When I first went with the Union Pacific there were only three or four representatives of western lines in this city at that time. I really do not remember now whether the Southern Pacific had an office here, or whether there was some representative from Chicago came down here.

Q. For a good many years they had one, had they not?

A. Oh, yes.

Q. Do you know Mr. Connor?

A. Yes, sir.

Q. Did he have a predecessor in his position as agent of the Southern Pacific here, or was he the first one?

A. Well, I have forgotten: it has been so long ago.

Q. He was the agent of the Southern Pacific for a number of years previous to the time that the offices were consolidated, was he not?

A. Yes, sir.

Q. And during that time you were working for the Union Pacific?

A. For the Union Pacific, and also the Central Pacific branch of the Southern Pacific via Ogden.

2412 Q. That is, you worked the business to go over the Union Pacific through to California?

A. Yes, sir.

Q. And moved over the Central Pacific?

A. Yes, sir.

Q. Was there competition at that time between the Southern Pacific and the Union Pacific for transcontinental business?

A. Also the Santa Fe, too.

Q. I was going to ask you about that in a moment; but I ask you first between the Union Pacific and the Southern Pacific.

A. Yes, sir.

Q. In what way did the Southern Pacific agency here endeavor to move the transcontinental business?

A. It was via New Orleans or El Paso.

Q. How did you endeavor to move it?

A. We endeavored to move it either via St. Louis, Kansas City, Chicago and Omaha via——

Q. Via the Union Pacific?

A. Via the Union Pacific, yes, sir.

Q. To what points on the Pacific Coast did this competition between the Southern Pacific and the Union Pacific extend; what terminal points on the coast?

A. There was San Francisco, Sacramento, Los Angeles, San Bernardino, and——

Q. How far north?

A. The Southern Pacific was not interested, or rather, we never ran into any competition to speak of, that I really can recall, on Portland or Tacoma or Seattle business. That was generally St. Paul competition—Northern Pacific.

Q. The business into Portland, you say, was competed for against you by the Northern Pacific and Great Northern?

A. Well, the Northern Pacific, first, and the Great Northern afterwards, yes, sir.

2413 Q. Did the Southern Pacific Company, or their agency here, work for business to California points by way of Ogden?

A. They did when they could not get it around via the other two routes.

Q. But their first endeavor was to get it via New Orleans, was it?

A. Naturally.

Q. How was that competition between the Union Pacific and the Southern Pacific as to being active or otherwise?

A. It was active between all lines. The Southern Pacific, the Santa Fe, the Rock Island, the C. M. & St. P. and the North-Western were all soliciting business in connection with lines via Denver, Salt Lake, El Paso and New Orleans.

Q. You said that the Southern Pacific were endeavoring to work their business by New Orleans?

A. Yes, sir.

Q. If they could?

A. If they could.

Q. How was the competition as between the Southern Pacific agency, which was trying to work the business via New Orleans, and your agency, which was trying to work it via Omaha? Was it active or not?

A. Oh, yes; quite active.

Q. Do you remember of any rate wars during those days?

A. I remember one very distinctly.

Q. About when was it?

A. That I could not tell you. I have no data to go by. All I can say is that we had a minimum of fifty cents from Chicago or the Mississippi river, I believe it was, to work on; and that is all I do remember about it.

Q. You had a minimum of fifty cents what?

2414 A. Fifty cents a hundred on anything and everything, almost, we would take.

Q. To the coast?

A. To San Francisco.

Q. Yes; that is what I mean—to San Francisco?

A. Yes.

Q. That was given you by the Union Pacific?

A. That was before the time the Interstate Commerce law was enacted.

Q. I understand. That is the time when everybody was out scrapping for business at any price they could get?

A. Yes, sir.

Q. Did the Sunset Route participate in that war?

A. Yes, sir.

Q. What are the elements that enter into effective competition, Mr. Smith, when rates are maintained?

A. Do you mean at the present time?

Q. Yes; or at any time when rates are maintained. Take the coast rates: They are all the same over the different lines. What are the elements that enter into competition for business, in that situation?

A. I can only speak from my standpoint, when there were no cut rates, as you call it. Personality enters a great deal into it; acquaintanceship with the shippers.

Q. What about the furnishing of equipment?

A. There was a time when the Union Pacific, when I represented them, had the first large furniture car on the western lines; and it was not a case of asking for business; it was a case of furnishing cars. They would send word to you if you would furnish cars they would give you business. I have traveled around. For instance, at Columbus, Ohio, I would go there and would not ask for busi-

2415 ness, but different shipping clerks would say, I will give you a car the last of the week, or two cars this week, and I have got three or four cars for you next week. We always kept a number of cars in the Columbus yards on the different lines. Meanwhile the other lines got busy, and the Rock Island, I think it was, came out with a one-foot larger car, and it was strange how soon they dropped the Union Pacific cars.

Q. Then the building of those big cars enabled you to get a lot of business?

A. Oh, yes. Then we had to get out a larger car. I think they have got them up to about fifty feet or more now. I don't know how large they are, since I have been out of it.

Q. Then that is one way to compete, is it—furnish satisfactory equipment?

A. Well, we were up against a tough proposition on account of the tunnels on the Central Pacific. We could only build so high or so wide.

Q. That was a case where the Southern Pacific did block the Union Pacific?

A. That was where they used to get ahead of us.

Q. But you built them as big as the tunnels would stand, did you?

A. Within a quarter of an inch of scraping the side walls, I guess.

Q. What work do solicitors do in order to get business, outside of endeavoring to procure satisfactory equipment?

A. Well, I used to travel around and try to make myself agreeable to all the shippers, and generally give them a little hot air about making a little better time than any other line.

Q. That is usual, isn't it?

A. Yes, sir. That is one of the tricks, I guess.

2416 Q. Did you work tracing cars, looking up claims, and that sort of thing, for the shippers?

A. No, no, I did not have anything to do with that.

Q. You did not do that?

A. Any claims referred to our office were immediately gotten in shape and then sent to the general office.

Q. Did those two lines, when they were in competition, do any advertising to get passenger business?

A. Oh, yes, yes.

Q. Which line did the Southern Pacific advertise—the Sunset Route or the Ogden Route?

A. They advertised principally through tourist sleeping cars from Cincinnati, if I remember correctly.

Q. Which way?

A. Via Cincinnati Southern, I think it was.

Q. To New Orleans?

A. To New Orleans; via New Orleans. We would advertise the same equipment from Chicago.

Q. By the Union Pacific?

A. In connection with the Northwestern.

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Cross-examination by Mr. LOVETT:

Q. You say you advertised the same equipment from Chicago, Mr. Smith?

A. The tourist sleepers.

Q. That is, over the North-Western, the Union Pacific and the Southern Pacific?

A. The Central Pacific, yes, sir.

Q. You mean the line west of Ogden to the Pacific coast controlled by the Southern Pacific?

A. Yes, sir.

Q. The Southern Pacific also advertised the Ogden route
2417 generally, did it not, as well as the Sunset Route, in its advertising matter?

A. I can not recall those features. It may be possible that they did.

Q. You are not certain as to that?

A. I am not certain; no, sir.

Q. You do not happen to remember that they advertised very extensively the three routes—the Sunset, the Ogden and the Shasta? Do you recollect that from their advertising matter?

A. Oh, I remember the Shasta route has been advertised. The only way that I can recall, I call to my mind the Southern Pacific advertising via New Orleans. I believe practically the same advertisement has been in the papers in late years since I left the railroad business. I have seen it time and time again.

Q. It has continued much the same?

A. Yes.

Q. I believe you testified that your solicitation was for the Union Pacific-Southern Pacific line by way of Ogden?

A. Yes, sir.

Q. And so far as California business is concerned, you could not get business for the Union Pacific without also getting it for the Southern Pacific, could you?

A. I had to get it that way. There was no other way to get it there.

Q. You had to get it for the Southern Pacific as well as for the Union Pacific?

A. Yes, sir.

Q. I believe you also testified that when the separate solicitors of the Southern Pacific could not get the freight either by New Orleans or El Paso, they would get it by Ogden, if they could?

2418 A. Yes. I have worked with them myself in that connection.

Q. This territory in which you solicited was very actively solicited by all the lines, was it not?

A. Yes, sir.

Q. For the California business?

A. Yes, sir.

Q. The lines extending toward New Orleans, and then the lines extending southwesterly toward El Paso, and then the lines westerly

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to a connection with the Southern Pacific, or with the Atchison, in the west?

A. Yes, sir.

Q. That is so still, is it not?

A. It is only a presumption on my part. I have been out of it for so many years that I have paid no attention to what they are doing now.

Q. This rate war that you spoke about that occurred many years ago—was not that about 1886, when the Atchison first opened its line to the Pacific coast?

A. The Atchison was mixed up in it, I know.

Q. It was really the Union Pacific and Southern Pacific and their connections as against the Atchison, was it not, for California business.

A. Then it also had—I believe the same would apply via the Northern Pacific by St. Paul.

Q. By St. Paul?

A. Yes.

Q. The Union Pacific and the Southern Pacific were working together at that time in connection with this rate war, were they not?

A. Yes, sir; that is, via Ogden.

Q. You never solicited any business for California points by way of Portland and then down by boat, did you, Mr. Smith?

A. No, sir; I never did.

Q. You never knew of any to move that way, did you?

A. Not from this territory.

2419 Q. Or from any territory, do you know?

A. That I could not say.

Q. I am only asking you of your own knowledge. You don't know any of your own knowledge?

A. No, sir.

2420 J. L. BLAIR,

called on behalf of the Complainant, being duly sworn, testified as follows:

Direct examination by Mr. SEVERANCE:

Q. Where do you live, Mr. Blair?

A. Hamilton, Ohio.

Q. And what is your business?

A. I am secretary of the Niles Tool Works Company.

Q. What is the character of the product manufactured by that company?

A. Manufacture machine tools; heavy machinery.

Q. Is it a large concern?

A. Yes, sir.

Q. One of the largest concerns of that kind in the country, is it not?

A. Yes, sir; it is said to be the largest.
Q. To what part of the country do you ship your product?
A. To all parts of the United States.
Q. Including the Pacific Coast?
A. Yes, sir.
Q. What, if anything, have you to do with the routing of the traffic of that company, Mr. Blair?
A. I have charge of the traffic.
Q. How long have you had charge of the traffic?
A. For about twelve years.
Q. Are you acquainted with Mr. Connor?
A. Yes, sir.
Q. How long have you known him?
A. I could not say as to that; but I have known him ever since he has been the representative of the Southern Pacific.
Q. And you knew him before he was joint agent of the two companies?
A. Yes, sir.
Q. Do you remember when the Union Pacific had a separate
2421 agent here?
A. Yes, sir.
Q. What was his name?
A. Mr. Welch, I believe, was the agent at that time.
Q. You knew him, did you?
A. Yes, sir.
Q. Did you know Mr. Liston?
A. Yes, sir.
Q. And Mr. Smith?
A. Yes, sir.
Q. Previous to the time the agencies of these two lines were amalgamated was there competition for Pacific Coast business between the two?
A. Yes, there was.
Q. Was that active or otherwise?
A. It was active.
Q. And which way did Mr. Connor and his subordinates attempt to route traffic to the Coast?
A. By way of New Orleans.
Q. And Mr. Welch and his subordinates?
A. By way of Omaha and the Union Pacific.
Q. Which way did you ship in those days?
A. We shipped both ways.
Q. Both ways?
A. Both ways.
Q. Divided your business?
A. Yes, sir.
Q. And you still divide it?
A. Yes, sir; we try to divide it.
Q. Do you ship anything via New Orleans now?

A. I do not recall that we have for a long time.

Q. In the days when this competition existed did you ship that way?

A. We did.

Q. Do Mr. Connor or his assistants call on you now and solicit business?

A. Yes, sir.

Q. Which way, if either, do they try to work it now—as between these two routes, I mean.

2422 A. I do not think they express any particular preference as between the two.

Q. What way does your business principally move to the Coast at the present time? Take the California terminals first.

A. I think the greater part of our business that has gone to the Coast has gone by way of Omaha—Union Pacific, and Ogden—Southern Pacific.

Q. What other lines take any of it? Does the Santa Fe take any of it?

A. The Santa Fe.

Q. Do you ship to the north coast, to Portland, Tacoma, and Seattle?

A. Some; not a great deal.

Q. What routes does your Portland business take?

A. Usually the Northern Pacific or Great Northern.

Q. Not usually by the Union Pacific?

A. No, sir.

Q. Did you ever know of traffic moving to California points by way of the Canadian Pacific and boat from Vancouver, when there was a differential that way?

A. I think we made one shipment some years ago to the Mare Island Navy Yard. I do not recall the date, though. I know we did make a shipment once.

Q. There was a differential in favor of that route, was there not?

A. As I remember there was a differential of ten cents a hundred.

Q. What do you think as to the usefulness to railroads of these freight solicitors and commercial agencies for getting business?

A. I believe they are a very useful adjunct to a railroad. They do the railroads a great deal of good in soliciting their business; and they also do the shippers some good.

2423 Q. By "useful adjuncts to railroads" you mean they secure business for the railroads?

A. Yes, sir.

Q. And you say they are useful to the shippers. In what way are they useful to the shippers?

A. By way of looking after shipments after they are started; tracing them; hurrying them forward to their destination; reporting arrivals.

Q. And in that way they secure the good will of the shipper and get further shipments, do they not?

A. Yes, sir.

Q. Assuming the rates are equal, what are the principal elements that enter into the competition for business between lines?

A. I think it is a good deal the personality of the solicitor.

Q. Does the matter of service and equipment enter into it?

A. To some extent, yes.

Q. How are your shipments usually—carload or L. C. L.?

A. Usually carload; in fact almost all carloads; very few less than carloads.

Q. But the shipments are not of a character that require any special kind of equipment, are they?

A. Not often.

Cross-examination by Mr. LOVETT:

Q. Your business for the Pacific Coast is solicited by a great many lines, is it not, Mr. Blair?

A. Yes, sir.

Q. Where is your plant located?

A. Hamilton, Ohio.

Q. It is solicited by the lines leading toward New Orleans?

A. Yes, sir.

Q. Such as the Queen & Crescent, Louisville & Nashville,
2424 and the Illinois Central?

A. Yes, sir.

Q. And then via the Missouri Pacific and other lines leading to the southwest?

A. Yes, sir.

Q. And then by the Rock Island and Burlington and the Missouri Pacific and the other large lines leading westerly, as well as the Union Pacific?

A. Yes, sir. The greater part of our shipments to the Coast is routed by the consignees, or the buyers. In the majority of cases we have no option as to the routing.

Q. The most of your business on the Pacific Coast is to railroad shops, is it not?

A. Yes, sir.

Q. And it is routed by the consignees?

A. By the purchaser, yes, sir.

Q. The shorter and more direct line is westerly, is it not—that is, as against New Orleans?

A. I think so.

Q. Such business as the representatives of the Union Pacific secured when the Union Pacific and the Southern Pacific had separate solicitors for California, went over the Southern Pacific as well as the Union Pacific, did it not? That is to say, over the Union Pacific to Ogden and then over the Southern Pacific from Ogden to the Pacific Coast?

A. Yes, sir, I think so.

Q. That was the only outlet for the Union Pacific, was it not?

A. Yes, sir.

Q. You never shipped anything to California by way of Portland and then by boat from Portland down, did you?

A. Not that I recall.

Q. You never knew of a shipment to go that way, did you?

2425 A. No, sir.

Q. You never shipped any business for Portland by the way of New Orleans, or El Paso, either, did you?

A. No, sir.

Q. I think you said you recalled one shipment to San Francisco some years ago to the Mare Island Navy Yard?

A. Yes, sir.

Q. By the Canadian Pacific?

A. Yes, sir.

Q. That was a government shipment, was it not?

A. Yes, sir.

Q. That is the practice of the government, generally, is it not—to patronize foreign lines wherever it gets a chance?

A. No; the government had nothing to do with that part of it. It was up to the contractors to make delivery to the navy yard.

Q. Up to the contractors?

A. Yes, sir. We were the contractors. In that particular case I remember there was an attempt to investigate it in Congress, but it fell flat.

Q. When did that occur, Mr. Blair?

A. I do not recall the date. Oh, it must have been early in the nineties; I do not recall just when, though; probably 1896 or 1897.

Q. Prior to 1901?

A. Prior to 1901, yes, sir.

Q. Do you know how long that differential was maintained by the Canadian Pacific?

A. No, I do not remember.

Q. Your knowledge was called to it, I suppose, only by this single transaction?

A. Yes, sir.

Q. You do not know that that differential was subsequently withdrawn as the result of an arbitration?

A. No; but I think it was. I think it is not in effect now.

2426 Q. When the Southern Pacific solicitors, before the agencies were consolidated, solicited preferentially by way of New Orleans and El Paso, suppose they could not get it that way, didn't they try to have it sent by way of Ogden?

A. Yes, I think they did, although I do not recall any particular cases to that effect.

Q. You do not recall any particular instances?

A. No, sir.

Q. That would be the natural thing for them to do, would it not?

A. Of course, yes.

Redirect examination by Mr. SEVERANCE.

Q. Mr. Blair, you stated in answer to Judge Lovett that your principal shipments to the Coast were to the railroad shops. At what points are these shops located?

A. There are shops in San Francisco, Sacramento and Los Angeles.

Q. And you say that those shipments are routed by the consignee?

A. Yes, sir.

Q. By the railroad company?

A. Yes, sir.

Q. The shops at Sacramento are Southern Pacific shops, are they not?

A. Yes, sir.

Q. And the shops at San Francisco are what? Southern Pacific or Santa Fe?

Mr. LOVETT. Perhaps they are both.

Q. Or both?

A. I could not say now.

Q. Take Sacramento, for instance: The shops there are Southern Pacific?

A. Yes, sir.

2427 Q. There is no doubt about that, is there?

A. No, sir.

Q. It is the only line there?

A. Yes; that is right.

Q. Over what route does the Southern Pacific direct you to ship to Sacramento?

A. I could not answer that question definitely without referring to some orders we have had. I do not recall any particular cases, but I know we have had shipments there, but I could not recall the particular routing on any particular shipments.

Q. Do you ship anything via New Orleans now?

A. I do not think we do.

Q. Anything that goes by the Union or Southern Pacific, do you not ship it all by the Union Pacific?

A. I think we do.

Q. So that the Southern Pacific shipments to Sacramento do not go over the Southern Pacific to New Orleans, but they go over the Union Pacific from Omaha, and then over the Southern Pacific from Ogden?

A. I could not answer that positively, but my impression is that they do.

Q. What shops are there in Los Angeles?

A. I do not recall now what railroad shops are there.

Q. You can not remember?

A. No, sir.

An adjournment was then taken until the morning of Wednesday, February 10, 1909, at 10.30 o'clock, at the same place.

2428 ROOM 322, FEDERAL BUILDING, CINCINNATI, O.,
*Wednesday, February 10, 1909, 10.30 A. M.*

The hearing was resumed pursuant to adjournment, before the Special Examiner, Hon. Sylvester G. Williams, at the above time and place.

Present: On behalf of the Complainant: Mr. C. A. Severance, Mr. G. E. Husted. On behalf of the Defendants: Mr. R. S. Lovett.

## A. P. GOTHLIN,

being duly sworn as a witness on behalf of the Complainant, testified as follows:

Direct examination by Mr. SEVERANCE:

Q. Mr. Gothlin, where do you live?
A. Columbus, at the present time.
Q. What is your present business?
A. I am a member of the Railroad Commission of Ohio.
Q. How long have you been a railroad commissioner?
A. Since August 1, 1906.
Q. How many members are there of the Railroad Commission of Ohio?
A. Three.
Q. How are they appointed, or elected?
A. They are appointed by the Governor.
Q. For how long a term?
A. Six years.
Q. You have been in since August 1, 1906?
A. Yes, sir.
Q. Previous to that time what was your business?
2429 A. I was traffic manager for the National Cash Register Company of Dayton, Ohio.
Q. How long were you traffic manager of the National Cash Register Company?
A. From August, 1898, to August, 1906.
Q. Previous to August, 1898, when you became traffic manager of the National Cash Register Company, what was your business?
A. For nine years I had been general agent of the Wisconsin Central Railway, at Cincinnati: four years of that time I was general agent of the Northern Pacific and Wisconsin Central jointly, and the last four years of that time I was with the Wisconsin Central alone.
Q. At the time when you were the general agent of the Wisconsin Central and the Northern Pacific, that was the time when the Northern Pacific had a lease of the Wisconsin Central?
A. Yes, sir: from 1889 to 1893.
Q. Previous to your engagement by the Wisconsin Central, what was your business?

A. I was with the Wisconsin Central, in Pittsburg, from 1886 to 1889; and prior to that, from 1883 to 1886, I was traveling freight agent for the Chicago & North-Western.

Q. What was your position with the Wisconsin Central at Pittsburg?

A. General agent; freight department.

Q. And at Cincinnati did your jurisdiction extend over both freight and passenger, or only freight?

A. Well, for a very short period in 1897, or 1896, I had jurisdiction over both; but for the most of the time it was over freight only.

Q. To what parts of the United States did the National
2430 Cash Register Company ship its product?

A. They shipped all over the United States, Canada, Mexico; in fact all over the world.

Q. Also all over the world?

A. Practically so, yes, sir.

Q. Did you have a large business on the Pacific coast?

A. Quite a large business, to San Francisco and Los Angeles.

Q. Where did you say their factory is? Dayton.

A. Dayton, Ohio.

Q. How did the bulk of the business of the National Cash Register Company move to the Pacific coast, say from 1898 on, when you were with them?

A. During the time that I was connected with the Cash Register, the most of their 'Frisco business went via New Orleans and the Southern Pacific. Occasionally, for a short period it would go by Omaha; but usually that way. The Los Angeles business usually went by the Santa Fe.

Q. Were you acquainted with the Southern Pacific representatives in this territory?

A. Yes, sir.

Q. Who was the Southern Pacific representative; that is, who was in charge at the time you went with the National Cash Register Company?

A. Mr. Connor.

Q. And he continued to be, did he not?

A. Yes, sir.

Q. Who was representing the Union Pacific here at that time?

A. I think, if I remember correctly, that when I first went there in 1898, Harry Smith was practically representing them—Mr. Welsh, the nominal representative, being incapacitated by sickness for several years before he retired. Shortly after that, if I remember correctly, when Mr. Welsh was superseded, Smith left very soon
2431 after that and Mr. Liston took charge. I think there was another man in between for a short period, but I do not recall him.

Q. What was the fact as to whether the Union Pacific and the Southern Pacific were competing with each other for coast business prior to 1901?

A. I never had any doubt as to that. That was always my impression, judging from my interviews with their representatives.

Q. Did the Union Pacific agents, and the Southern Pacific agents, both call on you and solicit business?

A. Yes, sir.

Q. Which way did the Southern Pacific agents endeavor to route the traffic?

A. Its preference was by New Orleans.

Q. And the Union Pacific?

A. By Omaha, or Kansas City.

Q. You said that the bulk of your business to San Francisco moved by New Orleans. Was there any special reason for that?

A. Well, there were several reasons. One was, in my experience, that we generally got better service for less than carload freight. Ours was less than carload freight. For a large part of the time there was a package car from Cincinnati through to San Francisco—I do not just recall how long that was on, but for quite a long time—which was an advantage for less than carload shipments.

Q. Just explain what a package car is, Mr. Gothlin.

A. The Southern Pacific, in connection with the Q. & C., ran one or more cars daily loaded with less than carload freight through from Cincinnati to 'Frisco, via New Orleans. That was one of the arguments, and a very good argument, used by the Southern Pacific for securing less than carload freight for San Francisco.

2432 Q. How frequently did the National Cash Register Company ship to San Francisco?

A. Practically daily. The shipments were of various sizes. Their shipments were not large in themselves, but in the aggregate they amounted to quite a good deal.

Q. Were there other reasons for giving the business to the Southern Pacific, aside from the fact that they had this package car?

A. Yes, sir. I was personally acquainted with Mr. Connor; I had known him for a number of years. Furthermore, he rendered myself and the company I was working for favors, on several occasions, which were perfectly legitimate, and yet they were favors which we recognized.

Q. Mr. Gothlin, you have said that for a long time you were general agent of the Wisconsin Central and the Northern Pacific, and for a while traveling agent of the Chicago & Northwestern?

A. Yes, sir.

Q. What is your opinion as to the value to railroad companies situated as these transcontinental lines are of local representatives occupying positions such as Mr. Connor occupies?

A. The value to the railroad?

Q. Yes. In getting business.

A. Well, when I was representing the western railroad, I was of the opinion that I was of considerable value to them; and I have not changed that opinion very much. They bring the railroad in direct contact with the shipper. And I think I can speak with con-

siderable experience, because, when I first started to travel in
2433 this territory, to have a western representative meet the eastern shippers direct was comparatively new, and we frequently found that many of the eastern shippers were unacquainted with the geography or the identity of the various western roads at all. They simply knew—for instance, a shipper at Springfield who wanted to ship to Omaha or San Francisco, he simply delivered it to the initial line. The western agents educated them to routing their business—that is, the earlier ones. After a while it became a habit.

Q. What services do these agents legitimately render to shippers, which are of value to the shippers and that aids them in getting business?

A. If a representative of a western line, or any line for that matter, looked after the interests of the individual shippers, at the same time looking after the interests of his own line as he should, he could be of great value to both. Now, in my own experience it was frequently possible for me to furnish equipment to shippers, and I think that is the experience of a great many of the western agents. They take upon themselves the burden of securing the equipment.

Q. Suppose that an agent is placed as you were—not the agent of the initial line, but of a western line: how would you go to work to get equipment in this territory?

A. At one time the road that I represented had furniture equipment—that is, suitable for bulky freight, such as buggies and furniture. Take the Big Four Railroad for example: I had an arrangement, and I think many of the other western agents also had, with
Mr. Cavanagh, superintendent of car service, to keep a certain
2434 number of those cars in Indianapolis, and on my order he would send them to Cincinnati or Columbus or any other place where we wished to load them, and have them there promptly, thus relieving the initial line agent of any bother or worry, and also the shipper, which was considered quite an advantage to the shipper. That was one way.

Q. And was that of assistance to you as an agent in securing business?

A. Undoubtedly, yes, sir; because if we got the car, we got the business. If we furnished the car and loaded our car, we got the business.

Q. I think in talking with you last night you spoke of some service you were able to perform for the potteries in Ohio, East Liverpool, which enabled you to get business.

A. The East Liverpool potteries are located at a non-competitive point on the Pennsylvania lines. They ship to all over the west practically. They were not particularly desirous for cut rates, but they liked to be in position to know what the rates were. Myself and one or two other western agents located in Pittsburg would prepare sheets showing all the western towns of any size, in alphabetical

order, and the through rates made up by combining the Pennsylvania rates to Chicago or the river, as the case might be, plus the rates beyond, on the commodities in less than carload lots, so they would have those rates before them. They seemed to consider that quite an advantage, to be able to know that, and it secured for our lines quite a good deal of business. As new tariffs came out and changes were made, we would change those sheets. We kept them in the hands of the shippers all the time. And we did that for a good
2435 many other shippers through the country.

Q. And in that way secured business?

A. Yes, sir.

Q. I think you also spoke about the service you were able to render the tobacco people in Louisville, in connection with shipments to Canada.

A. The National Tobacco Works of Louisville became one of my best patrons, and I first secured their business by being able to render them a service in this way: They shipped to Vancouver, and on export business were entitled to a refund of the revenue tax paid at Louisville. It seems that the government official at the boundary was rather lax, and they were frequently held up for many months getting the refund. I instituted a series of tracings by which I could advise them very promptly of the delivery to the passing of the boundary from the United States official, which would enable them to secure their refunds much more quickly than they had before. They seemed to consider that a favor and an advantage, and after that, for a number of years, without further solicitation at all, except tracing such business as they cared to have traced, I had their business steadily, which amounted to quite a good deal for our little road—250,000 pounds in one month, at less than carload—good paying freight; that is, tariff rates.

Q. That was when you were with what roads?

A. When I was with the Wisconsin Central, and when I was with the Wisconsin Central and Northern Pacific jointly. The same way at Middletown, Ohio. By tracing certain of their shipments and keeping them posted promptly, they considered that a sufficient
2436 favor—an advantage to them to know those things—to give me practically all of their competitive business in that territory, which amounted to a great deal.

Q. This business to Vancouver, which you spoke of—these shipments of tobacco for Canada, moved over the Wisconsin Central and Northern Pacific?

A. Yes, sir.

Q. To Tacoma or Seattle?

A. Yes, sir; and then was delivered to the Canadian authorities somewhere there. I think the Government delivery was made on the boat after it left Seattle. I am not sure how it was.

Q. It went up to Vancouver on the boat?

A. It left for Vancouver.

Q. I say it went up to Vancouver from the Sound port.

A. That is my memory, yes, sir.

Q. Now, those are examples of certain services that can be performed by soliciting agents, are they?

A. I think so, yes.

Q. That were performed by you?

A. There are many other ways. Mr. Connor, on several occasions when I was a shipper, rendered me favors that were perfectly legitimate. For instance, we had occasion to ship a carload of secondhand registers that had accumulated in San Francisco. There was no carload rate at that time in the western classification on cash registers. We could not afford to pay the class rate, which would have amounted to something like $1,000, or $1200. He secured the action by the Transcontinental Association, which made us a $300 rate—that is a dollar rate for 30,000 pounds (we did not have quite 30,000 pounds, but sufficient), and, knowing that he took the trouble to secure
2437 that from the Transcontinental Association, of course it was routed by the Southern Pacific Railway. Another time he secured me a very good rate to Australia. We were shipping via New York and were willing to pay a higher rate by 'Frisco, on account of the time we would save; and he secured action of the Transcontinental Association and secured that rate for us. On another occasion I wanted a commodity rate on a certain class of paper that we were shipping in quantities, and I have forgotten now whether he secured that or not, but my impression is that he did; at any rate, we recognized his efforts in that line and felt under obligations correspondingly.

Q. Having these instances that you have mentioned, and your experience generally in mind, it is your opinion, is it, that the location of commercial agencies in this eastern field, by transcontinental lines, is a valuable method of securing business for those lines?

A. I think so. I think they are also of value to the shippers; it enables them to have a friend at Court, so to speak.

Q. You say you continued with the National Cash Register Company until 1906?

A. Yes, sir.

Q. Then, you were with them for several years after Mr. Connor became the joint agent of the Union Pacific and Southern Pacific?

A. Yes, sir.

Q. After that time did either Mr. Connor or his subordinates call on you in reference to securing business?

A. Yes, sir.

Q. Did they indicate any preference for one route to the coast over the other, when they represented both?

A. Well, to be frank, I never felt but what Mr. Connor per-
2438 sonally always stuck to his first love. I believe, from what I know of him, up until the last time I had dealings with him as a shipper, that he was always inclined towards the southern route. Mr. Liston, who was supposed to represent the Union Pacific, always made it clear to me that if the business were already moving by the

Southern Pacific, he did not care to interfere; if, however, it was going by the Santa Fe he would like to have it by the Union Pacific.

Q. That is after the consolidation of the agencies, you mean?

A. Yes, sir.

Q. Well, prior to the consolidation of these agencies, when the Union Pacific had a separate soliciting agency here, they worked exclusively, I suppose, for their own route?

A. Oh, yes.

Q. And against all others, including the Sunset Route?

A. Prior to the consolidation the Union Pacific, of course, did not evince any indifference to the Southern route. They wanted to get it whether the Southern Pacific had it or not, to the best of my memory.

Q. Mr. Gothlin, do you know anything about any shipments to San Francisco by way of the Canadian Pacific to Vancouver and boat line from there?

A. I carried some wire from Pittsburg, myself, about 1889, if I remember correctly; I think it was from the Oliver Roberts Wire Company. I know I was rather surprised to get the business, but I got it.

Q. How large a shipment was it?

A. It was a very large shipment; I think as much as thirty or forty cars, if I remember correctly.

2439 Q. How did that move?

A. By Wisconsin Central, and, my memory is it went Great Northern to Winnepeg, and then Canadian Pacific, and then boat line from there down.

Q. Was there a differential at that time in favor of that route?

A. My memory is that there was a very small differential.

Q. And you worked in connection with the Canadian Pacific or Great Northern and got that freight?

A. That is my memory of it, yes, sir.

Q. Do you remember anything about an active competition between the Southern Pacific, the Union Pacific and yourself for the shipment of a lighthouse from Mount Vernon to Astoria?

A. There was a lighthouse moved from Mount Vernon to Astoria in about 1889.

Q. Astoria is in Oregon?

A. Astoria, Oregon,—from the John Cooper Company. It moved via C. A. & C., Wisconsin Central and Northern Pacific. From the time that the shipment first became known to the traveling agents through the country until it moved, was quite a long period, five or six months; and, to the best of my memory, every western agent in the country was after it.

Q. Well, by "every western agent" you mean the representatives of the Union Pacific and the Southern Pacific among others?

A. My impression was that the Southern Pacific people were after it also at the same time.

Q. The Southern Pacific and Union?

A. Southern and Union and every intermediate line. As is
2440 usually the case when there is a large shipment—this was a large shipment you understand, and when large shipments were in prospect nearly every traveling agent in the country who could take the business was after it, of course.

Q. Do you remember anything about a competition over the shipment of a steel bridge from Massillon, Ohio, to a point in Oregon south of Portland?

A. Some time in the early '90's (I do not recall just exactly the date) the Massillon Bridge Company, I think it was, had a bridge for a point in Oregon south of Portland (just where I do not recall) for which I, among other agents, was competing, and it went by the Louisville & Nashville and the Southern Pacific. The reason it was called to my memory is the fact that Mr. Crutchfield, who was traveling for the Louisville & Nashville, after the movement, took frequent occasion thereafter to have a little fun at my expense, at my not knowing that he was my competitor before.

Q. Was the Union Pacific also trying to get that shipment?

A. My impression is that all the agents were at that time. They generally were. I could not say specifically of knowing of them going there for it.

Q. You spoke of Mr. Connor securing the making of some commodity rates for you by the Transcontinental Association. How are transcontinental rates ordinarily made?

A. Well, I have never attended a meeting of any of the Transcontinental Associations, but my understanding is that proposals for changes of rate of any kind are discussed and action taken at the meeting; afterwards they are published by the agent
2441 of the Transcontinental Association, who publishes the tariff.

Q. And those rates are the same by all routes?

A. Yes, sir; ordinarily. I think there have been times when perhaps to the north coast, Vancouver and points there. I think the rates sometimes are five cents above the straight rates, something of that sort; but they are all published rates.

Q. What is your opinion as to the influence that the Union Pacific, considered apart entirely from the Southern Pacific, would legitimately have in the fixing of transcontinental rates to California points, San Francisco, by reason of the possession of a through rail line to Portland, in connection with the boat line from there to San Francisco?

A. Well, I see no reason why, if the Union Pacific were a separate and distinct organization and had an active and vigorous management, they could not practically dictate to the Transcontinental Association any policy that they might see fit to adhere to strictly. That is, they could at least be in position not to be dictated to, not coerced into anything that they did not care to admit.

Q. As Railroad Commissioner of Ohio, do you have to do with the consideration of rates—does your Commission?

A. Intrastate rates.

Q. That is what I mean—local rates.
A. Yes, sir.
Q. That is a large part of your duty?
A. Yes, sir.
Q. The questions of rates are tried out before your body as they are before the Interstate Commerce Commission, are they not?
2442 A. The same manner, but limited in scope. We are limited to the state.
Q. Yes: I understand—to local state rates.
A. Yes, sir. Practically the same.

Cross-examination by Mr. LOVETT:

Q. Does the Ohio Commission exercise the power of rate-making, Mr. Gothlin?
A. Well, that depends upon what you mean by rate-making. We have not power, such as the Texas Commission has, to make blanket rates. We have power, upon complaint, to substitute a specific rate deemed unreasonable.
Q. You expressed the opinion, if I understood you correctly, that the Union Pacific, by reason of its control, or rather by reason of its ownership of the line from Omaha to Ogden, and its control of the Oregon Short Line and the O. R. & N., leading up to Portland, is in a position, if absolutely independent of other lines in the matter of ownership and control, to practically dictate to the transcontinental lines, or at least not to be dictated to by any transcontinental lines in the matter of transcontinental rates. Have you considered the relative situation of the Union Pacific and the Southern Pacific and the probable effect on the Union Pacific of a policy of that sort, Mr. Gothlin?
A. In what way?
Q. Well, you understand, do you not, that the Union Pacific line from Omaha to Ogden is practically a straight line across that portion of the continent, and that at Ogden it connects with
2443 the Central Pacific, controlled by the Southern Pacific, which is practically a continuation of the line to the Pacific Ocean?
A. Yes, sir.
Q. And that the Union Pacific is an intermediate line, or link, in the system of transcontinental lines, about 1,000 miles in length, and that from Ogden to San Francisco (that is, Ogden being the western terminus of the Union Pacific proper) it is about 850 miles, and that from Ogden to Portland the distance is approximately 800 miles.
A. You mean by way of Sacramento?
Q. No; by way of the Oregon Short Line, and the O. R. & N.
A. Well, they would come back to Granger, then?
Q. No. From Ogden or from Granger, I don't care which.
Mr. SEVERANCE. It leaves from Granger.
Q. The Oregon Short Line connects with the Union Pacific at Granger?
A. Yes, sir; that is my understanding.

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Q. And also at Ogden?

A. Yes.

Q. And traffic moving to Portland could go either by way of Ogden or diverge from the Union Pacific main line at Granger. In either event, Portland is some 800 miles away from the Union Pacific line, and it is more than 800 miles from Portland to San Francisco, is it not?

Mr. STUBBS. About 777.

Q. Well, it is 850 miles from Ogden to San Francisco, and it is 775 or 800 miles from Portland to San Francisco, and approximately the same distance from Portland to Ogden, or a little greater to Granger. Now, from Portland the Union Pacific, in order to get to California, would have to use a boat line, would it not, in the
2444 case you have assumed, in order to reach from Portland to San Francisco?

A. Yes, sir.

Q. Suppose the Union Pacific should attempt to use that line by way of Portland, in carrying out the policy that you have suggested against the Southern Pacific, and assuming that the management is entirely separate and distinct, don't you think that the Union Pacific would suffer a great deal more than it would gain, inasmuch as the Southern Pacific would naturally retaliate by diverting from the Union Pacific at Ogden the traffic otherwise interchanged and giving that traffic to the Denver & Rio Grande? Don't you think, as a traffic proposition, that the Union Pacific would suffer by that policy very much more than it could possibly gain?

A. I never knew of a rate war in which both lines did not suffer the loss of revenue.

Q. Well, but from the loss of business, too?

A. I do not know just why it should lose business particularly if it made the rates that were satisfactory.

Q. Well, whatever rates it made, under the existing law, at least, it would have to make openly?

A. Oh, undoubtedly; undoubtedly.

Q. And you do not doubt but what the other line would meet those rates, do you?

A. Surely.

Q. And don't you think in view of the connection at Ogden, the natural connection there, that the Union Pacific would lose very much more business by the diversion of the Southern Pacific of the business to the Denver & Rio Grande than it could possibly gain by going by way of Portland?

A. I do not know that I quite follow you. But what would
2445 make them lose the business? From the eastern lines you mean, or from the east-bound business coming from California; is that it?

Q. Both ways. As it is now, the Union Pacific is the preferred connection of the Southern Pacific; they work together.

A. Yes, sir.

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Q. The Southern Pacific would naturally give its unrouted traffic to the Union Pacific—that is, in through rates. Now, if the Union Pacific were to attack the Southern Pacific in the manner that has been suggested, by way of Portland, the Southern Pacific is not dependent upon the Union Pacific at Ogden for an eastern connection—it could use the Denver & Rio Grande—and it would be perfectly natural, would it not, for the Southern Pacific to meet this move of the Union Pacific by diverting the traffic controlled by it to the Denver & Rio Grande?

A. I think that is quite possible.

Q. Well, is it not perfectly natural? You do not suppose that if the Union Pacific were to attack the Southern Pacific in that way, by attempting to use this Portland route, that the Southern Pacific would not retaliate, do you?

A. Please let me see if I understand you correctly and if we understand each other. If there were a question arising between the management of the Union Pacific and the Southern Pacific in the Transcontinental Association, which they could not agree upon, and determined to fight it out—is that what you mean?

2448 Q. I mean the case that you have assumed, where the Union Pacific would attempt to dictate to the transcontinental lines, by the use of the Portland route, whatever that may be. I am dealing with the case that you have assumed.

A. Well, this is what I had in mind, if you will allow me: assuming that the Union Pacific were entirely *independent of any* proprietorship of the Southern Pacific, and a question were to arise in the Transcontinental Association, in which the Union Pacific could not agree with the Southern Pacific—thinking, perhaps, that they were attempting to coerce, or something of that sort, I see no reason why, with the adequate ocean service from Portland, they could not put in from the east, from a large part of this territory, a service that would be equally, if not more, satisfactory to the shippers in this section of the country than via New Orleans; *and if* they kept the rates down to a point that the Southern Pacific did not care to go, they would naturally get that business.

Q. May I digress just a moment to ask if you ever knew of them to do that?

A. No, I did not. I do not know much about their carrying business for 'Frisco by Portland. I do not know about their having done it.

Q. Is it not true, Mr. Gothlin, that you never heard of the Union Pacific attempting to work the Portland route for California business?

A. I think that is true. I would not say absolutely that I never heard of it. I will say this: that I do not recall particularly ever having it called to my attention that they have done that. I never heard particularly of there being any great amount of scrapping between the lines in the Transcontinental Association either.

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Q. Well now, to return to the proposition that we were
2447 discussing a moment ago. In that case, if the Union Pacific should, on account of differences in the Transcontinental Association or any other association, or for other reasons, use that Portland route for Southern Pacific business, or California business—don't you understand that the great bulk of the California business handled by the Union Pacific—practically all of it—is interchanged with the Southern Pacific at Ogden?

A. That is my understanding. That is their natural route to California.

Q. It always has been?

A. That is my understanding, yes.

Q. And it is the only outlet that the Union Pacific has ever had to California, except this possible outlet by way of Portland that you have never known them to use.

Mr. SEVERANCE. Except the Salt Lake route now.

Mr. LOVETT. I am speaking of the conditions existing before that.

A. That is my understanding. That would be the natural way.

Q. The difference between the situation of the Union Pacific and the Southern Pacific at that point is this, is it not—that the Union Pacific has no outlet for California except the Southern Pacific, whereas the Southern Pacific has the Denver & Rio Grande as an outlet for the east: and, coming back to the proposition that I stated just now, as a matter of plain common sense, as well as traffic theories, if the Union Pacific should attempt to use this Portland route in any controversy with the Southern Pacific, the Southern Pacific management, if controlled by the considerations that control other people, would divert all the traffic it could from the
2448 Union Pacific to the Denver & Rio Grande?

A. It is quite possible.

Q. Quite probable?

A. Quite probable I will say. That would be natural.

Q. Now, as against a line of that sort, that direct short rail line, don't you think that the Union Pacific would inevitably lose vastly more in that controversy by that diversion of traffic than it could possibly gain by the use of the route by way of Portland? Now you have some knowledge of traffic, of course. Would not that be your opinion?

A. My experience of rate wars is they are senseless anyway, and the management does not care how much they are losing. Their object is to hurt the other fellow. And undoubtedly the Union Pacific could inflict more damage upon the Southern Pacific, I believe, than it could possibly receive if the question were one that they felt justified extreme measures of that kind.

Q. Do you think that the Union Pacific could inflict more injury on the Southern Pacific in that controversy than it would receive by the diversion of the traffic from it?

A. I think the experience of rate wars will show that the smaller line can always hurt the larger line in a larger ratio than the damage

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to itself. The Southern Pacific, you know, has more interests than the line from Ogden to Frisco. They have the interests of the long haul line from New Orleans, and I do not have much doubt but that the Union Pacific could, if it saw fit to take drastic measures, arrange rates so that from this whole territory the New Orleans route would get scarcely anything.

2449 Q. Do you think any intermediate line would do that?

A. I hardly think so; because the situation is a little different. To the Missouri River and Kansas City there are a great number of lines, and I do not believe there is any one of those relatively as strong as the Union Pacific. There are five connections at Omaha, I believe, and several at Kansas City, of the Union Pacific, and no one of those would be as strong in a matter of that kind as the Union Pacific would with its two lines from Kansas City and Council Bluffs.

Q. You think that in the matter of rate wars, such as you call that controversy, the Southern Pacific would suffer more than the Union Pacific because it has more at stake; is that the idea?

A. That is the idea. In the old days, before railroad managers saw the folly of it, when we used to have those extreme wars, the bigger the line the more it suffered.

Q. The Southern Pacific would not suffer more per mile of road than the Union Pacific, but it would suffer more in the aggregate?

A. No; their revenue is not in that proportion.

Q. How is that?

A. Their revenue is not per mile, either.

Q. It would suffer more in the aggregate, you think?

A. I think it would suffer more in the aggregate, yes.

Q. Now, Mr. Gothlin, assuming that the Southern Pacific does a very large business to and from California, which is interchanged with the Southern Pacific at Ogden, and the Southern Pacific should divert every pound of that business that it could control to the Denver & Rio Grande, and should cancel its through rates with the Union Pacific——

A. Which it could not do.

2450 Q. Why not?

A. Because the Interstate Commerce Commission would not allow it.

Q. Why, they have got another practicable route, according to your testimony, by way of Portland?

A. Which—the Union Pacific?

Q. Yes.

A. Oh, undoubtedly. But I do not think for a minute that the Interstate Commerce Commission would allow the cancellation of rates and divisions by Ogden.

Q. You do not think they would. Why? Have they got the power if there is another practicable route?

A. Sir?

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Q. If I understand the law of Congress, they have not got the power, if there is another practicable route—and you say that this Portland route, if I understand you, is a practicable route. So, in that case, the Southern Pacific would be at liberty to cancel the rate with the Union Pacific absolutely?

A. I do not know that I understand the legal situation as you put it. I do not profess to have the legal knowledge that you have, and I would not want to put my opinion against yours on a legal question.

Q. Let us take your view of it, Mr. Gothlin. Assume that they have not got the power to do it; you are aware, are you not, that the Supreme Court of the United States has held (and in the case of the Southern Pacific, too) that it has the right, as any carrier has, to control the routing of traffic beyond its own line?

A. I think that was true in regard to fruit.

Q. Yes.

A. It was a fruit case, was it not?

Q. Yes.

2151 A. Whether that is true with regard to all business, I am not sure. There are certain special conditions in regard to fruit, you know, cars and so forth.

Q. You do not know whether the decision of the Supreme Court turned on the character of the traffic or on account of the legal questions involved, do you, Mr. Gothlin?

A. I would not say as to that; but the impression I had was that the character of the traffic had some bearing on the decision.

Q. You do not understand, then, that the Supreme Court of the United States has decided that the carrier on which the traffic originates has the right to route that traffic in interstate shipments?

A. In every case?

Q. Generally, I will say.

A. Generally? I did not so understand it, no. And I know the practice has not been among railroads to refuse shippers the right to route, even since that decision.

Q. You understand that the right of the carrier is limited, then, simply in the case of oranges and other fruits?

A. I would understand that if a railroad should give a bill of lading to a given point at a given rate, being responsible therefor, that it ought to have the right to control the routing. But I understand further that the Interstate Commerce Commission has held to this in their conference rulings, in the matter of traffic made up on combination of locals; that if the shipper does not specify a routing, the initial line shall be responsible for sending by the route which makes the lowest combination; but their responsibility ceases if the shipper has specified a routing. Now, that would seem

2152 to indicate that the Interstate Commerce Commission themselves admit the right of a shipper to route.

Q. Yes. You understand also that they held that he had the right to route the oranges, too, don't you?

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A. Well, that was what brought the case, I guess.

Q. Yes. And the Supreme Court did not happen to agree with him.

A. They did not agree with him, no, sir. But these other rulings have been subsequent to that.

Q. Subsequent to the decision in the orange case?

A. Yes. However, Judge, I don't want to be considered here as assuming to have any legal knowledge in the matter.

Q. It is your understanding, then, Mr. Gothlin, that the Southern Pacific would not have the right to cancel the rates with the Union Pacific at Ogden if the Union Pacific were using the Portland route against it; and also that it would not have the right, even with those rates in, to control the routing of the traffic as against the Union Pacific; and your opinion as to the power of the Union Pacific, by virtue of this line to Portland, is based upon that understanding of the relative rights of the Union Pacific and the Southern Pacific; is that true?

A. That question is rather long and involved. Will you allow me to answer it in my own way?

Q. Yes, certainly.

A. As long as a published tariff shows more than one combination of routes, my opinion has always been that the shipper had the right to select those routes. For instance, if the Pennsylvania Railroad from Cincinnati should publish a tariff to St. Paul, and in
2453 that tariff were shown the Chicago & North-Western, the Burlington, the Great Western, the Wisconsin Central, and the others, all on a parity in the tariff, I have been under the impression that that very tariff would give the shipper, when delivering that shipment to the Pennsylvania, the right to dictate which of those routes he should take beyond—that they were all on a parity so far as the connecting line and the Pennsylvania were concerned.

Q. And your opinion that the Union Pacific could inflict more damage on the Southern Pacific that the Southern Pacific could inflict upon it, is based upon that understanding of the power?

A. Largely, yes sir; although, strictly speaking, I was thinking more particularly of the west-bound business than the east-bound.

Q. Of the west-bound business?

A. More particularly, yes, sir—which they would originate, so to speak; that is, business which would go over the Union Pacific rails before it struck the Central Pacific.

Q. I will return to the west-bound business in a moment. But coming back to the basis of your opinion, I wanted to get that clear, Mr. Gothlin. Your understanding is also, I believe, that the Southern Pacific would not have the right to cancel its rates with the Union Pacific in the case that you mentioned?

A. Yes, sir. Now please let me qualify that. I do not mean to say it would not have a right to cancel rates, but that it would be compelled to put in through rates of some kind.

Q. With the Union Pacific?

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A. With the Union Pacific—if the Union Pacific saw fit
2454 to complain to the Interstate Commerce Commission.

Q. That it could not cancel its transcontinental rates with the Union Pacific and establish them with the Denver & Rio Grande?

A. I do not believe they could. That is my opinion. And furthermore, they would not be allowed to cancel their divisions.

Q. Would not be allowed to cancel their divisions?

A. I don't think they would.

Q. And that is your view of it in expressing the opinion that you expressed?

A. Yes, sir; undoubtedly.

Q. Now, with reference to the west-bound business, you said you had that more particularly in mind?

A. Yes, sir.

Q. Very little transcontinental business originates on the Union Pacific, does it not?

A. Very little originates on the Union Pacific proper, I should imagine.

Q. Practically all of it is received from other lines?

A. They have six or seven connections at Kansas City and Council Bluffs from which they take business.

Q. And you think that the Union Pacific could work that business by way of Portland to California points, as against the Southern Pacific at Ogden?

A. I believe they could if the necessity required it. I do not say that it would be as good a route as via Ogden.

Q. When they would get that business by boat down to Portland they would have to use either the Southern Pacific or the Atchison to get into the interior, would they not?

A. Oh, yes. The interior rates, however, are based upon arbitraries.

2455 Q. Yes, ordinarily; but in rate wars all bases are upset usually, are they not?

A. My understanding of the transcontinental business is that the great bulk of it is consigned to dealers at the terminal points.

Q. And then shipped back into the interior?

A. Shipped into the interior by dealers at San Francisco, Los Angeles, Portland, Seattle and Tacoma.

Q. Is the fruit traffic a large traffic in California?

A. I never had any experience in the fruit traffic, except the dried fruit traffic from the north Pacific coast. I never had any experience in the fresh fruit traffic at all.

Q. Do you think that the citrus fruit traffic could be handled by the Union Pacific by way of Portland as against the other routes?

A. I think that is very doubtful. I think that is one thing that the Southern Pacific, with their lines in California, would probably have, you might say, almost absolute control of. If that be a factor of the total business, that amounts to a great deal. I do not know what proportion it is.

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Q. You do not know whether it amounts to much or not?

A. I do not know what proportion the revenue from the citrus fruit business is.

Q. You do not know the distance from Portland to San Francisco, do you, Mr. Gothlin?

A. I do not exactly know. I was under the impression that the Southern Pacific's line from Portland to San Francisco was in the neighborhood of 600 miles; and the boat line would be just about the same, I imagine.

Q. Of course the boat line goes down the river for a considerable distance.

2456 A. From Portland to the mouth of the river and down, yes.

Q. How far inland is Portland, do you know?

A. I don't know exactly what the distance is from the mouth of the river.

Q. About 100 miles, is it not, something like that?

A. I wouldn't think it was quite that far. I thought it was about 80; something in that neighborhood.

Q. I believe you also testified that you never heard of the Union Pacific at any time attempting to use that route for California business?

A. I did not quite say that, I think. I said I didn't recall it. I am not sure that I never heard of it using that line.

Q. Well, when you were in the freight-soliciting business you never knew of it to use that line for California business, did you?

A. I do not recall of any circumstance, no, sir.

Q. And when you were traffic manager for the National Cash Register Company you never shipped anything that way, did you?

A. Oh, no.

Q. You spoke of a bridge shipment from some place in this state to a point south of Portland that went by way of the Louisville & Nashville and the Southern Pacific.

A. Yes, sir.

Q. To what point did that shipment go, do you remember?

A. Where it went to?

Q. Yes.

A. I don't recall.

Q. It was to a point south of Portland, wasn't it?

A. Somewhere south of Portland, yes.

Q. It was a local point on the Southern Pacific, was it not?

A. I think it was.

2457 Q. No other line reaching there?

A. Well, the Northern Pacific had rates there, you know. We often took freight for points south of Portland in Oregon based on the Portland rate plus the arbitrary. You know to Albany and Corvallis and points south of that there were certain preferential rates that enabled the Northern Pacific to get in there.

Q. Under existing tariffs?

A. Yes, sir.

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Q. And on Southern Pacific points?

A. Yes, sir.

Q. But after you got above navigation on the Willamette river it was local strictly to the Southern Pacific, was it not?

A. Yes; but the Northern Pacific has taken freight for points above Corvallis. I have forgotten how far down the line you got before the arbitrary from Portland grew to be higher than the arbitrary from the nearest terminal in California. But you could go down quite a ways; you could go below Albany and Corvallis.

Mr. SEVERANCE. You mean "above?" You said "below" in Oregon. You mean above the river?

WITNESS. I mean south.

Q. This shipment of nails by the Canadian Pacific from Pittsburg, that you testified about—when was that?

A. I think it was in 1889, as near as I can recall: 1888 or 1889, I would not be sure. I left there in 1889.

Q. Was that during the time that the Canadian Pacific was making a contest for a differential line to California?

A. I do not know about their contest.

Q. You did not know about that?

A. I know—that is, I recall, not very definitely, that for a
2458 period of time there was a slight differential via the Canadian Pacific to San Francisco, by boat from Vancouver.

Q. And this shipment about which you testified was moved under a differential?

A. That is my memory; but I don't think that was the object. I do not think the differential was the object in moving. The real reason why it went that way was that the man who was shipping was working the direct lines, one against the other, trying to get something.

Q. Trying to arouse suspicion?

A. He shipped it as a blind. I ascertained that afterward. They were accusing each other of having cut the rate.

Q. You think that was the real reason it moved that way?

A. Yes.

Q. Rather the exception? You were surprised when you got it, I believe you testified?

A. Somewhat, yes, sir. Very much gratified, however.

Q. Yes, of course. That is the only important shipment that you recall as moving that way, isn't it, Mr. Gothlin?

A. Yes. I know that we put in oil rates—that is, the Wisconsin Central joined with the Canadian Pacific and put in oil rates to enable the independent oil men in Pennsylvania to get into 'Fri-co; but I do not remember how much they carried on it.

Q. When was that?

A. It was shortly after the Canadian Pacific got to the Coast. I think it was 1887 or 1888.

Q. You do not know how long those rates staid in, do you?

A. No, I do not.

D CLOSE IN CENTER

Q. You do not know how long those rates staid in?

2459 A. I do not remember, no.

Q. You testified in your direct examination, Mr. Gothlin, about your understanding of how transcontinental rates were made—proposed to the Transcontinental Association, I believe, and made in the Association. Were you testifying from your personal knowledge of the matter then?

A. I said that I had never been present at a meeting of the Transcontinental Association.

Q. You do not know of your own knowledge how——

A. Only from intuition and my acquaintance with representatives of the Transcontinental Association. When a man had anything to propose, the statement of it would have to go before the Transcontinental Association to be considered.

Q. And your understanding is based upon those circumstances?

A. Yes, sir. The matters that I spoke of, Mr. Connor hadn't the authority to do it immediately; but they were taken up and in time the action was taken by the Transcontinental Association.

Q. Mr. Connor, and no other commercial agent, has power to make rates, so far as you know, Mr. Gothlin?

A. Oh, no; I understand they have not.

Q. In the instances you mentioned, where Mr. Connor was instrumental in securing some change in the rates, you would suppose, from your knowledge of the way matters are handled, he would take it up with his general freight agent, wouldn't he?

A. Of course.

Q. And it would be considered by his superiors, and possibly by the Transcontinental Association?

A. Well, the belief that the Transcontinental Association

2460 considered them was accentuated by the fact that when the rate became valid and I was notified by Mr. Connor a little in advance, shortly after that they would be published and the other agents would be after the business—all of the lines.

Q. Whatever the Transcontinental Association had to do with it, it could not be made without the consent of Mr. Connor's company, could it?

A. Could be made without the consent?

Q. Could not be made without the consent of his company, could it?

A. Well, I don't know whether their rules require unanimous consent, or majority, or how it is.

Q. You do not know how that is handled?

A. No, I wouldn't say as to that.

Q. But Mr. Connor took the matter up, and ultimately the rate was made; is that correct?

A. And invariably the statement was made that it would have to be considered by the Transcontinental Association before anything could be done.

Q. Before the rate was made. When were those transactions? Do you remember about the dates?

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A. I don't know that I can recall. I think the matter of the return of the old cash registers was seven or eight years ago; maybe nine. And the Australian rate, I think, was made longer ago than that.

Q. Longer ago than that?

A. I think so. The matter of the paper was later.

Q. Did your company ever make any shipment to Portland?

A. Oh, yes, sir.

Q. How did those shipments move ordinarily?

A. Usually Northern Pacific.

Q. You never shipped any by the Sunset Route to Port-
2461 land, did you?

A. No, sir.

Q. I believe you testified that most of your shipments to San Francisco went by way of the Sunset Route—that is, to New Orleans?

A. Yes, sir, almost invariably.

Q. You spoke of what you term package cars being operated over the Queen & Crescent——

A. Yes, sir.

Q. ——from this territory, by way of New Orleans and over the Southern Pacific to California, for less than carload freight. Those cars are still operated, are they not, Mr. Gothlin?

A. I could not say. They were up to the time I left the Cash Register Company.

Q. They were operated in the same way up to 1906, weren't they?

A. That is my memory, yes, sir.

Q. Now, you also testified that Mr. Connor, when representing the Southern Pacific only, solicited preferentially by way of New Orleans?

A. Yes, sir.

Q. If he could not get traffic that way, did he have any other route that he solicited? Did he solicit by way of El Paso, and if not that way, then by way of Ogden?

A. I do not recall of Mr. Connor ever asking me for business by any other route than down by New Orleans.

Q. You do not remember any other?

A. No, sir.

Q. But you would understand, from your knowledge of the location of the Southern Pacific, that if he could not get it that way, that he would like to get it by way of Ogden?

A. Who? Mr. Connor?

Q. Yes. When he was representing the Southern Pacific only.

A. I do not recall that I ever understood Mr. Connor
2462 to want business any way except by New Orleans—from my knowledge as a shipper and from my association with him before I was a shipper.

Q. All business that the Union Pacific solicitors got prior to 1901, when they had separate solicitors, for California, so far as you knew, went over the Southern Pacific from Ogden, did it not?



ID CLOSE IN CENTER

A. Oh, yes.

Q. They could not get business for themselves for California without also getting it for that portion of the Southern Pacific, could they?

A. I think not; unless they elected to take that other route which you spoke of.

Q. Which you never knew them to do?

A. Not to my knowledge, no. I do not recall that they ever solicited business that way from me.

Q. Were other lines soliciting business for California in this territory, Mr. Gothlin?

A. Oh, yes; the intermediate lines, yes, sir.

Q. What is that?

A. The intermediate lines; such as the North-Western--you mean via Omaha and Kansas City?

Q. Let us begin with the Queen & Crescent. It has always solicited business for California, has it not?

A. Yes, sir.

Q. Does so yet?

A. Yes, sir.

Q. And the Louisville & Nashville?

A. Yes, sir.

Q. The Illinois Central?

A. Well, I do not know much about the Illinois Central. I do not recall of their being active, so far as I was concerned, as a shipper.

Q. But the Queen & Crescent and the Louisville & Nashville have been actively soliciting business for California by way
2463 of New Orleans, have they not?

A. Oh, yes, sir.

Q. And the Missouri Pacific lines by way of the Iron Mountain and Texas and El Paso, and also by way of Colorado, have they not? They have two routes.

A. I do not remember anything about business being solicited from me by Iron Mountain, particularly; but the lines to Omaha and Kansas City were Union Pacific.

Q. I mean for the Missouri Pacific. I am speaking of the Missouri Pacific. Has not the Missouri Pacific been actively soliciting business for California?

A. Yes, sir. I do not know how actively. The Missouri Pacific solicited business for all points on their line, California included. They had other interests besides in California, you know—Denver, and so forth.

Q. Don't they solicit business and carry it down by the way of Iron Mountain and Texarkana and El Paso, and also carry it westwardly to Denver?

A. I think possibly they do.

Q. Does not the Rock Island solicit California business?

A. They have an El Paso route now; yes, sir.

Q. And also by way of Denver, haven't they?

A. Yes, sir.

Q. And the Burlington?
A. Yes, sir.
Q. And the North-Western?
A. The North-Western is by Omaha, strictly, I believe, and St. Paul.
Q. I am speaking of all of these lines.
A. Oh, yes.
Q. Do not all of these lines actively solicit business?
A. All of them more or less solicit California business.
Q. Actively solicit California business?
A. Yes, sir.

2464 Q. Well, they all must send their California business either over the Atchison or the Southern Pacific, must they not, in order to get it to destination?
A. Well, the Atchison would take it from Chicago itself.
Q. Or any other point it could get it?
A. Yes, sir. But the Atchison, so far as my memory of the Atchison soliciting business goes, was to get it at Chicago.
Q. Yes, of course. So as to get the long haul.
A. Yes, sir.
Q. But I am speaking of these other lines that I have mentioned. All the business that they get for California must ultimately go over either the Atchison or Southern Pacific, must it not?
A. Yes, sir; that is true.
Q. In order to get to destination?
A. That is true.
Q. To be delivered to the Southern Pacific at New Orleans or El Paso, or some intermediate point, or be delivered to the Southern Pacific at Ogden for California? That is true, is it not?
A. That is my understanding; yes, sir.
Q. With reference to the freight solicitors for these lines: All railroads employ freight solicitors, do they not—practically all of them, so far as you know?
A. That is my understanding. Practically all railroads have freight solicitors; yes, sir.
Q. That is pretty good evidence that they serve a useful purpose, wouldn't you consider it so?
A. Why, I always thought so; yes, sir.

2465 Redirect examination by Mr. SEVERANCE:

Q. With reference to this route that you say could be used by way of competition by the Union Pacific by Portland: You testified that shipments were made, to your knowledge, by way of Vancouver to San Francisco?
A. Yes, sir.
Q. You spoke of one shipment of 30 or 40 carloads of wire, I believe. The route by rail to Portland and thence by boat to San Francisco is many hundreds of miles shorter than the route by Vancouver by rail and thence down to San Francisco by boat, is it not?

A. Oh, yes.

Q. And traffic did move by Vancouver, at a differential?

A. Yes, sir.

Q. You suggested one thought, in answer to Judge Lovett, with reference to what might happen to the Southern Pacific in case the Union Pacific and Southern Pacific were competing for coast business and there was a disagreement over rates, in answer to his question as to whether more damage would result to the Union Pacific than to the Southern Pacific, and that was that the Southern Pacific had other interests at stake than the simple line from Ogden to San Francisco.

A. Yes, sir.

Q. By that did you mean the line via New Orleans?

A. Yes, sir.

Q. And what you meant was that if the rates were brought down by the Union Pacific competition it would bring them down all along the line, and therefore it would cut the rates on all the Southern
2466 Pacific through business by New Orleans? Is that what you meant?

A. Yes, sir; with the further idea that from a large part of this territory the distance via New Orleans is so much greater that the shrinkage would be felt a great deal more. It would reduce the rate per ton per mile so much more than by a shorter line.

Q. Your idea, as I understand it, is that the use of that route via Portland and thence by the boat line would be justifiable only as a matter of competition and to insure fair treatment from the Southern Pacific?

A. Well, you used the word "justifiable" there. I suppose it would be justifiable. The Union Pacific would be justified in using it at any time, if they saw fit.

Q. My use of the word "justifiable" was somewhat inaccurate. I did not mean exactly that. What I meant was this: You stated in answer to Judge Lovett that the natural route was the all-rail route by Ogden. That is the shorter route and the more natural?

A. That seems the more natural route, yes, sir.

Q. The more natural route?

A. Yes, sir.

Q. And that your view of the influence possessed by the Union Pacific by reason of the line to Portland and the boat line was that it would give them such an influence as would insure fair treatment from the Southern Pacific?

A. I think so.

Q. Was the Union Pacific, with its Oregon Short Line and Oregon Railroad & Navigation Company lines into Portland, in competition with you for Portland business when you were agent for the Northern Pacific?

A. Yes, sir.

2467 Q. Actively competing with you for that business?

A. Yes, sir.

COPY BOUND

Q. During all the time that you were soliciting business, or shipping, were the rates to California terminals the same over the Sunset Route and the Union Pacific and the Southern Pacific?

A. Yes, sir.

Q. And by the Santa Fe?

A. Yes, sir.

Q. So that the competition that existed between these lines was in service and in solicitation of business?

A. In service and personality.

Q. Do you know whether there was much, if any, difference in time between the Southern route to San Francisco and the route via the Union Pacific and Southern Pacific via Ogden?

A. My memory is that I could depend more for regularity on the New Orleans route.

Q. By "regularity" you mean they made better time, or were more even in their time?

A. Were more even in their time. You see there were transfers via Missouri River. Less than carload business would be transferred at either St. Louis or Chicago, and then again at Omaha or Kansas City often. Sometimes there were through cars—through cars loaded from Chicago, but I wasn't so sure of them as I was by Cincinnati.

Q. Well, when you used this package car there was no transfer at all, except to switch from one railroad to another?

A. That is my understanding.

Q. So the car was not unloaded at all?

A. Of course, I never followed the car through so that I
2468 could say absolutely that, but I have always understood that, and the results seem to justify that impression.

Q. That is what was represented to you by the agent, wasn't it?

A. That is what was represented to me, yes, sir.

Q. Now, the advantage in distance is very greatly with the Union Pacific route, is it not?

A. From Dayton?

Q. To San Francisco.

A. Yes, I think it is. I never compared exactly the figures, but my impression is, from looking at the map, that the distance would be shorter by way of Chicago.

Q. The Southern Pacific had to overcome that in some other way?

A. How is that?

Q. And the Southern Pacific Sunset Route had to overcome that disadvantage in some other way relating to the service, in order to compete?

A. I presume so, yes, sir.

Q. Was there any through package car the other way, so far as you know?

A. I do not recall. I think there were at times cars from Chicago via one route or the other, but I do not recall with any certainty that there was anything that we could depend upon to be regular and sure.

D CLOSE IN CENTER

Q. Was this through package car made up at Cincinnati, or Dayton, or where?

A. Made up at Cincinnati, on the Q. & C. tracks.

Q. Shipped into Cincinnati, and then the stuff was put in this car and then it went right through to the Coast?

A. That is my understanding, yes, sir.

Q. You spoke about a shipment by San Francisco to Australia: Is that a quicker, or a longer, route than the one by New York
2469 and the Suez?

A. Oh, much quicker.

Q. Much quicker by San Francisco?

A. Yes, sir.

Q. Why is it that the business is ordinarily moved the other way? You said it usually went the other way.

A. Why, the rate by New York is much less. The rail haul is only to New York, and from there it is water haul; and the rates are very low, comparatively speaking, from New York.

Recross-examination by Mr. LOVETT:

Q. I believe you testified that most of your shipments to California were by way of New Orleans, Mr. Gothlin?

A. To San Francisco, yes, sir. We had but the two points that we shipped to in California—Los Angeles and San Francisco. San Francisco were much the larger shipments. That usually went by way of the Southern Pacific.

Q. You did not find that a very impracticable route, then, Mr. Gothlin?

A. No. I don't think I said that it was impracticable.

Q. I thought you said that in this possible rate war with the Union and Southern Pacific that the Sunset Route would be out of business?

A. I was talking about the effect on the railroad itself; not on the shipper. It is undoubtedly a longer route, and the rate per ton per mile on the same rate is less from Cincinnati to San Francisco via New Orleans than it is by direct line, and the rate might be shrunk to such figures that the revenue would not be at all compensatory by the longer route.

Q. Well, a good big book could be written on what the rate
2470 per ton per mile does not prove in transportation, couldn't it, Mr. Gothlin?

A. I don't know that anybody ever has found it out yet. I never have been able to find a traffic manager that knew.

Q. Nor I.

Mr. SEVERANCE. They all talk about it, though.

Mr. LOVETT. They all talk about it. It is good for statistics.

Q. Do you not think that the expedition in handling the shipments to California by way of New Orleans was probably aided a great deal by the fact that there was a single management from New Orleans to San Francisco—that is, the unity of management of the Southern Pacific—a single line practically?

COPY BOUND

A. Well, it was undoubtedly aided by the fact that there were but two lines in interest from Cincinnati to San Francisco.

Q. Only two lines concerned in the shipment?

A. Yes, sir—and the fact that they had a through carriage arrangement without transfer. That might apply, I suppose, however, even if there were four lines—the agreement to do that having once been made and the service started.

Q. Did I understand you to testify that there had been or had not been through package cars westerly from here?

A. I said, I believe, that I did not recall definitely. I think there were at times through package cars from Chicago, but my memory is that they were not so certain and sure. There is one other factor: the Southern Pacific, via New Orleans, apparently worked
2471 this through package business by one line only—the Q. & C.

Q. Haven't they the same arrangement with the Illinois Central?

A. I couldn't say. Not to my knowledge. They may have, and may not. I don't know.

Q. I am informed that they have.

A. If they have, Mr. Connor never called my attention to it.

Q. Take the Cincinnati, Hamilton & Dayton, and the Big Four; did they seek to get this California business?

A. I don't quite catch you.

Q. I say I wish to take some of these lines leading northerly from the Ohio River. I am not very familiar with the exact location of all the lines, but take the Cincinnati, Hamilton & Dayton, for example.

A. Yes, sir.

Q. The Big Four is one, the Pennsylvania is another, and the Cincinnati, Chicago & Louisville, which are all lines leading from the Ohio River, as I understand, northwardly and northwesterly. They all sought to get business and solicited this business from this territory to the Pacific coast, did they not?

A. I think so. The last line you named—a new line—I have no experience with it; but as to the others.

Q. They all solicit this business?

A. Yes, sir.

Q. And the lines leading south solicit it also?

A. Yes, sir.

Q. Those lines running in substantially opposite directions, are, then, to some extent and in a certain sense, competitors for that business, are they not?

A. I think that is true. You mean, of course, from Cincinnati?

Q. Yes. From that territory, we will say. Now, hasn't
2472 the line on which traffic originates a great deal to do with the routing of it and control of it, Mr. Gothlin?

A. You mean through this territory here?

Q. I mean generally. Generally speaking. This territory or any other.

ND CLOSE IN CENTER

A. Well, I can speak more particularly of my own experience. I think the situation now is that the territory is so thoroughly covered by connecting lines that the initial line has very little to say about it.

Q. The initial line has very little to say about it. Why shouldn't it have at least as much, if not more, than any other line—for instance in the matter of furnishing cars? They may be indifferent, but if they want to exercise it, aren't they in position to exercise greater influence than any other line?

A. That is a hypothetical question, isn't it?

Q. No.

A. I suppose that would be true; but I was speaking about what the practice is. I believe it is true that the initial line through this part of the country, so far as western business is concerned, does really, in practice, have very little to say about the routing. Whether they care to exercise that power or not, I don't know.

Q. Well, take them with some other business. Take them with the eastern business, for example. I am not asking particularly with reference to western business, but I am asking generally as to the power of the line on which the business originates and its influence in the matter of the routing of that traffic, irrespective of any legal question, too, but as a practical business matter.

A. The situation east is entirely different. They are fast
2473 freight lines and each fast freight line has a series of connecting lines, and if you give it to a fast freight line it must go by that series of lines. The situation is entirely different from western business. If a man elects to give it to the Merchants Despatch or the Traders Despatch or any other line, it must follow the lines of railway that are in that line.

Q. And the business is controlled, then, by the fast freight lines rather than by the railroad companies; is that your idea?

A. I think probably that is true. That is to say, that if a shipper elects to give to a particular fast freight line, he cannot change the routing after the initial line has got hold of it.

Q. No; but where the line or the railroad company on whose line the traffic originates is interested, or wants to exercise any influence in the routing of it, is it not in position to exercise a greater influence, as a business matter, I mean ordinarily and irrespective of any legal right it may have, than any intermediate carrier?

A. Well, that may be true theoretically; but practically I do not think it is true. I know that with myself and with the other western agents, if we found an initial line attempting to dictate routing, or to control routing, contrary to my wishes, or whoever the agent might be, and the arrangement with the shipper, that there would be trouble.

Q. There would be trouble?

A. There generally was trouble.

Q. What kind, and for whom?

A. Well, do you want me to tell you some of the old freight secrets now?

2474 Q. Well, I will not press that.

A. The way the boys used to do, if they found the initial line working against them, they would influence the shipper against that initial line.

Q. Work against the initial line; retaliate; is that the idea?

A. Yes, sir. If they could not do it at that particular point, if he happened to be located at a non-competitive point, they could catch him at the competitive point.

Q. They would get even there, or try to?

A. But, as a matter of fact, my experience, and I think the experience of nearly all the other western traveling agents, has been that the initial line always treated them decently; they never attempted to interfere. If the western line got the business, they let them have it, as a general rule.

Q. You spoke in your direct examination about the furnishing of cars as being a very important factor in controlling the traffic, and that prompted my question as to whether that matter must not rest very largely in the hands of the initial line, and whether, if it wanted to exercise an influence in the routing of traffic, it was not in a stronger position to do so than any other line.

A. You mean the initial line that actually controlled the traffic—if they were not stronger?

Q. Yes.

A. I suppose if they saw fit to antagonize the western line that had secured the business, and insisted on furnishing some other cars, perhaps they could coerce or induce the shipper to ignore the other line and route by the way they wanted to; but I do not think that has been the practice.

Q. You do not think that has been the practice?

2475 A. Not as a rule, no, sir.

Q. The initial lines in this territory as a rule are indifferent to the routing of the traffic?

A. That is my experience as a freight solicitor.

Q. They do not look out to try to secure to themselves the long haul, either?

A. I do not know what I would say about that. I know that roads have given up the long haul; but the western agent has generally policy enough not to try to do anything to make the initial line hurt itself.

Q. He always considers it advisable to deal fairly with the initial line, too, doesn't he?

A. I cannot recall of any situation in this neighborhood where a western line agent has asked an initial line to give up part of its haul.

Q. As a matter of fact, the initial lines will not give it up. Have you known where they have done it?

A. Oh, yes they will. Now, I can cite you right here. I could have given our California business to a line and got the haul to Chicago, instead of the haul to Cincinnati. They never made any fuss about it.

Q. Didn't they get something for it?

A. They got their local rate to Cincinnati.

Q. They probably got as much revenue out of it?

A. Oh, no; no, indeed. The Big Four could carry that freight to East St. Louis and get a great deal more revenue than to Cincinnati, or the Pennsylvania could carry it to East St. Louis, or the Cincinnati, Hamilton & Dayton could carry it to their connecting line.

2476 Q. It is quite unusual, though, is it not, for a railroad to give up its long haul or greater revenue and take the short haul, unless it is compelled to?

A. Well, judging from my experience, I do not think that it is very often the case where the initial line would attempt to enforce the long haul as against any western connection that had secured freight.

Q. If the Southern Pacific, then, were like other railroads in the country, it would be immaterial to it whether traffic controlled by it went by way of Ogden or New Orleans, wouldn't it, if it gave up the long haul cheerfully?

A. Well, I don't know about that.

By Mr. SEVERANCE:

Q. Just one question with reference to the routing of traffic initiated in this territory for the coast. Wasn't it quite a common occurrence for the transcontinental lines, through their representatives on the coast, to secure the routing of the traffic from this territory to the coast, and in those cases didn't you get letters from the western representatives of the Northern Pacific, say, or the Wisconsin Central, requesting you to go to the shippers and see that they respected that routing?

A. You mean when I was their representative?

Q. Yes.

A. Oh, yes.

Q. That was quite a customary thing, wasn't it?

A. Yes, sir.

2477 ABRAHAM RHEINSTROM,

being duly sworn as a witness on behalf of the Complainant, testified as follows:

Direct examination by Mr. SEVERANCE:

Q. Where do you live, Mr. Rheinstrom?

A. I live in this city.

Q. And what is your business?

A. Liquors, fruits, and machinery.

Q. Are you in the distilling business?

A. We are distilling liquors which are not a direct distillation from the grain; it is sort of a re-distillation.

Q. Do you make whisky, too?

A. No, sir.

Q. Do you have occasion in your business to ship fruits from California to Cincinnati?

A. Yes, sir.

Q. In considerable quantities?

A. Yes, sir.

Q. How many years have you been in business here?

A. Since 1876.

Q. What is your firm?

A. Rheinstrom Bros.

Q. Do you ship your product to the Pacific coast after it is manufactured?

A. Yes, sir.

Q. How long have you been engaged in that branch of the business, that is, bringing fruits here from California and manufacturing your liquors and shipping them back?

A. I will have to refer to a memorandum. As to shipping fruits here, we commenced shipping fruits in about 1899.

Q. How long have you been shipping your product to the coast?

A. We have shipped to the coast since about 1880 or 1881 possibly. I could not recall the exact date.

2478 Q. Can you estimate about how extensive your shipments are per annum?

A. From the east or from here west?

Q. Both ways, say.

A. Coming this way we have shipped, for instance in 1899, 38 cars; in 1900 we shipped 55 cars; in 1901, 21 cars; in 1902, 60 cars; in 1903, 67 cars; in 1904, 28 cars; in 1905, 4 cars; in 1906, 15 cars; in 1907, 15 cars; in 1908, 18 cars.

Q. Your shipments were rather heavier some years ago than they have been recently?

A. Yes, sir.

Q. How does your product move to the coast—carload or L. C. L.?

A. In carloads, and some L. C. L. on account of discriminating rates against us. They have taken off car rates and we are forced to make local shipments.

Q. Now, do you remember when the Union Pacific and the Southern Pacific had separate soliciting agencies here?

A. Yes.

Q. Was your business solicited by those agencies?

A. Yes, sir.

Q. Separately?

A. Yes, sir.

Q. Against each other?

A. Yes, sir.

Q. How was that competition—active or otherwise?

A. It was pretty active, as far as I remember.

Q. Do the representatives of Mr. Connor call on you now with reference to business?

A. I have not seen Mr. Connor for some years. Mr. Shinkle calls on us occasionally.

Q. Does he make any distinction between the Southern Pacific route and the New Orleans route in soliciting business?

A. Not that I know of.

2479 Q. Did you ever make shipments to California or from California by the Canadian Pacific and the boat line?

A. Yes, sir.

Q. When?

A. Well, it was around 1902; I could not exactly remember.

Q. Do you mean 1902?

A. Around about that time.

Q. Down to about that time?

A. Around that time; prior to that.

Q. Was it as late as that?

A. I could not really state positively about the date; I would have to refer.

The witness was handed a letter by Mr. Severance.

WITNESS. The letter of our representative there that attends to that is 1900. Then and prior to that.

Q. Now, was there a differential in force prior to that time by the Canadian Pacific? I mean, was there a cheaper rate?

A. There was a cheaper rate by the Canadian Pacific.

Q. How much did you ship that way? I do not mean accurately, but did you ship considerable of your stuff that way?

A. We shipped a number of carloads.

Q. Which way?

A. Well, we shipped both ways, coming and going.

Q. That is, you shipped the fruits this way and your products the other way?

A. Yes, sir.

Q. That went by the Canadian Pacific, did it?

A. Yes, sir.

Q. To Vancouver, and then down by boat?

A. I think that is the way.

Q. How is your business handled in California? Is it sent to a distributing agent, or do you sell direct to consumers?

A. We have a plant there. We have an agent there and we
2480 have a building there where we pack and keep stock on hand for distributing.

Q. And you distribute locally from that place?

A. Yes, sir.

Q. Now, previous to 1900 or 1901, which way did your traffic move when it went all-rail, when it did not go by the Canadian Pacific?

A. Coming this way?

Q. Well, say coming this way, yes.

A. Of course that part was left, as a rule, to our representative there as to how to route it. Of course the only condition we made

at this end was to have it by the Pennsylvania, because we have a switch along the Pennsylvania lines.

Q. Then, take the traffic moving the other way. How did that move from here?

A. Well, we worked a great deal with the Southern Pacific. Of course in the winter season, when it was cold, we preferred the Southern Pacific, and had to ship that way to keep from freezing; and sometimes in summer season we had to ship the other way on account of the intense heat and danger of fermentation.

Q. Now, when Mr. Connor or his representative came around, when the agencies were separate, and solicited the business, which way did Mr. Connor endeavor to send it?

A. Via New Orleans.

Q. And the Union Pacific people by Omaha, I suppose?

A. Yes, sir.

Q. Have there been any changes made since 1901 with reference to your traffic to and from the coast—any changes in rates or conditions under which you can ship?

A. Yes, sir.

Q. What have they been?

A. Well, they reduced the rates on the fruit that we were shipping this way, from $1 a hundred to 75 cents, and they changed the rates from here there up to the present time considerably.

2481 Q. Changed it how?

A. Well, they advanced the rates and took away the benefits of carloads, and the valuation of the merchandise shipped. They varied the valuation of the merchandise shipped, as they reduced or advanced the rates. I don't know whether you know anything about that. In shipping whiskies or liquors or alcohol, in order to have a reduced commodity rate, they lowered the valuation per gallon, sometimes 50 cents and sometimes a ltttle more, or something like that, in order to get the reduced rate, that in case of loss they would be called upon to pay only the reduced valuation. Of course, as they have advanced the rates they also raised the valuation of some of the liquors.

Q. What has been the net result of that to you in the transportation charges you have had to pay? Has it been to increase your charges or to decrease them?

A. Well, there has been a tendency to increase the freight charges.

Q. You spoke about taking away the carload privilege?

A. Yes. They have at the present time almost, on some things, taken away the carload rate, giving us only a rate on local shipments, that is, less than carloads, and no concession as to carloads.

Q. They have made them the same, you mean?

A. Yes, made them the same.

Q. Which way does your business move at the present time?

A. Well, at the present time we are not shipping anything.

Q. Oh, you are not shipping?

A. No.

2482 Q. How long ago did you stop shipping?

A. Well, we have stopped shipping now west, with very small exceptions of small shipments, for over a year.

Q. Previous to that time which way was your traffic moving, four or five years back from that?

A. Well, the routing always came from our representative.

Q. I am speaking of west-bound business.

A. Yes, I know. He always directed us as to how we should route it, and of course it went by his way. Of course at this end the Pennsylvania, sometimes the Chicago, Milwaukee & St. Paul, and then via Omaha and Union Pacific, and sometimes via New Orleans and El Paso.

Q. Any of it by the Santa Fe?

A. And the Santa Fe, yes.

Q. Did you at any time ship by the Illinois Central and the Southern Pacific?

A. Well, I can't recall that we did.

Q. Have you shipped to Portland, Oregon, too?

A. Yes, sir.

Q. Over what routes did you ship to Portland?

A. Well, I can't recall the exact routes.

Q. You don't remember which transcontinental lines took it—whether it was the Northern Pacific or the Great Northern or the Union Pacific?

A. It was usually the Northern Pacific or the Great Northern.

Cross-examination by Mr. LOVETT:

Q. You never shipped any to Portland by way of the Southern Pacific, did you, Mr. Rheinstrom?

A. No, sir.

Q. When were these changes in rates, classification, etc., made, about which you have just testified?

2483 A. They have been made in the last two years or more—the last few years.

Q. Within the last three years?

A. Yes; and of course some changes were made prior to that, where they advanced the rates and discriminated as against us on ordinary liquors and whiskey in favor of alcohol.

Q. Were they made only by the Southern Pacific and Union Pacific?

A. Well, my impression is that they constituted about 99 per cent of the power to make the rates to the Pacific.

Q. That is your opinion of it?

A. That is my opinion, yes.

Q. Were they the only lines that made these changes?

A. Well, they were published changes.

Q. By all lines?

A. Yes, sir.

Q. By the Atchison?

A. Yes. I suppose they are part of the——

Q. You suppose what?

A. I suppose the Atchison is part of that.

Q. Part of the Southern Pacific and the Union Pacific?

A. No, not part of the Southern Pacific, but part of that combination.

Q. Part of the Union Pacific?

A. No, part of the Pacific coast roads.

Q. Part of the Transcontinental Association?

A. Part of the transcontinental arrangement or the combination.

Q. You suppose it is a part of the transcontinental arrangement or combination?

A. Yes. Well, they are a part of that system, I mean, carrying freight to the coast.

Q. One of the transcontinental lines?

A. Yes, one of the transcontinental lines.

2484 Q. And you supposed that it made these same changes?

A. My experience is that they never had much influence, it seems to me, in bringing about any changes; they hadn't much to say. It was always the Southern Pacific that controlled the situation.

Q. You always understood the Southern Pacific——

A. I understood that to be the case.

Q. You understood the Southern Pacific controlled the rate situation on the Pacific coast?

A. Yes, sir.

Q. When you were solicited separately by the Union Pacific and the Southern Pacific, the traffic that you gave the Southern Pacific went, you say, ordinarily by the way of New Orleans?

A. Yes, sir.

Q. Did any of it go by way of El Paso?

A. Yes, it used to; some went by El Paso, too.

Q. That is, by the southwestern lines to El Paso?

A. Yes.

Q. And then some went by the Santa Fe? Is that correct?

A. Yes.

Q. And some by way of the other lines, including the Union Pacific?

A. Yes, sir.

Q. Now, all of that which went by the Union Pacific went over the Southern Pacific from Ogden to California, did it not?

A. As far as I know. There was no other outlet.

Q. No other outlet?

A. No.

(A recess was here taken until 2 o'clock p. m.)

2485 WILLIAM H. McGUFFEY,

being duly sworn as a witness on behalf of the Complainant, testified as follows:

Direct examination by Mr. SEVERANCE:

Q. Where do you live, Mr. McGuffey?
A. Milford, Ohio.
Q. How long have you been living here?
A. In this vicinity?
Q. Yes; in the state of Ohio.
A. I was born in Cincinnati, and have been living here off and on since I was born, and the last time about twelve or thirteen years.
Q. What is your business?
A. I am in the freight department of the Proctor & Gamble Company.
Q. How long have you been in that position?
A. A little over four years.
Q. Previous to that time what was your business?
A. I was in the freight traffic department of the Queen & Crescent.
Q. For how long a time?
A. Eight years.
Q. In what line of work were you engaged for the Queen & Crescent?
A. I was the chief clerk and assistant chief clerk in the general freight department.
Q. Prior to the consolidation of the Union Pacific and the Southern Pacific offices here, do you remember the fact that separate offices were maintained by those two companies?
A. Yes, sir.

2486 Q. Who represented the Union Pacific?
A. I really do not know. The Q. & C. had practically no business with the Union Pacific, and I do not remember the man's name, I never came in contact with him.
Q. With what company did the Queen & Crescent work for business to the coast?
A. Exclusively with the Southern Pacific.
Q. Via the New Orleans route?
A. Yes, sir.
Q. What other lines at that time were competing with the Southern Pacific for coast business?
A. The Union Pacific and the Santa Fe.
Q. That is, for California?
A. For California, yes, sir.
Q. And for the North coast what lines were competing?
A. My memory is vague on that, because we never handled any North coast business.
Q. Was that competition between the Union Pacific, the Southern Pacific and the Santa Fe an active competition?
A. Yes, sir.

Q. Did the Queen & Crescent, in connection with the Southern Pacific, work for business north of San Francisco?

A. Very little.

Q. Did you get any business north of San Francisco?

A. My recollection is we got occasional shipments, but they were very occasional.

Q. Where to—Portland?

A. Portland, yes, sir.

Q. Which way did the Southern Pacific endeavor to work their coast business?

A. They not only endeavored, but did work it all through New Orleans, as far as we were concerned.

2487 Q. Now, since you have been connected with the traffic department of the Proctor & Gamble Soap Company, do you see the soliciting agents of the different lines?

A. Yes, sir.

Q. Do you see Mr. Connor and his assistants?

A. Yes, sir.

Q. Do they come and solicit you for business?

A. Yes, sir.

Q. As between the Union Pacific and Southern Pacific, do they express any preference?

A. No, sir.

Q. How does your Portland business move?

A. It moves almost exclusively Union Pacific.

Q. Almost exclusively Union Pacific?

A. Yes, sir.

Q. Do any other lines share in it?

A. I do not recall for some time that we have shipped anything to Portland except over the Union Pacific.

Q. Do you ship to Puget Sound points?

A. We ship by the Great Northern or the Northern Pacific.

Q. What service do you find you receive, if any, from the freight solicitors of the different lines?

A. A good deal from some and very little from some others.

Q. What character of help do you get from those who are of service to you?

A. Well, we get the service simply that comes by talking directly to a representative of a company, which is superior to that which we sometimes get by correspondence. The value that we get from them depends a great deal on the man, how much weight he has with his management, and how far he understands how to handle business. Some of the roads we handle through their soliciting agents, their commercial agents, and some of the roads we practically never handle that way.

2488 Q. What kind of service do they perform for you where they are of use, aside from bringing you into immediate contact? In connection with what matters do they perform any service?

A. Very little except that so far as we are concerned. If we are discussing any rate matter we call in one of the commercial agents, if he is a live man, and talk the matter over with him and make it plain to him and get him to put it up to his people for us.

Q. That is, when you want any rate adjustments or changes made?

A. Yes, sir.

Q. Now, when you were connected with the freight department of the Queen & Crescent, did you learn, or have you since learned, what service, if any, the soliciting agents performed for small shippers? You have a large organization, I suppose—Proctor & Gamble, but in the case of small shippers what service can they reasonably and properly perform?

A. I think they would perform a good deal of service for a small shipper. They are supposed to post him as to what the rates are. They could not do that for us.

Q. You take care of that yourself?

A. We take care of that ourselves. We have a large traffic department, with tariff files, and we generally post them as to what the rates are.

Q. But in the case of a small shipper, the contrary would be true, wouldn't it?

A. Yes, sir.

Q. Since they are not able to maintain a traffic department. What service, if any, do they perform in the way of tracing cars that are shipped?

A. Not much for us.

2489 Q. I am speaking of the ordinary case of a small shipper,

A. In the ordinary case I should think they would perform a great deal of service. In the case of the small shipper, his only method of tracing a car is to go to the soliciting agent of the road, unless the general freight office of the road happens to be in the city where he lives.

Q. Did those matters pass through your hands to a considerable extent when you were with the Q. & C., in the freight department?

A. May I ask what you mean by "those matters"?

Q. Matters of tracing cars, and all that, or rate matters, putting it up, as you said, to the superiors by the commercial agent?

A. Yes, sir, the rate matters passed through my hands very largely. Not the tracing of cars—that was done by one of the other departments.

Q. Was it a matter of frequent occurrence that rate questions were put up to the management by freight solicitors?

A. No, sir, I should say rather infrequent.

Q. Rather infrequent?

A. The solicitors would probably be asked every day to reduce the rates, but there were no specific propositions put up except infrequently.

Q. And that would come up in the way of getting a commodity rate in, or something of that sort?

A. Yes, sir.

Q. In the case of a small shipper the usual course that those applications would take would be through the soliciting agent, in the first instance, and then through the general freight office?

A. Yes, sir.

Cross-examination by Mr. LOVETT:

Q. I believe you stated that the Queen & Crescent worked
2490 Pacific coast business exclusively in connection with the Southern Pacific by way of New Orleans?

A. Yes, sir.

Q. That continues up to the present time, doesn't it?

A. As far as I know. Having no connection with the Queen & Crescent now, I do not know; but what business we ship by the Queen & Crescent goes through New Orleans and the Southern Pacific.

Q. When did your connection with the Queen & Crescent cease?

A. A little over four years ago.

Q. Up to that time the Queen & Crescent worked very actively for that business, didn't they?

A. Yes, sir.

Q. And, as far as you know, it has continued to do so?

A. Yes, sir.

Q. The New Orleans gateway is still open, of course?

A. Yes, sir.

Q. Other lines leading to New Orleans also work for that business?

A. Yes, sir.

Q. In answer to a question on the direct examination, you stated that the Queen & Crescent's principal competitors for that business out of this territory were the Union Pacific and the Atchison. You mean by that the Atchison and its connections, the Union Pacific, and the Southern Pacific west of Ogden, and the connections east of Missouri River, do you not? You did not mean to say that other lines reaching this territory were not actively working for that business, did you?

A. If I may judge your question from some testimony I have listened to, I should say that I meant the western lines. My experience has been that the lines leading directly from here
2491 do not solicit that coast business with anything like the activity that the western lines do.

Q. Now, just what do you mean by the western lines, Mr. McGuffey? Name them, won't you?

A. The Santa Fe, the Union Pacific and the Southern Pacific.

Q. The Burlington?

A. No, sir; it would not be my expression to call the Burlington a western line.

Q. Doesn't it work actively for that business in this territory?

A. Well, not actively as compared to the transcontinental lines.

Q. How about the Rock Island?

A. I would say the same about that.

Q. Why isn't the Burlington, with its line from Chicago to Denver, and connecting there with the Denver & Rio Grande, a most active worker for that business? Hasn't it been as active as the Union Pacific ever was?

A. No, sir.

Q. It has not?

A. Not in my knowledge.

Q. Not in your knowledge?

A. No sir.

Q. Do you understand it has been indifferent to it?

A. No, sir, not indifferent, but their solicitors who look after it talk more about the Colorado business.

Q. They do not work for the Pacific coast business?

A. Only occasionally they mention that. If they see cars going out there, of course they call up and try to get the intermediate route on it.

Q. So they try to work it via St. Paul?

2492 A. They don't say much to me. If you are talking to me as the representative of the Proctor & Gamble Company, they never specify about the routing.

Q. I am talking about your general knowledge.

A. The general preference in all cases is for a long haul. I suppose in the majority of cases, if I recall correctly, they express a preference for the long haul, but they are grateful for whatever haul they may get.

Q. They are willing to take the short haul if they cannot get the long haul?

A. Yes, sir.

Q. Apparently the Southern Pacific is the only one that is indifferent to the long haul, from what we have heard here. The Rock Island works actively for that business, doesn't it?

A. I will say again not actively as compared to the Union Pacific.

Q. Do you understand why that is? Doesn't it get as long a haul out of it as the Union Pacific?

A. Well, I should say in our business, no. If we were shipping from here via the Rock Island, we would probably give it to the Rock Island at Seneca or Chicago, and turn it over to the Union Pacific at Council Bluffs.

Q. Well, suppose you gave it to the Rock Island at Seneca or Chicago, and it took it to El Paso: it would get a very much longer haul than the Union Pacific would get, wouldn't it?

A. It never had an opportunity to take any of our business that way.

Q. You never sent any that way?

A. No, sir.

Q. Do you know of its taking other business that way?

2493 A. I know there are divisions in effect that way, but whether they get any business that way I know not.

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Q. Even if it took it to Denver, it would get a longer haul out of it than the Union Pacific, wouldn't it?

A. I am not exactly familiar as to just where Denver lies. I know how far it is from Omaha to Ogden.

Q. Yes; that is 1,000 miles.

A. 1,000 miles even.

Q. Do you know how far it is from Chicago to the Missouri River?

A. Roughly speaking I suppose it would be about 300 miles; I never figured it.

Q. That is very roughly speaking. It is about 500.

A. 500?

Q. About 490, I believe.

A. It is 287, I think, from East St. Louis to Kansas City, and I guess it is considerably farther, come to size it up.

Q. And from the Missouri River to Denver it is about 500 miles, isn't it?

A. Well, I don't remember that distance. I have never had any occasion to carry that in my mind.

Q. Has the Rock Island been actively soliciting in this territory, or been soliciting at all in this territory?

A. Oh, yes, sir.

Q. Has it an agency here?

A. Yes.

Q. Can you see any reason why it should not be as active as the Union Pacific, in view of its line to El Paso, and in view of its line to Denver?

A. Well, I imagine the reason is that a great many years ago the western lines—and when I speak of the western lines I speak
2494 of the Union Pacific, the Southern Pacific and the Santa Fe—they had their solicitors here, and they have given a good deal of the business that they have secured to these intermediate lines and I imagine that there is some understanding among them that the intermediate lines are not to be too active in trying to get the business and divert it to their long hauls.

Q. You never knew of the Union Pacific to give any to the Rock Island, did you?

A. Well, I don't recall in that way, because we always route our business through anyhow; we always specify the routing.

Q. You do not understand that the Union Pacific or the Southern Pacific would be interested in the selection of the route east of their lines, do you?

A. I should think so.

Q. You wouldn't think so?

A. I should think so, yes, sir.

Q. You think they would be?

A. Yes.

Q. What interest would they have as to whether the business was carried from here to Omaha, for instance, by one line or another, so they got their haul?

CLOSE IN CENTER

A. I judge they have traffic relations with the other lines and have some preferences. I never knew any railroad that did not.

Q. They have rates over all, haven't they?

A. Yes, sir.

Q. And all lines are open to the shippers?

A. Yes, sir.

Q. Well, can you see any reason for any preference on the part of the Union Pacific or Southern Pacific as between the lines leading out of Cincinnati, so they got the business at Omaha?

2495 A. Yes, sir, I should think so. If one particular line was naturally more friendly to the Union Pacific than some other line I would think they would reciprocate in influencing the business that way.

Q. Did you ever know a railroad dependent that way upon its connections, soliciting as between them, preferring one as against the other?

A. I think I have.

Q. In the absence of a common ownership?

A. Yes, sir.

Q. Have you known an instance of that sort?

A. If you ask me for a specific instance, I don't know whether I can cite one right at the present moment, but I should say, running my mind back in a general way, I would know a number of cases.

Q. Could you mention one?

A. I don't know that I can. It is not a matter that would probably make any vivid impression on my mind.

Q. How about the Missouri Pacific—has it been soliciting business in this territory?

A. Yes, sir.

Q. Actively or otherwise?

A. The Missouri Pacific, I think, solicits coast business a little more actively than some of the other roads, that is, some of the intermediate roads, but not very actively as compared with the transcontinental lines.

Q. By which route does it solicit it—by way of Denver, or by way of El Paso, or both ways?

A. I think in the majority of cases they have solicited by the D. & R. G.

Q. By the Denver & Rio Grande?

A. Yes, sir.

Q. You say the Missouri Pacific is not as active in its solicitation as the Union Pacific?

2496 A. No, sir, not to the Pacific coast.

Q. Not to the Pacific coast?

A. They are fully as active in their general solicitation.

Q. The Missouri Pacific has a line of its own extending from St. Louis to Denver, hasn't it?

A. No, sir. I think they get in there with the D. & R. G., if I recall rightly.

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Q. Denver?
A. Isn't that correct?
Q. No, you are mistaken.
A. I think so. I think they connect at Pueblo.
Mr. SEVERANCE. I think that is right.
Q. Pueblo—that is right. They connect with the D. & R. G. at Pueblo, then?
A. Yes, sir.
Q. About what is the distance from St. Louis to Pueblo?
A. I think it is about the same distance, or a trifle farther than to Denver. I should say it was something like—well I don't know; I haven't figured that distance for a long time.
Q. It is probably a thousand miles or more, isn't it?
A. I should think it was under a thousand miles.
Q. Then, from Pueblo, by the Denver & Rio Grande, to Ogden?
A. I don't know. We work very little business that way, and I never figured the distance. We give very little business to that road.
Q. You don't know about that distance, then?
A. No, sir.
Q. Is the D. & R. G. an active solicitor for this transcontinental business?
A. Yes, sir, as far as they have had representation in this district. They have been to see us a good many times about that business.
Q. Have they representation in this territory?
2497 A. Yes, sir, they have recently.
Q. All this business that formerly was secured by the separate agents of the Union Pacific for California, or at any time secured, moving over the Union Pacific to California, passed over the Southern Pacific from Ogden, as you understand, didn't it?
A. Yes, sir, that is my understanding.
Q. Moving over the Union Pacific either from Omaha or Kansas City to Ogden, and thence over the Southern Pacific to destination?
A. Yes, sir.
Q. You never knew of any shipments to California points by the Union Pacific up to Portland and thence by boat down?
A. I never knew of any, no, sir.
Q. You testified on your direct examination that your shipments to Portland went mostly by the Union Pacific. You mean by the Union Pacific and its connections east of the Missouri River, and then over the Oregon Short Line, and then over the O. R. & N.?
A. Yes, sir.
Q. You also testified that formerly, I think when you were connected with the Queen & Crescent, there were some shipments north of San Francisco by way of New Orleans, but they were very seldom. I understood you correctly, didn't I?
A. Yes, sir.
Q. You seldom had shipments that way for Portland, for example? Is that correct?
A. Yes, sir.

CLOSE IN CENTER

2498 W. E. SHEWALTER,

being duly sworn as a witness on behalf of the Complainant, testified as follows:

Direct examination by Mr. SEVERANCE:

Q. Where is your home, Mr. Shewalter?
A. Springfield, Ohio.
Q. What is your business?
A. I am connected with Mast, Foos & Company, as traffic manager.
Q. What is the business of Mast, Foos & Company?
A. They manufacture windmills, iron pumps and lawn mowers.
Q. Is it a large institution?
A. Well, it is not the largest, but it is one of the principal manufacturers of goods of that class.
Q. In the country?
A. Yes, sir.
Q. To what parts of the country do you ship your product?
A. All parts generally.
Q. How long has the company been in business?
A. About thirty-five or forty years.
Q. How long have you been with them?
A. Sixteen years.
Q. How long have you been in charge of their traffic?
A. About nine or ten years.
Q. Did you have anything to do with the traffic before that time?
A. Yes; I was in the shipping department. I did not have control of it, but I had something to do with it.
Q. Were you familiar with the way it was routed?
A. Yes.
Q. Do you remember when the Union Pacific and the Southern Pacific maintained separate commercial agencies here at Cin-
2499 cinnati?
A. Yes, sir.
Q. Did you know Mr. Connor?
A. Yes, slightly.
Q. And Mr. Welsh?
A. I can't remember Mr. Welsh, no, sir.
Q. Who was the Union Pacific man that you knew?
A. Well, I met his representative; I do not remember the name.
Q. The representative of Mr. Welsh?
A. Yes.
Q. Now, at that time did Mr. Connor and his representatives and the representative of Mr. Welsh call on you at Springfield, soliciting business?
A. Yes, sir.
Q. Were they in competition with each other?
A. Yes, sir.
Q. Which way was the Southern Pacific agency endeavoring to route its business to the coast?

A. Principally via New Orleans.
Q. And the Union Pacific by the Missouri River gateway?
A. By Omaha.
Q. How was that competition at that time? was it active or otherwise?
A. I should say quite active.
Q. Which way did your company ship, or did they ship both ways?
A. We used both ways.
Q. Since the agencies were consolidated here, are you called on by representatives of the joint agency?
A. Yes, sir.
Q. Who is the agent that calls on you?
A. Mr. Sigler.
Q. Does he call on you soliciting the business?
A. Yes, sir.
Q. What is his attitude as between the New Orleans gateway and the Union Pacific?
2500 A. I cannot remember that he expresses any preference at all now.
Q. He simply endeavors to get the business for either the Union Pacific or the Southern Pacific.
A. Yes, sir.
Q. Do you ship to the north Pacific coast?
A. Yes; we ship to Portland and Seattle.
Q. What way does your traffic move to Portland?
A. Well, it is divided. Part of the time it goes Union Pacific by way of Omaha, and sometimes by the Northern roads.
Q. By the Northern Pacific or the Great Northern?
A. By the Northern Pacific or the Great Northern, yes, sir.
Q. Did any of that ever move by way of New Orleans, as far as you can remember?
A. I cannot remember that it ever did, no, sir.

Cross-examination by Mr. LOVETT:

Q. You never shipped any to Portland by way of New Orleans, did you, Mr. Shewalter?
A. By way of New Orleans?
Q. Yes.
A. No, I can't remember that we ever did.
Q. All the rates by all these gateways are the same and are still open, are they not, by way of New Orleans, El Paso and the Missouri River gateways?
A. As far as I know they are, yes, sir.
Q. You can ship any way you like?
A. Yes.
Q. In soliciting your shipments, if they could not get them by way of New Orleans, they were always very glad to get them by way of Ogden, were they not?

2501 A. Well, I suppose they were, although I cannot remember that they ever solicited that way.

Q. The soliciting. when they were separate, so far as you recall, was exclusively by way of New Orleans?

A. Yes.

Q. Did they ever solicit any by way of El Paso or the Texas Junction lines?

A. Yes, sometimes by way of El Paso. Very seldom we shipped that way, though.

Q. But you have no recollection of any solicitation by the Southern Pacific representatives prior to the consolidation of agencies by way of Ogden?

A. After the consolidation, you mean?

Q. Before.

A. No, I can't remember that.

Q. You never made any shipments to California by way of Portland and then by boat to San Francisco, did you?

A. No, I think not.

Q. All of your shipments that went by way of the Union Pacific to California went over the Southern Pacific from Ogden to the Pacific coast destination, didn't they?

A. Yes.

Q. That is, handled by the Union Pacific to Ogden, and then over the Southern Pacific beyond?

A. Yes, sir.

2502 G. L. CORY,

being duly sworn as a witness on behalf of the Complainant, testified as follows:

Direct examination by Mr. SEVERANCE:

Q. Where do you live, Mr. Cory?

A. Springfield, Ohio.

Q. What is your business?

A. I have charge of the traffic department of The James Leffel & Company.

Q. What is the business of James Leffel & Company?

A. Manufacturers of water wheels, steam engines and boilers, power connections for water wheels.

Q. Is that a large factory, a large manufactory?

A. As far as the water wheel end of the business is concerned, it ranks probably as large as any concern in the country. The engine and boiler business is comparatively small.

Q. How long have you been connected with that company?

A. Since August, 1899.

Q. In charge of their traffic?

A. Yes, sir.

Q. Previous to that time did you have any railroad experience?

A. Two years immediately previous to that I was with the present D. T. & I. Railway—the Ohio Southern at that time—in the local freight office; and previous to that I was telegrapher and clerk and extra agent on the Big Four, Peoria division.

Q. Are you acquainted with Mr. Connor?

A. Yes, sir.

Q. Do you remember when the Union Pacific and Southern Pacific maintained separate agencies here?

A. Yes, sir.

2503 Q. At that time were you acquainted with the Union Pacific representative?

A. Yes, sir.

Q. Who was he?

A. Mr. Liston called upon us.

Q. Did Mr. Connor or his representatives call on you also?

A. Yes, sir.

Q. Were those two agencies competing with each other for coast business?

A. Yes, sir.

Q. Which way did Mr. Connor and his representatives seek to route the business to the coast?

A. New Orleans.

Q. And Mr. Liston and his associates?

A. Via the Missouri River—Ogden.

Q. Was that competition active or otherwise?

A. Active.

Q. Do you ship freight to north Pacific coast points?

A. Yes, sir.

Q. How does that move?

A. It moves usually upon instructions of the consignee. Our products are practically all sold f. o. b. cars Springfield.

Q. Are you familiar with the movement that they take?

A. Yes, sir.

Q. How does the traffic move, say to Portland and Tacoma and Seattle?

A. The Portland business moves via Union Pacific, Oregon Short Line, Oregon Railroad & Navigation Company; also via St. Paul, the Northern Pacific, the Great Northern, and some of the Seattle business in the last few months especially has been moving via the Soo line and the Canadian Pacific, on instructions of the consignee.

Q. Do the representatives of Mr. Connor's agency here call on you, soliciting business, at present?

A. Yes, sir.

2504 Q. Have they, since the consolidation of the agencies?

A. Yes, sir.

Q. How do they seek to route the business now as between the two lines—the Union Pacific and the Southern Pacific, New Orleans route?

A. I don't remember that they have expressed any preference.

Q. Who is the representative of Mr. Connor who calls on you now?

A. Mr. Sigler.

Cross-examination by Mr. LOVETT:

Q. Such business as you shipped over the Union Pacific to California points always passed over the Southern Pacific from Ogden west, did it not?

A. Yes, sir.

Q. And the solicitors in working exclusively for the Union Pacific, when the Southern Pacific and the Union Pacific were separate, were in that way working also for the Southern Pacific, weren't they?

A. Yes, sir, from Ogden to destination.

Q. You never shipped any business to Portland by way of the Sunset Route, that is, New Orleans or El Paso, did you?

A. No, sir, not that I recall.

Q. You never shipped any to San Francisco by way of Portland, and then by boat down?

A. No, sir.

Q. You are not interested in the division of the through rate as between the different lines participating in the haul, are you, Mr. Cory?

A. No, sir.

Q. You are only interested in the aggregate rate?

A. Yes, sir.

2505 Q. I suppose that the various lines lying between here and New Orleans and El Paso and Denver and the Missouri River are soliciting business to the Pacific coast, are they not?

A. Yes, sir.

Q. And always have been, as far as you know?

A. As far as I know, yes, sir.

By Mr. SEVERANCE:

Q. Mr. Connor or his representatives never solicited shipments by way of Ogden, did they, when they were separate agencies?

A. No, sir.

By Mr. LOVETT:

Q. They never objected to getting it that way, but they preferred to have it by way of New Orleans?

A. Well, they could not help but get it, I believe, from Ogden to California points.

Q. If it went that way it was not necessary for them to solicit it?

A. No, sir.

By Mr. SEVERANCE:

Q. But they never said anything to you about the Ogden route in the way of asking for business from you?

A. No, sir.

Q. So any satisfaction they may have felt, as suggested by Judge Lovett, was something that they did not indicate to you?
A. No, sir, if they had any satisfaction they didn't mention it.

2506 F. L. MARSHALL,

being duly sworn as a witness on behalf of the Complainant, testified as follows:

Direct examination by Mr. SEVERANCE:

Q. Where do you live, Mr. Marshall?
A. Piqua, Ohio.
Q. What is your business?
A. Traffic manager of the Pioneer Pole & Shaft Company.
Q. What is their business?
A. The manufacturing of buggy poles and shafts.
Q. How long have you been with that company?
A. Since its organization, early in 1903.
Q. Previous to that time what was your business?
A. I was with the Buckeye Manufacturing Company in the same business, Anderson, Indiana.
Q. That is, in charge of their traffic?
A. The last four years in charge of the traffic.
Q. What is the business of the Buckeye Manufacturing Company?
A. It was the manufacture of poles and shafts.
Q. In the same kind of business?
A. The same thing, yes, sir.
Q. Are these two businesses related—the Buckeye Manufacturing Company and the Pioneer Pole & Shaft Company?
A. The Pioneer Pole & Shaft Company is the successor to the former company.
Q. So, it is the same business under another name?
A. The same business under another name.

2507 Q. And you were formerly located at Anderson, Indiana, and are now at Piqua, Ohio?
A. Piqua, Ohio; that is correct.

Q. Compared with other companies in the same line of business, is this a large concern, Mr. Marshall?
A. Yes, sir. I am not posted as to the exact percentage of the business that they transact. I would judge from 50 to 60 per cent.
Q. Of the entire business?
A. Of the entire business.
Q. Of the country?
A. Probably that.
Q. Then, it is the largest individual company?
A. Yes, the largest individual company.
Q. In that line of business?
A. Yes.

Q. Do they have plants at more than one place?
A. Yes, sir.
Q. Where are they located?
A. The Ohio Plants are at Sidney, Piqua, Troy, Cincinnati, Akron, Ashtabula and Wellington; in Indiana at Muncie and Anderson; and also at St. Louis, and Memphis, Tennessee.
Q. Do you have charge of all their traffic?
A. Yes, sir.
Q. From all of the plants?
A. Yes, sir.
Q. To what parts of the country do you consign your product?
A. More or less to all parts of the United States.
Q. Do you ship to the Pacific coast?
A. Yes, but not very extensively.
Q. As compared with other parts of the country?
A. As compared with other parts, no. Our product is used mostly in the manufacture of vehicles.
Q. From what points do you ship to the coast such product as you do ship there?
A. Well, we ship mostly from Anderson, Indiana; Muncie, Indiana, and Piqua and Troy, Ohio.
2508 Q. Do you remember when the Southern Pacific and the Union Pacific had separate agencies in Cincinnati?
A. Yes, sir.
Q. Were you acquainted with their agents?
A. I was.
Q. Did they call on you, soliciting business?
A. Yes, sir.
Q. Which way did the Southern Pacific agency endeavor to route the business?
A. Via New Orleans.
Q. And the Union Pacific which way?
A. Via Omaha—the Missouri River.
Q. Was the competition between these lines for Pacific coast business active or otherwise?
A. It would be considered active in the sense that it was being solicited against one another.
Q. Did you ever ship to the coast otherwise than by rail?
A. I think I recall one or two small shipments that way via New York City.
Q. And how did they move?
A. They went around the Horn. That was at the suggestion of the consignee.
Q. But they were very few, were they?
A. Very few.
Q. Since the consolidation of the agencies of the Southern Pacific and the Union Pacific here, does a representative of that agency call on you, soliciting business?
A. Yes, sir; Mr. Sigler.

Q. Which gentleman comes to see you?
A. Mr. Sigler.
Q. And as between the Sunset Route by New Orleans and the Union Pacific route, which way, if either, does he try to route the traffic?
A. He has never expressed any preference that I recall.
Q. Do you ship somewhat to Portland—north Pacific coast
2509 points?
A. Yes, some.
Q. How does your traffic move to Portland?
A. That is divided among the Union Pacific, the Northern Pacific, and the Great Northern.
Q. And is it solicited by those three?
A. Yes, sir.
Q. And has been for a long time, during all the time you have been in the business?
A. It has been, yes, sir.

Cross-examination by Mr. LOVETT:

Q. Does the Chicago & North-Western agent ever call on you soliciting that business, Mr. Marshall?
A. I think I recall solicitations from the North-Western for that business, yes, sir.
Q. The St. Paul agent?
A. Yes, sir.
Q. The Burlington?
A. Yes, sir.
Q. The Rock Island?
A. Yes, sir.
Q. The Missouri Pacific?
A. Yes, sir.
Q. All soliciting that business?
A. Yes, sir.
Q. The Denver & Rio Grande?
A. More or less, yes, sir.
Q. The Queen & Crescent?
A. Yes, sir.
Q. And the Louisville & Nashville and the Illinois Central?
A. Yes, sir.
Q. In fact, they are all soliciting that business?
A. All more or less soliciting it, yes, sir.
Q. Now, if the Chicago & North-Western agent gets the business, which way does it move?
A. It moves via Chicago and Omaha—Union Pacific; Southern Pacific at Ogden, I presume, if it goes Union Pacific.
2510 Q. That is to say, if the agent of the Chicago & North-Western were to get it, so far as Union Pacific is concerned, it would be the same as if its own agent got it, wouldn't it? It would move over that line?

A. What is that question? What is that again?

Q. I say if the agent of the Chicago & North-Western should secure the business, that would be the same, as far as the Union Pacific is concerned, as if its own agent had got it, because it would get the traffic from the Chicago & North-Western, wouldn't it?

A. Yes.

Q. And so with the St. Paul?

A. But I don't understand that either one of them can secure the business now, can they?

Q. Can secure the business now?

A. Yes. I understand the routing is in the hands of the initial carrier at this time, is it not?

Q. If they choose to exercise the right, I understand that. But a member of the Ohio Railroad Commission, who was on the stand this morning, had a different view of it. But as a practical matter, if you were to route your traffic over the Chicago & North-Western, either voluntarily or in response to the solicitation of the agent of that company, it would pass over the Union Pacific, too, wouldn't it?

A. Well, I have not had occasion to make a shipment since I got the new transcontinental tariffs, and I am not posted on that. I am really asking for some information, for one thing.

Mr. SEVERANCE. Well, you have come to a good source.

Q. I am not speaking of any recent transaction; I am speak-
2511 ing generally, of the past.

A. Yes, prior to the time the new transcontinental tariffs went into effect, of course it would move that way, the way the shipper would designate.

Q. I didn't know that there were any new transcontinental tariffs. I was just asking as to the situation generally, not with reference to any particular time. But generally, if it moves over the Chicago & Northwestern, it also moves over the Union Pacific?

A. Yes, sir.

Q. And so if it would move over the St. Paul to California, it would move over the Union Pacific?

A. Yes, sir, that would be the natural route.

Q. And if it moved over those lines, or if it moved over the Union Pacific it would move to California then over the Southern Pacific west of Ogden, wouldn't it?

A. Yes, sir, necessarily.

Q. Shippers are not interested in the division of through rates as between the carriers, are they? That is to say, it is no concern of yours how the Union Pacific and the Southern Pacific, for instance, or the Southern Pacific and the Queen & Crescent or other lines divide the through rate as among themselves?

A. No, sir, no material difference to the shipper.

Q. The shipper is not interested in that division at all; he is simply interested in the aggregate rate?

A. That is all.

Q. Did you ever ship anything to Portland by way of the Sunset Route, Mr. Marshall?

A. No, sir; never did—not that I recall.

Q. As far as you recall, none was ever shipped that way?

2512 A. No, sir.

Q. You never shipped anything to San Francisco by way of Portland; that is, by rail to Portland and thence by boat from Portland down to San Francisco, did you?

A. No, sir. That would be an impracticable route for us.

By Mr. SEVERANCE:

Q. You are interested in getting as good service as you can, aren't you?

A. Yes, sir.

Q. And you feel that the more competition there is between lines the more activity there will be to give good service, to get the business?

A. Yes, sir, I think that is true.

By Mr. LOVETT:

Q. How is the service generally on the line made up by the Union Pacific and the Southern Pacific by way of Ogden? Isn't that about as good as any of the all-rail lines?

A. As I recall, it is on a parity at least with the——

Q. With the best?

A. With any line; yes, sir.

Q. You don't know of any better?

A. I don't know of any better, take it all around.

2513 H. P. BLUM,

being duly sworn as a witness on behalf of the Complainant, testified as follows:

Direct examination by Mr. SEVERANCE:

Q. Mr. Blum, what is your position at present?

A. I am traffic manager of the Central States Cooperage Company.

Q. How long have you been in that position?

A. One week.

Q. Previous to that what was your business?

A. Traffic manager of the Globe-Wernicke Company at Cincinnati.

Q. What is the business of the Globe-Wernicke Company?

A. Manufacturer of sectional bookcases chiefly, sectional filing cabinets—general line of office equipment.

Q. Is that a large concern?

A. The largest of its kind in the world.

Q. To what parts of the United States does the Globe-Wernicke Company send its product?

A. All parts.

Q. Including the Pacific coast?

A. Yes, sir.

Q. How long were you traffic manager of the Globe-Wernicke Company?

A. Five years and two months.

Q. You began when?

A. September 21, 1903.

Q. At that time was the Union Pacific maintaining a separate agency here from the Southern Pacific, or were they consolidated?

A. I am quite sure that they were consolidated.

Q. Who, if anyone, called on you as traffic manager of the Globe-Wernicke Company in soliciting business for the Union
2514 Pacific and the Southern Pacific?

A. Mr. Shinkle, the local soliciting agent, usually called on me, but I have discussed traffic matters with Mr. W. H. Connor also.

Q. In soliciting your business, did Mr. Shinkle express any preference for one route as against the other, that is, for the Union Pacific route as against the route by New Orleans?

A. No, sir; he was impartial.

Q. Impartial as between those two?

A. Yes, sir.

Q. How did the business of the Globe-Wernicke Company move to Portland, Oregon?

A. Via Union Pacific, Great Northern and Northern Pacific?

Q. Did you ever ship to the coast by boat?

A. Yes, sir.

Q. By what line?

A. Through New York City, via the American & Hawaiian Steamship Company at times, and sometimes in care of the Panama Railroad Steamship Company.

Q. And did the product move from here to New York?

A. From here to New York City, yes, sir.

Q. To New York City by rail?

A. By rail, and steamship beyond.

Q. And did the steamship company absorb the rail rate from here to New York?

A. No, sir.

Q. How was it arranged? It was a through rate, was it?

A. The charges were not absorbed, but they were taken care of as advance charges; that is, in case we desired that the consignee pay the freight, the steamship would take up the charges, and, I
2515 presume, pay them to the railroad and charge them as advances at destination. That business usually moved on a prepaid basis, but of course the circumstances were the same.

Q. How did the aggregate rate to San Francisco from Cincinnati by way of New York and the Panama route of the American & Hawaiian line compare with the all-rail rate?

A. It was lower.

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Q. Did you make any shipments that way?

A. Well, by comparison, no—by comparing it to the number that moved all rail directly overland to the coast.

Q. Well, leaving out the comparison, was the shipment that way considerable or very small?

A. I would say small.

Q. How long a time was consumed in the journey to San Francisco by that route? Take the first Panama route—from here to New York City and then by the Panama route.

A. Well, I am not capable of stating. It was not a matter of sufficient interest to follow it through, because, in the first place, the orders were dated so far ahead of time that the matter of time in transit was no consideration at all.

Q. And was that the same with the shipments by the American-Hawaiian line?

A. Yes.

Q. You don't remember which was the quicker route—the American-Hawaiian line or the Panama route?

A. I do not.

Q. And you do not remember how much time it took to get the product there either way?

A. I do not.

Q. Those shipments were cases where you were in no hurry?

A. In no hurry.

Q. Do you remember how much the differential was?

2516 A. No, I don't recall that at the present time. It was handled on a differential basis, but I don't know just what it was. These companies had a tariff covering that business, but at the time I usually referred to those tariffs.

(No cross-examination.)

2517 GEORGE W. VOSMER,

being duly sworn as a witness on behalf of the Complainant, testified as follows:

Direct examination by Mr. SEVERANCE:

Q. Mr. Vosmer, what is your business?

A. I am foreman of the hardware department and metal filing department of the Globe-Wernicke Company at Norwood.

Q. Was there any time that you had charge of their traffic?

A. Yes, sir.

Q. Were you the predecessor of Mr. Blum?

A. Yes, sir.

Q. For how many years prior to his occupancy of that position did you have charge of their traffic?

ND CLOSE IN CENTER

A. I had charge of the traffic department for two years prior to that, and was rate clerk and route clerk of the freight movement from the 8th Street plant two years and a half prior to that.

Q. You heard his testimony given just now as to the extent of the business and the way it was scattered over the country?

A. Yes, sir.

Q. Conducted by the Globe-Wernicke Company?

A. Yes, sir.

Q. Does that accord with your information as to their business?

A. Yes, sir.

Q. Do you remember when the Union Pacific and the Southern Pacific had separate soliciting agencies here in Cincinnati?

A. Yes, sir.

Q. Were those agencies soliciting the business of the Globe-Wernicke Company at that time, in competition?

A. Yes, sir.

Q. Which way did Mr. Connor and his subordinates en-
2518 deavor to route the traffic to the coast?

A. Always via New Orleans.

Q. How has your business always been routed to Portland, if you know?

A. By the Union Pacific and the O. R. & N. Company, and the Great Northern and the Northern Pacific railroads.

Q. Has that business always been actively competed for by those lines?

A. Yes, sir.

Q. And is still?

A. I don't know whether it is now or not; it was up to the——

Q. Well, up to the time you left?

A. Up to the time I was there.

Q. Well, the business to California points Mr. Connor endeavored to get by the Southern Pacific, by New Orleans. Did some of your business move that way?

A. Most all of it. Most all of that business out there was routed via New Orleans and the Southern Pacific Railroad by the consignee.

Q. By the consignee?

A. Yes.

Q. Did some of it move by the Union Pacific?

A. I cannot recall that I ever sent any California business out there via the Union Pacific.

Q. Do you remember when the offices were consolidated here?

A. Yes, sir.

Q. After they were consolidated what representative of the companies called on you, looking out for business?

A. Mr. Shinkle.

Q. Did he ever after that endeavor to get business away from one line for the other?

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2519 A. No, I can't say that he endeavored to take it away from one line or the other, but my impression is that he always preferred the New Orleans route.

Q. That is the way you had always been shipping?

A. That is the way we had always been shipping it, yes, sir.

Q. Did you continue to do so?

A. Yes, sir.

Cross-examination by Mr. LOVETT:

Q. He tried to get it away from the Atchison, didn't he?

A. Oh, yes, sir; he tried to keep it away from those other roads.

Q. Did I understand you to say that your shipments to the north Pacific coast, that is, Puget Sound and Portland, were by the Union Pacific, the Northern Pacific, and the Great Northern?

A. Yes, sir.

Q. You never shipped any business that way by the Sunset Route, did you?

A. No, sir, I never did.

Q. And never shipped to Portland by that route?

A. No, sir.

Q. Did you ever ship any business to San Francisco by way of Portland and by boat down the coast?

A. No, sir.

Q. Did you ever know of anybody shipping that way?

A. No, sir, I never did.

Q. The Union Pacific agents never solicited you to ship that way, did they?

A. No, sir, not to my knowledge they didn't.

Q. Now, if, prior to the consolidation of the agencies, Mr. Connor or other agent of the Southern Pacific could not get the business by way of New Orleans, would they, as against the Atchison, seek to work it by way of the Union Pacific and Ogden route?

A. No, sir, not to my knowledge they wouldn't.

2520 Q. Did they solicit only by way of New Orleans?

A. That is my recollection that they only solicited by New Orleans. If it had to go via Ogden they got it anyway, without soliciting.

Q. They got it anyway?

A. Yes, sir.

Q. There being no other outlet for the Union Pacific?

A. No.

Q. You were not interested in the division of these rates as between the different lines participating in the haul, were you?

A. No, sir.

ND CLOSE IN CENTER

2521 J. A. HEDGES,

being duly sworn as a witness on behalf of the Complainant, testified as follows:

Direct examination by Mr. SEVERANCE:

Q. Mr. Hedges, where do you live?

A. Columbus, Ohio.

Q. And what is your business?

A. I am secretary and treasurer of the Peruna Company.

Q. In connection with your position do you have anything to do with the movement of traffic?

A. The traffic department is under my supervision.

Q. That is a very large concern, isn't it—the Peruna Company?

A. Yes, sir.

Q. It manufactures a certain kind of medicine?

A. Yes, sir.

Q. And to what part of the country is that medicine shipped?

A. To all parts of the United States.

Q. How long have you been in charge of the traffic of the Peruna Company?

A. It was put into my department sometime in the year 1901.

Q. How does the bulk of your traffic move to the Pacific coast?

A. Since the San Francisco earthquake we have been shipping most of it by rail. Prior to that we sent most of our shipments to the coast around the Horn.

Q. Have you ever used the American-Hawaiian line?

A. Yes, sir.

Q. How does the traffic move from Columbus when it goes to California by the American-Hawaiian line?

2522 A. To New York city, and then around the Horn.

Q. Did you say since the earthquake you shipped by rail?

A. Principally by rail, yes, sir.

Q. How long a time did it take the American-Hawaiian line to deliver goods in San Francisco from Columbus?

A. About eighty days, I think; somewhere about 80 days.

Q. There was a differential in favor of that line, wasn't there?

A. Yes, sir.

Q. I suppose that is the reason you shipped that way?

A. That was the reason for shipping that way.

Q. Is your product anything that ordinarily requires quick transportation?

A. Well, usually, yes. The transportation I speak of as going around the Horn was intended for our San Francisco storage account. For a number of years we kept a storage plant in San Francisco and made our distribution from there for a great many western points, that is, in the southern part of the United States and the west; but ordinary shipments on orders we almost invariably shipped by rail.

Q. You stated that it was in 1901 you took charge of that branch of the business. After that time how did your Pacific coast business move when it moved by rail—the California business?

A. I think principally by the Union Pacific, that is, for California points.

Q. And the Portland business, how did that move?

A. For the most part the Portland business was shipped over the Northern Pacific.

Q. After you took charge of the traffic as part of your busi-
2523 ness, the Union Pacific and the Southern Pacific did not maintain separate commercial agencies here, did they?

A. No. I have very little recollection about any merger between the two or anything connected with their combining. I think the combination probably took effect before I paid any particular attention to it.

Q. Since you have had charge of the business, have they had any agents there competing with each other for coast business?

A. No, not as between the two roads.

Q. That is what I mean—as between the two roads.

A. No, sir.

Q. They have an agent, haven't they, who calls on you and solicits business?

A. Oh, yes.

Q. Is he impartial between the two in his solicitation?

A. Well, I don't recall him ever having solicited business for either particular line.

Cross-examination by Mr. LOVETT:

Q. Such business as you ship over the Union Pacific to California goes over the Southern Pacific from Ogden to destination, doesn't it, Mr. Hedges?

A. Yes, sir.

Q. You never shipped to Portland by way of the Southern Pacific, did you—the Sunset Route?

A. To Portland?

Q. Yes.

A. Yes, I remember some shipments of advertising matter—oh, you mean by the Southern Pacific?

Q. Yes.

A. No. I misunderstood you; I thought you said the Union
2524 Pacific. I do not recall any shipments going to Portland by way of the Southern Pacific.

Q. And you never shipped to California by way of Portland, and then by boat from Portland to San Francisco?

A. No, sir.

2525 WILLIAM J. DOYLE,

being duly sworn as a witness on behalf of the Complainant, testified as follows:

Direct examination by Mr. SEVERANCE:

Q. Mr. Doyle, where do you live?
A. Cincinnati, Ohio.
Q. What is your business?
A. Traffic manager of J. A. Fay and Egan Company.
Q. How long have you been engaged with the Fay and Egan Company?
A. About twenty-two years.
Q. How long have you had charge of the traffic?
A. About sixteen years.
Q. What is the business of the Fay and Egan Company?
A. Builders of woodworking machinery, anything that cuts wood; woodworking machinery for furniture factories, and so forth.
Q. Is it a large concern?
A. One of the largest in the world.
Q. And to what parts of the country is their product shipped?
A. All parts.
Q. Including the Pacific coast?
A. Yes, sir.
Q. Do you remember when the Union Pacific and the Southern Pacific had separate offices in Cincinnati?
A. Yes.
Q. Were you acquainted with their respective representatives?
A. Yes, sir.
Q. Who represented the Southern Pacific in those days?
A. Mr. Connor.
2526 Q. And who represented the Union Pacific?
A. Mr. Clifford.
Q. Were you acquainted with Mr. Liston?
A. Yes.
Q. What was his position?
A. He was street man for the Union Pacific.
Q. And who was Mr. Smith?
A. Mr. Smith was also with the Union Pacific, but very seldom called on me. Mr. Liston did, though, and so did Mr. Clifford.
Q. Now, in the days when they had these separate offices here, did the representatives of the Union Pacific and of the Southern Pacific each call on you and solicit your traffic?
A. They did.
Q. And which way did the Southern Pacific people endeavor to route their traffic?
A. New Orleans—Sunset Route.
Q. And the Union Pacific by——
A. Omaha, Overland.

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Q. How was that competition—active or otherwise?
A. Active, very.
Q. How do your shipments to Portland move?
A. Union Pacific, Oregon Short Line.
Q. Has that always been so?
A. The last five or six years. Of course the Great Northern got some, and so did the Northern Pacific. In the last five years we have not done much business up there, though.
Q. Have you ever shipped any business to San Francisco by way of the Union Pacific to Portland, and then by boat?
A. No.
Q. You never used the boat line between San Francisco and Portland?
2527 A. No, not the boat line. I think there were a few cars, during a blockade some years ago, from Ogden, that they took to Portland and back. I am not sure about that, though.
Q. From a memorandum I have, I thought you had used the boat-line in a blockade?
A. Traffic was blocked from Ogden and blocked from El Paso, and I think they took some cars up and brought them down on the Shasta route. That is just hearsay, though; I don't know about that.
Q. You don't know about that?
A. No. That was just to accommodate the customers out there.
Q. My memorandum is at fault then; I understood that you did. But your Portland business, as I understand it, then, moves by Union Pacific?
A. Union Pacific and Oregon Short Line.
Q. And formerly went by the Northern Pacific, you say?
A. Yes. That is a long time ago, though. It is controlled on the coast, you know. We sell all our machinery f. o. b. Cincinnati.
Q. Oh, all of your stuff is routed at the other end, is it?
A. Yes, sir.
Q. So you do not route anything yourself?
A. No, very seldom.
Q. Do these soliciting agents come in with notifications that stuff has been routed and ask you to respect the routing, at times?
A. Yes, sir.
Q. That is quite frequent, is it?
A. Yes.
Q. Do you ship abroad?
A. Yes, sir.
Q. To the Orient, or only to Europe?
2528 A. Yes, to the Orient, but very seldom by the Pacific coast. It is generally by New York; in fact, we used to send all our foreign business via New York.
Q. How do your shipments to Los Angeles move?
A. By the Santa Fe, via Mazon.
Q. Who routes them?
A. The consignee.

D CLOSE IN CENTER

Q. Do you know an association called the Pacific Machine Dealers' Association?

A. Yes, sir.

Q. Of which Mr. Gillette is the secretary?

A. Yes.

Q. What does he have to do with routing traffic, if anything?

A. For 'Frisco or Los Angeles you are speaking about now?

Q. Either one.

A. Well, the cars for 'Frisco are made up in the name of the Bradford Machine Tool Company, and the cars for Los Angeles are made up John Steptoe Company.

Q. What does Mr. Gillette have to do with the routing of them?

A. Well, I think Mr. Shinkle looks after the 'Frisco business for Mr. Gillette; that is, they load for him.

Q. Mr. Shinkle here, you mean?

A. Of Mr. Connor's office. And Mr. Fisher of Mr. Thompson's office, looks after the Los Angeles business, I think. Of course we are not supposed to know that.

Q. What I want to get at is this. I will first ask you is your house a member of this Pacific Machine Dealers' Association?

A. They are, yes, sir.

Q. What is that association?

A. More especially during these times it is awful hard to make up a carload right now, and in order to do any business on
2529 the coast, of course we have got to get a carload rate, so all the machinery dealers on the coast are members of this association.

Q. And they bunch their shipments?

A. They bunch their shipments together and make a carload; that is the only way they can do.

Q. And their secretary routes the traffic, doesn't he?

A. Yes, sir.

Q. That is Mr. Gillette?

A. Mr. Gillette; I believe that is the name.

Q. And does the business to San Francisco, all of it, go Union Pacific?

A. No.

Q. And the business to Los Angeles, all of it, go Santa Fe?

A. Everything for Los Angeles goes Santa Fe, but the 'Frisco business, a whole lot of it, goes by Rock Island and El Paso.

Q. Goes by Rock Island and El Paso?

A. Southern Pacific.

Q. It is divided, is it?

A. In fact, most of it goes that way.

Q. Most of it goes that way?

A. Yes.

Q. But that is all routed out at the other end by this Mr. Gillette?

A. Yes, sir.

Q. Representing that lot of dealers and manufacturers?

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A. That is right, yes.

Q. And no other company participates in the Los Angeles business with the Santa Fe, so far as you know?

A. What is that?

Q. Is there no other company that participates with the Santa Fe in the Los Angeles business?

A. I don't think so, as far as I know.

2530 Q. All of your product goes to Los Angeles by the Santa Fe?

A. Yes, sir; they have their full haul out from Mazon, Illinois, just out of Chicago; they get their full haul.

Q. You mean they take it in train-load?

A. No, each car, you know.

Q. Carload?

A. Yes.

Cross-examination by Mr. LOVETT:

Q. I believe you testified that you never made any shipments to San Francisco by way of Portland.

A. Yes, sir.

Q. By boat and water?

A. I never remember of any.

Q. And you never made any to Portland by way of the Sunset line, did you?

A. No, sir.

Q. Now, I suppose there are a good many lines soliciting business for California in this territory, aren't there?

A. Yes, sir.

Q. The Rock Island?

A. Yes, sir.

Q. And the Burlington?

A. All of them, all the Northwestern lines—the C. & N. W., the C. M. & St. P., and the Illinois Central.

Q. And the Southwestern lines?

A. Yes, sir.

Q. And the Southern lines are also soliciting?

A. Yes, sir. Of course we generally refer them to the coast.

Y. Your business is largely controlled from the coast?

A. Largely controlled from the coast.

Q. All business that you ever sent over the Union Pacific for California moved over the Southern Pacific from Ogden,

2531 didn't it?

A. Oh, yes.

Q. The only outlet?

A. The only outlet, of course.

Q. So, whatever business the separate solicitors of the Union Pacific secured for California, was also secured in that way for the Southern Pacific?

A. Yes, sir.

ND CLOSE IN CENTER

Q. The solicitors of the Southern Pacific, in working for the New Orleans route, if they could not get business that way, would they, as against the Atchison, endeavor to work with the Union Pacific for the Ogden route?

A. Yes, sir.

Q. You understand that the shipper is not interested in the division of the rates between the different carriers, participating, don't you? Is that your understanding?

A. Yes.

Q. The shipper is interested only in the aggregate rate, the through rate?

A. The shipper is interested in the through rate.

Q. And not in the divisions of it between the carriers?

A. No; just the through rate, of course.

By Mr. SEVERANCE:

Q. Do you remember of any instance when Mr. Connor or his representatives tried to work business by Ogden? Didn't he always try to work it by New Orleans?

A. Before they combined?

Q. Yes.

A. Always by New Orleans.

Q. Yes, that is what I thought. So when you said, in answer to Judge Lovett that if he could not get it via New Orleans he would take it by Ogden as against the Atchison, you meant since they have been consolidated?

2532 A. Oh, yes, since they have been consolidated.

By Mr. LOVETT:

Q. Couldn't he do it before?

A. He wanted to have the long haul before.

Q. He would rather have the short haul than let the Atchison get it, wouldn't he?

Mr. SEVERANCE. The question is whether he said anything about it.

A. All of our business generally for ten or twelve years went by New Orleans, up till about four or five years ago. In fact, both our agents route everything via New Orleans; that was our natural route down there always.

Q. So the question of solicitation on the part of the Southern Pacific by the Ogden route did not come to your attention, then?

A. A few cars that way now and then, you know, just to show they were up there.

By Mr. SEVERANCE:

Q. Those few cars that went every now then were in response to Union Pacific solicitation, weren't they?

A. Yes, sir.

2533 S. F. KEMPER,

being duly sworn as a witness on behalf of the Complainant, testified as follows:

Direct examination, by Mr. SEVERANCE:

Q. Mr. Kemper, where do you live?
A. Cincinnati.
Q. What is your business?
A. Secretary of the Hall Safe Company.
Q. Have you ever had anything to do with their traffic?
A. It has been under my supervision.
Q. Were you ever the traffic manager of the Hall Company?
A. Yes, sir.
Q. From what date?
A. About 1897 up to about two years ago.
Q. The Hall Safe Company manufactures safes?
A. Yes, sir.
Q. Steel safes and vaults?
A. Yes, sir.
Q. To what parts of the country do you ship your product?
A. All parts.
Q. Is it a large concern?
A. Yes, sir.
Q. Large output?
A. Yes, sir.
Q. Do you ship to the Pacific coast?
A. Yes, sir.
Q. Do you remember, years ago, when the Union Pacific and the Southern Pacific had separate agencies here?
A. I don't remember it very distinctly, no. I suppose I did know at that time that their——
Q. Did you know Mr. Connor?
A. No, I never met Mr. Connor until today.
2534 Q. Oh, you never met him before. Did you ever know Mr. Welsh?
A. No, sir.
Q. So that you don't remember of their having separate agencies?
A. Oh, I suppose they did, but I never met either one of the gentlemen.
Q. Didn't their solicitors come to see you?
A. Yes, sir.
Q. Well, I didn't mean necessarily Mr. Connor and Mr. Welsh, but representatives of those two lines came and called on you, soliciting the business?
A. Yes, sir.
Q. In which way did the Southern Pacific try to route the business?
A. We never did very much business with them. The Southern Pacific, when they wanted it, wanted it via New Orleans.

Q. And the Union Pacific by Omaha, I suppose?
A. I don't believe we were ever solicited—they must have called on us, but I don't remember much about it.
Q. How does your business chiefly move to the coast?
A. Santa Fe.
Q. And has for a long time?
A. Yes, sir. To California points.
Q. Yes. How do you ship to Portland?
A. The Northern routes—Great Northern and Northern Pacific.
Q. Did you ever ship there by the Union Pacific?
A. Not that I ever recollect of.
Q. Do you have any Oriental business?
A. Yes, sir.
Q. How do you ship that?
A. Most of it goes by New York.
Q. Any of it go by San Francisco or other coast point?
2535 A. We have had a little of it to go via San Francisco.
Q. Do you remember what steamship line?
A. No, I do not.
Q. Did the Santa Fe take it to San Francisco?
A. Yes, sir.

Cross-examination by Mr. LOVETT:

Q. I believe you said that practically all your shipments for California go over the Santa Fe, Mr. Kemper?
A. Yes, sir.
Q. None over the Southern Pacific or the Union pacific?
A. We have had a few shipments that way, but not a great quantity of them.
Q. When? recently?
A. I think about the time of the earthquake in San Frascisco.
Q. About the time of the earthquake?
A. Yes.
Q. The earthquake shook the Santa Fe loose, did it? After the earthquake, though, after that temporary state of affairs out there, you resumed shipments by way of the Santa Fe?
A. Yes, sir.
Q. How did you say your shipments to Portland move?
A. By the northern routes—Northern Pacific, Great Northern and Canadian Pacific.
Q. You never shipped any that way by the Southern Pacific, did you?
A. No.
Q. Did you ever ship any to San Francisco by way of Portland?
A. No, sir.
Q. Is your business solicited by other lines, Mr. Kemper?
A. We have been, yes.
Q. The Rock Island?
A. Yes.

Q. The Missouri Pacific?

2536 A. Mostly for local business on their lines, though—not for through business.

Q. They do not solicit you for Pacific coast business, then?

A. I suppose they would take it if they got it, but they never come after it.

Q. They gave it up as useless, eh? How about the Missouri Pacific? Does it solicit your business to the coast?

A. Not recently.

Q. The Burlington?

A. For the northwest they do.

Q. But not for California?

A. No.

Q. You don't know how your business would move, I suppose, if it had been given to the Union Pacific, because you never shipped any that way?

A. We never shipped any that way.

2537 J. T. PURSEL,

being duly sworn as a witness in behalf of the Complainant, testified as follows:

Direct examination by Mr. SEVERANCE:

Q. What is your business, Mr. Pursel?

A. I have charge of the freight traffic of the Armleder Wagon Works, Cincinnati.

Q. That is a company in Cincinnati, manufacturing carriages and wagons?

A. It is a manufacturer of delivery wagons in Cincinnati, yes, sir.

Q. How long have you been with that company?

A. A little over three years.

Q. Previous to that what was your business?

A. With Frank J. Enger Carriage Company.

Q. And where are they located—in Cincinnati?

A. In Cincinnati.

Q. What is their business?

A. Carriages, vehicles.

Q. Did those two companies with which you have been connected ship their product to the Pacific coast, among other places?

A. Yes, sir.

Q. Have they, during all the time you have been connected with either one of them?

A. Yes.

Q. Do you remember when the Union Pacific and the Southern Pacific had separate agencies here?

A. Yes, sir.

Q. Who represented the Union Pacific?

A. The Union Pacific, when I first knew them, Mr. Welsh.

2538 Q. And later on, who?

A. Mr. Connor.

Q. That is, after the consolidation?

A. Yes. Yes, before the consolidation, too—the Southern Pacific.

Q. Yes, I understand Mr. Connor represented the Southern Pacific, but I asked you about the Union Pacific.

A. Oh, the Union Pacific?

Q. Yes. Mr. Welsh represented them, did he?

A. Yes. I was wrong about that.

Q. Who was he succeeded by, or do you remember anybody succeeding him?

A. I think there was a man by the name of Clifford here, but only for a short while. I don't just remember.

Q. In those days were those two lines competing for Pacific coast business?

A. Yes, sir.

Q. Those two agencies?

A. Yes, sir.

Q. Was that competition active or otherwise?

A. Well, I would consider it active.

Q. They used to call on you to solicit business?

A. Yes, sir.

Q. Which way did the Southern Pacific agency endeavor to route its business?

A. Mr. Connor preferred the New Orleans route, of course—the southern route.

Q. Which way did the most of your carriage business move as between these two—via New Orleans or by the Union Pacific?

A. Well, up to the time I went with Armleder it was divided. I hardly know which route got the most.

Q. Was the matter of equipment of importance to you?

A. Very important.

2539 Q. And was the business diverted from one line to another on account of one line being able to furnish equipment superior to that of the other?

A. At times, yes, sir.

Q. How was the Union Pacific in that regard?

A. The Union Pacific, I think, were one of the first to have a large vehicle car; that is my recollection.

Q. And furnishing that car resulted in taking business away from the other lines and giving it to them?

A. In a great many instances, yes.

Q. Since the offices were consolidated, have you been called on and solicited for business by the agent of the joint lines?

A. Well, I have been called on by the representative, Mr. Shinkle.

Q. That is what I mean.

A. Yes.

Q. Does he express any preference between the New Orleans route and the Union Pacific route?

A. Well, no, I don't think he does with me.

Q. When you were with the Frank J. Enger Company, did you ship to Portland?

A. Well, we possibly did, but if we did I haven't any recollection of any shipments now. It is very likely we did.

Cross-examination by Mr. LOVETT:

Q. You never shipped to Portland by way of the Sunset Route, did you, Mr. Pursel?

A. No, sir, I never did.

Q. Nor to San Francisco by way of Portland and by boat from Portland down to San Francisco?

A. No, sir.

2540 Q. Such business as you shipped to California by way of the Union Pacific, either at the solicitation of the Union Pacific agent or for other reasons, moved over the Southern Pacific from Ogden to destination, did it not?

A. I presume it did. There was no other way to get it there at that time.

Q. That is your understanding?

A. Yes.

Q. There was no other way to get there except over the Southern Pacific?

A. Yes, sir.

Q. You are not interested in the division of the through rate as between the different carriers?

A. No. The through rate is all we are interested in.

2541 CHARLES BERNDT,

being duly sworn as a witness on behalf of the Complainant, testified as follows:

Direct examination by Mr. SEVERANCE:

Q. Mr. Berndt, what is your business?

A. I am traffic manager of the Andrew Jergens Company.

Q. What is the business of the Andrew Jergens Company?

A. Why, toilet soaps, perfumes, talcum powders, Florida water.

Q. Is it a large concern?

A. Yes, it is a pretty good-sized concern.

Q. To what parts of the country do you ship your product?

A. Why, almost all over.

Q. How long have you been with them?

A. Twenty-three years.

Q. Do you ship to the Pacific coast?

A. Yes, sir.

Q. Over what lines does your traffic chiefly move to California points now?

A. At the present time over the Santa Fe.

Q. What is the reason that you send it by the Santa Fe, if you have any special reason?

A. Nothing in particular. It is a little bit better time.

Q. A little bit better time?

A. Yes.

Q. And you figure that it is important to shippers to get the time, do you?

A. Yes, sir.

Q. That is one way of getting business, isn't it—furnishing it?

A. That is the object.

Q. Did you formerly ship some over the Union Pacific?

2542 A. Yes, sir.

Q. Have you ever shipped by the Southern Pacific, by New Orleans?

A. Yes, sir.

Q. Lately?

A. No, not for the past year, that I can recall.

Q. Did you ever ship very much that way?

A. Oh, yes.

Q. Does the same reason apply for not shipping by the Southern Pacific which you gave for not shipping by the Union Pacific, and giving your business to the Santa Fe—that is, that the Santa Fe gave you better time?

A. Better time, that is the only reason.

Q. Than either of the others?

A. Yes, sir.

Q. Do you remember when the Union Pacific and the Southern Pacific each had separate agencies here?

A. Yes, sir, I recall.

Q. And were you solicited by both of those agencies for your business?

A. Well, not very much.

Q. Were you at all?

A. Yes, some.

Q. And they were in competition with each other, weren't they?

A. Oh, yes.

Q. And at the present time you know there is only one agent here?

A. Yes.

Q. Has this agent called on you?

A. Occasionally.

Q. Who is the gentleman that calls?

A. Mr. Shinkle.

Q. Does he express any preference between the two lines?

A. No, sir.

Q. What transcontinental lines take your traffic to Portland?
2543 A. The Chicago & Northwestern, the Union Pacific and Oregon Short Line. That is the way we have been shipping.
Q. You still ship that way?
A. Yes, sir.
Q. And have for a long time?
A. Yes, sir.
Q. Do the northern lines endeavor to get it? Do they come to see you about it—the Great Northern and the Northern Pacific?
A. Well, they do occasionally, but we never use them that way.
Q. You give it all to the Union Pacific?
A. Yes.

Cross-examination by Mr. LOVETT:

Q. You never shipped to Portland by way of the Southern Pacific, did you, Mr. Berndt?
A. No, sir.
Q. Nor to San Francisco by way of Portland and boat line?
A. No, sir.
Q. You say you ship now to California exclusively by the Santa Fe?
A. Well, not exactly exclusively, but the bulk of it by the Santa Fe.
Q. And some goes by way of the Union Pacific?
A. Yes, sir.
Q. That which goes by the Union Pacific, goes over the Southern Pacific from Ogden, doesn't it?
A. From Ogden, yes.
Mr. SEVERANCE. That is the slow route.
Q. You ship your slow freight—your dead freight—by the Union Pacific, do you?
A. Well, what I mean is, we have occasionally an order that the consignee asks us to ship that way; otherwise not.
Q. Do you realize, Mr. Berndt, that you are the only man who has discovered that the Union Pacific was a slow route,
2544 of all the witnesses who have been examined?
(No response.)

2545 WILLIAM PISTER,

being duly sworn as a witness on behalf of the Complainant, testified as follows:

Direct examination by Mr. SEVERANCE:

Q. Mr. Pister, where do you live?
A. Cincinnati, Ohio.
Q. What is your business?
A. Traffic manager for the Christian Moerlein Brewing Company, Cincinnati.

Q. That is a very large brewery, is it not?

A. So recognized; quite large; ranks about sixth in the United States.

Q. In previous years have you shipped to the Pacific coast to a considerable extent?

A. We had some shipments to California up to about three years ago; possibly four years ago.

Q. Yes. I understand at the present time you are not shipping there, but you used to ship there?

A. Yes; we formerly shipped there.

Q. How long have you been traffic manager of that brewing company?

A. About seven years.

Q. Since you have been in charge of their traffic, the Union Pacific and the Southern Pacific have all the time had their joint agency, haven't they?

A. Yes.

Q. They have not had separate agencies. Has your business been solicited by the representatives of that agency?

A. Yes, sir.

Q. Have they expressed any preference as between the Union Pacific route and the New Orleans route?

A. No, sir, they did not. We designated that ourselves, 2546 according to the seasons of the year. In the winter months we would run it through the New Orleans gateways, and in the summer months it made no difference about beer. We would let it go through Ogden and Omaha. I do not believe they ever got anything through Ogden.

Q. How is that?

A. I say I do not believe we ever shipped in connection with the Union Pacific, but we did ship via the Santa Fe and other northern lines.

Q. Have you shipped to north Pacific coast points?

A. No, sir, we do not.

Q. You were not controlling that traffic when the separate agencies existed here?

A. No, sir.

Cross-examination by Mr. LOVETT:

Q. I believe you said you never shipped via the Union Pacific, so far as you recall?

A. No, sir. I am almost positive that we never used the Union Pacific.

Q. You never have shipped to Portland by the Southern Pacific?

A. No, sir, not in my time.

Q. You never knew of any shipped that way?

A. No, sir, I have never heard of any out that far.

Q. Did you ever ship any to Portland by way of Ogden?

A. No, sir.

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Q. To San Francisco, by way of Ogden?

A. By way of Ogden, no, sir. Well, yes, we did via Ogden, but it was in connection with the D. & R. G. and other lines, but not in connection with the Union Pacific.

2547 Mr. SEVERANCE. I can not hear.

Mr. LOVETT. He says that he shipped by way of Ogden, but it was by the Denver & Rio Grande and its connecting lines and not by the Union Pacific.

Q. That has been in recent years, has it?

A. Yes.

2548 MAURICE J. FREIBERG,

being duly sworn as a witness on behalf of the Complainant, testified as follows:

Direct examination by Mr. SEVERANCE:

Q. What is your business, Mr. Freiberg?

A. Distiller.

Q. How long have you been in that business?

A. Since 1879.

Q. At what place?

A. Cincinnati.

Q. And what is the name of your concern?

A. Freiberg & Workum Company.

Q. Have you had knowledge of the traffic?

A. I have had knowledge of the traffic in a general way; I have not had anything to do with the details of shipping for a number of years, but at one time I did.

Q. Up to what time, did you?

A. Up to about 1884.

Q. To what parts of the country do you ship your product?

A. All parts.

Q. Including the Pacific coast?

A. Yes, sir.

Q. You know Mr. Connor, don't you?

A. Yes, sir.

Q. Did you know Mr. Welsh?

A. Yes, sir.

Q. And Mr. Liston?

A. No, sir.

Q. You didn't know him?

A. I don't remember him. I would like to say in that connection I may have known him and don't remember his name, but I don't remember an agent by the name of Liston.

Q. At the time when Mr. Connor represented the Southern
2549 Pacific alone and the Union Pacific had its own agency here, were those two agencies competing for coast business?

A. Yes, sir.

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Q. Actively?

A. Certainly.

Q. Which way did Mr. Connor endeavor to route his shipments—or his office, I mean? I don't mean Mr. Connor personally.

A. I would have to say in that connection explanatory that our shipments to the coast are all made and all have been made to one concern, and that one concern has always insisted upon the privilege of routing its own shipments, and they have always given us the routing.

Q. What is the name of that concern?

A. It is now the Crown Distilleries Company, formerly Lillienthal Company.

Q. How was that traffic to that concern routed from here to San Francisco, formerly?

A. All ways, all kinds of ways, and is still.

Q. Do they still control the routing?

A. Yes, sir.

Q. You say all ways. That included the New Orleans route, I suppose?

A. Yes, sir.

Q. Are you now shipping anything by that route?

A. Yes, sir.

Q. Have you sent any business by the American-Hawaiian line?

A. Yes, sir.

Q. How did that move—around the Horn?

A. Around the Horn, I presume; went via New York.

Q. Recently or some time ago?

A. Oh, quite recently, within the last few months.

Q. How has your business moved to Portland, Oregon?

2550 A. To Portland, by the northern routes as a rule.

Q. You mean the Great Northern and Northern Pacific?

A. The Great Northern and Northern Pacific.

Cross-examination by Mr. LOVETT:

Q. Which way does your business that goes to California over the Union Pacific move westward—over the Southern Pacific?

A. How else could it go?

Q. That is just what I was asking.

A. Yes, sir.

Q. There is no other way for it to go?

A. Not that I know of.

Q. Your business is solicited by all lines leading to the south and southwest and west for California points, is it not?

A. Well, I would have to give the same explanation that I gave before—that our business is not solicited as much as it would be if it were not for the fact that all the railroads know that the routing is not in our hands.

Q. How long has that condition existed?

A. Ever since the firm has been in San Francisco, since 1870.

Q. During the time that there was separate solicitation by the Union Pacific and the Southern Pacific, about which you were asked that condition existed then, did it not?

A. Yes, sir.

Q. Well, they were not the only ones who solicited you at that time, were they?

A. On San Francisco freight?

Q. Yes.

A. I don't quite understand the question.

2551 Q. The question is whether the agents of other lines interested in transportation toward the Pacific coast, as well as the agents of the Union Pacific and the Southern Pacific, solicited your business?

A. Oh, certainly.

Q. You were solicited by lines leading to the southwest, such as the Queen & Crescent, the Louisville & Nashville and the Illinois Central?

A. Surely.

Q. And lines leading to the northwest and west, and even the northern lines?

A. Surely. The consignee, as a rule, gave the routing in full, even to the name of the initial line.

Q. You never shipped any by way of Portland and boat, did you?

A. For San Francisco?

Q. Yes.

A. For California points via Portland?

Q. Yes.

A. No, sir.

Q. Nor to Portland by way of the Sunset Route?

A. No, not that I remember. I don't believe we ever did.

2552 Mr. SEVERANCE. That is all the witnesses we have here, your Honor. We ask that an adjournment be taken until tomorrow morning at 10.30.

An adjournment was accordingly taken until the morning of Thursday, February 11, 1909, at 10.30 o'clock.

ROOM 322, FEDERAL BUILDING, CINCINNATI, O.,
*Thursday, February 11, 1909, 10.30 A. M.*

Counsel for the respective parties appeared before the Special Examiner, Hon. Sylvester G. Williams, at the above time and place, and the hearing was adjourned until the morning of Saturday, February 13, 1909, at 10 o'clock, at the Court Room of the Circuit Court in the Federal Building, at Cleveland, Ohio.

2553 U. S. DISTRICT COURT, ROOMS 97–100, CLEVELAND, O.,
*Saturday, February 13, 1909, 10 A. M.*

The hearing was resumed, pursuant to adjournment, before the Special Examiner, Hon. Sylvester G. Williams, at the above time and place.

Present: On behalf of the Complainant: Mr. C. A. Severance, Mr. G. E. Husted. On behalf of the Defendants: Mr. R. S. Lovett.

## JOHN A. COAKLEY,

being duly sworn as a witness on behalf of the Complainant, testified as follows:

Direct examination by Mr. SEVERANCE.

Q. Mr. Coakley, where do you live?

A. Cleveland, Ohio.

Q. What is your business?

A. Division freight agent for the American Steel & Wire Company, Cleveland.

Q. And what are your functions in that position?

A. To care for the interests of my company in the handling of traffic.

Q. How long have you occupied that position?

A. I have been located at Cleveland since June, 1904. Prior to that time I was located at Pittsburg, in a similar capacity.

2554 Q. For how long?

A. Since June, 1901.

Q. Previous to June, 1901, what was your business?

A. For six months in 1901 I was with the Q. & C. as traveling freight agent. Prior to that time I was for two years with the American Steel Hoop Company, as chief clerk to the traffic manager. Prior to that time I was engaged in various clerical capacities with the Baltimore & Ohio, the Pittsburg & Western and the Pennsylvania Company.

Q. Where were you located when you were with the Queen & Crescent?

A. Traveling freight agent at Pittsburg, in the Park Building.

Q. And through what district or territory did you travel?

A. What is known as the Pittsburg district, which might be considered as the territory west of Buffalo and Pittsburg as far as the Ohio state line.

Q. At the time you were with the Queen & Crescent, were you acquainted with the representatives of the Southern Pacific Company in that district?

A. Yes, sir.

Q. Who were they?

A. George G. Herring was the commercial agent of the Southern Pacific at Pittsburg at that time, and I believe his assistant was Dennis Crowley, traveling freight agent.

Q. Did you know the representatives of the Union Pacific?
A. Yes, sir.
Q. Who were they?
A. Joe Toynbee, of Pittsburg.
Q. As representing the Queen & Crescent, were you interested in transcontinental traffic?
A. Yes, sir.
2555 Q. In connection with which, if either, of those agencies were you working for transcontinental traffic?
A. The Southern Pacific agency.
Q. At that time were those two agencies competing with each other for transcontinental business?
A. Yes, sir.
Q. Which way did the Southern Pacific people endeavor to route their traffic to the coast?
A. Via New Orleans and via El Paso. They tried to get the long haul wherever they could.
Q. And the Union Pacific?
A. Via Omaha.
Q. How was that competition between these agencies; was it active or otherwise?
A. Active.
Q. How does the coast business of the American Steel & Wire Company in your territory move now?
A. Principally via Omaha. At times we ship considerable via El Paso, but the bulk of it moves via Omaha, on account of the shorter mileage and quicker time.
Q. Did traffic formerly move from this territory by way of New Orleans?
A. Yes, sir.
Q. How long ago did that stop?
A. We have not moved any via New Orleans since I have been in Cleveland, that is, since June, 1904.
Q. Do you know any reason why the business does not move via New Orleans from this territory as it formerly did?
A. I would consider it an unnatural gateway. I should say, roughly speaking, the mileage is about 900 miles longer that way than via Omaha. The time would be anywhere from six to
2556 eight days longer in transit.
Q. How did it happen that business formerly moved by that route? It was just as long then as it is now.
A. Well, it is probably due to the personal influence of the representative of the Southern Pacific.
Q. Who was the Southern Pacific representative in this district at that time—Mr. Connor?
A. I was not located here prior to 1904, but I should say Mr. Herring probably looked after this territory. He was a Pittsburg man. Either he or the Cincinnati man.
Q. You know Mr. Connor, do you?

A. Yes, sir.

Q. Do you remember of any business formerly moving to San Francisco by the Canadian Pacific, Mr. Coakley?

A. Yes, sir.

Q. Do you remember about when that was?

A. There used to be quite a large volume of it move that way. They had a differential rate; and on that differential rate being withdrawn the movement practically discontinued.

Q. Did that move to Vancouver by rail and then by boat to San Francisco?

A. Yes, sir.

Q. You are speaking of the large volume. From what district do you mean?

A. The Pittsburg district is the district I was familiar with prior to 1904.

Q. What was the character of the traffic that moved that way?

A. I should say general. Iron, steel and merchandise.

Q. Are you called upon by the traffic agents of the Union Pacific and Southern Pacific at present?

A. Yes, sir.

2557 Q. Have you been for some years since you have been in Cleveland?

A. Yes, sir.

Q. Do they have separate agencies now, or does the same agent represent them both?

A. The same gentlemen represent both companies now.

Q. Who are they?

A. W. H. Connor and George Hild.

Q. Where does Mr. Hild live?

A. I believe he resides in Cincinnati. He travels out of Mr. Connor's office. He is Mr. Connor's subordinate.

Q. In soliciting coast business do Mr. Connor and Mr. Hild work for either line as against the other, or for both lines?

A. They aim to get the long haul by Omaha, and if they cannot get it that way they take whatever haul they can get. I would regard the competition between the companies and the Santa Fe as very active.

Q. Do they seek to route traffic now via New Orleans?

A. Not particularly. Their solicitation is of a general character.

Q. That is, they solicit for the two companies, do they?

A. Yes, sir.

Q. Without any discrimination between the two?

A. Yes, sir.

Q. What is your opinion, Mr. Coakley, as to the value or efficiency of soliciting agents of the transcontinental lines in this territory?

A. I consider them very valuable and of considerable benefit to the company I represent.

Q. In what way?

A. They furnish us with rate advices; keep us posted on
2558 contemplated changes in classifications in which we are interested; and they expedite the movement of freight.

Q. What is your view about their value to the railroads that they represent, in the way of getting business?

A. I consider that they are of considerable value to the railroads.

Q. In securing business for the lines they represent?

A. Yes, sir.

Q. You said that Mr. Connor's office is competing actively with the Santa Fe for California business. Does the Santa Fe maintain solicitors in this district?

A. Yes, sir.

Q. And it is the competition between Mr. Connor's office and the Santa Fe office that you refer to, is it?

A. Yes, sir.

Q. How does your traffic move to the north Pacific coast points?

A. During the season of navigation it practically moves exclusively by boat, via Duluth, the Great Northern, the Northern Pacific, and the Omaha, which is a connection of the Union Pacific; and during the season when lake navigation is not open, it moves via Chicago and St. Paul. We aim to divide it pretty equally.

Q. You aim to divide it equally?

A. Yes, sir.

Q. You say it moves by the lakes to Duluth, and then by the Omaha road to Omaha?

A. Some of it, yes, sir; for instance, business for Portland.

Q. Yes; that is what I mean.

A. Yes.

Q. Does some of your Portland business go by the Northern
2559 Pacific?

A. Yes, sir.

Q. And by the Great Northern?

A. And by the Great Northern, and some by the Canadian Pacific.

Q. How does the Canadian Pacific reach Portland?

A. I believe they go in over the O. R. & N. tracks from Spokane.

Q. How is the competition, if any, between those lines for Portland business?

A. Very keen.

Q. How does your business for Seattle and Tacoma move?

A. About the same way as the Portland.

Q. Does the Union Pacific share in that business or does that go by the other line?

A. We aim to divide it equally among all of the lines.

Q. Is your traffic out of Cleveland a large traffic?

A. I should say it amounts to probably 10,000 tons in a season.

Q. The transcontinental traffic?

A. Yes, sir. That is, I mean the north Pacific coast traffic.

Q. The north Pacific coast traffic?

A. The north Pacific coast traffic.

Q. What would you say about your California traffic?
A. Probably 40,000 to 50,000 tons to Central California.
Q. That moves, you say, over the Santa Fe and the Union Pacific?
A. And the Union Pacific. We do give the Rock Island and the El Paso gateway a proportion of it, but it is not a very large proportion compared with the total amount.

Q. Does any of that move over the San Pedro route from
2560 Salt Lake City?

A. A large proportion of the Los Angeles business moves over the San Pedro, but none of the San Francisco.
Q. If you know, Mr. Coakley, how does the tonnage of the American Steel & Wire Company for the coast compare with that of any other shipper in Cleveland?
A. I haven't any idea of that. I could not say.
Q. Well, it is one of the largest, if not the largest, shipper, is it not?
A. I should imagine so; yes, sir.

Cross-examination, by Mr. LOVETT:

Q. Did I understand you to say that the Union Pacific got any of your business for Tacoma and Seattle, Mr. Coakley?
A. They do for Seattle. I would not say for Tacoma; no, sir.
Q. How does that move?
A. No—I beg to be corrected there.
Q. The Union Pacific does not get any of your business for Seattle?
A. No Seattle business; no, sir.
Q. Nor for Tacoma, does it?
A. No, sir.
Q. With reference to the agencies and the service performed by a soliciting traffic agent: Have you been satisfied in that respect with the service you have gotten from Mr. Connor and his assistants since the combination of the agencies?
A. Yes, sir.
Q. They have served all of your purposes, so far as you are concerned, have they not?
A. Yes, sir.
Q. During what period was it that you say you were connected with the Queen & Crescent as soliciting agent? I did not catch it.
A. I was six months with them. From January, 1901, to June, 1901.

2561 Q. And during that time you sought, of course, to work business from the Pittsburg territory by way of New Orleans to the Pacific coast?
A. Yes, sir.
Q. About how far did that traffic have to move before reaching the Southern Pacific, from point of origin to New Orleans?
A. I should say from one thousand to twelve hundred miles.
Q. Such traffic as moved then, or as moves now, to points on the Pacific coast south of Portland, over the Union Pacific, had to move also over the Southern Pacific to reach destination, had it not?

A. Yes, sir.

Q. That is, from Ogden?

A. Yes, sir.

Q. It would move over the Union Pacific to Ogden and then by the Southern Pacific to final destination?

A. Yes, sir.

Q. Since the opening of the San Pedro line, that for Southern California, I believe you say—that is, for Los Angeles—moves generally over the San Pedro?

A. Yes, sir; a large proportion of it.

Q. You have testified, I believe, that formerly a considerable amount of traffic moved by way of New Orleans to the Pacific coast—I think perhaps you were speaking especially of your company—but that now it practically moves the direct all-rail route?

A. Yes, sir.

Q. And you attribute that, in a large measure, to the personnel of the agents, I believe. Now, wouldn't you say, Mr. Coakley, that there has been a very great improvement in the all-rail line to the Pacific coast, and the service has been enormously improved, in recent years?

A. Yes, sir.

2562 Q. Has not that had a very influential effect in routing traffic that way?

A. You mean now via the Central gateway?

Q. Yes.

A. Yes, sir.

Q. You do not understand that the shipper is at all interested in the division of rates between the different carriers, do you?

A. No, sir.

Q. The shipper is interested only in the aggregate rate; and just how it is divided between the railroads is not a matter of any concern to the shipper?

A. No, sir.

Q. There are a number of lines soliciting traffic from this territory to the Pacific coast, are there not?

A. A great many.

Q. The lines leading to New Orleans still solicit that way, do they not?

A. Not actively, no, sir.

Q. The Louisville & Nashville and the Illinois Central?

A. No, sir.

Q. They are not actively soliciting from this territory by way of New Orleans?

A. No, sir.

Q. Distance and time being against them?

A. We have been given to understand that the division of the rate allowed them is so small that the business is unremunerative, on account of the large mileage.

Q. So they do not solicit actively any more from this territory?

A. No, sir.

Q. How about the lines leading southwesterly to El Paso, such as the Missouri Pacific system?

A. They solicit that business very actively.

2563 Q. The Rock Island?

A. The M. K. & T., the Kansas City, Mexican & Orient, the Rock Island.

Q. They actively solicit business still by way of El Paso?

A. Yes, sir.

Q. And then the lines leading westerly to a connection with the Denver & Rio Grande or the Union Pacific?

A. The Colorado Midland.

Q. And the Colorado Midland—that is, such as the Burlington, the North-Western, the St. Paul, and the intermediate lines, Chicago & Alton——

A. Very active in their solicitation.

Q. ——the Clover Leaf, and all of those lines actively solicit?

A. Very actively.

Q. The Big Four system—the New York Central lines—they actively solicit business?

A. Yes, very actively.

Q. Such business as would move over the St. Paul, or the North-Western, or the Burlington, or the Rock Island, or the Missouri Pacific, or the Missouri, Kansas & Texas, to California points, would ultimately pass over the Southern Pacific, would it not—either the Southern Pacific or the San Pedro?

A. Yes, sir, except possibly the Santa Fe via Pueblo.

Q. Well, if they would deliver it to the Santa Fe, these intermediate carriers would be getting the short haul, would they not?

A. Yes, sir.

Q. Ordinarily, railroads do not like that?

A. No. They aim to get the long haul wherever they can.

2564 Re-direct examination by Mr. SEVERANCE:

Q. Judge Lovett asked you if there had not been great improvement in the physical condition of the railroads west of the Missouri River; you answered there had; that has had some effect on traffic. There has been great improvement in the Santa Fe, has there not?

A. Yes, sir; I should say general improvement in both companies.

Q. And there has been a great improvement in the Sunset Route of the Southern Pacific, has there not?

A. Yes, sir.

Q. They have spent a great deal of money from New Orleans to the coast?

A. Yes, sir.

Q. So that the improvement has not been confined to any one line?

A. No, sir.

Q. As you understand it, in the last seven or eight years all the railroads in the country, practically, have made very great improvement in their rolling stock and in their permanent way, haven't they?

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A. Yes, sir.

Q. You stated, in answer to Judge Lovett, that the Queen & Crescent and Louisville & Nashville were not as actively soliciting business by New Orleans as formerly. I think you said it was because of some change in the divisions?

A. That is the impression that we have. I could not testify to that as a fact. It is simply an impression that I have of the solicitation they made of me.

2565 Q. That is, that the Southern Pacific gets a larger share of the through rate?

A. No; the L. & N. and the Q. & C. get such a small revenue per car out of it that they would prefer to have other business.

Q. Oh, you do not mean that there is a change in the division?

A. There is not a change in the through rate, but I do not know whether the divisions are the same that were in effect formerly, or not. I am not competent to testify to that.

Q. The Q. & C., and the L. & N., do not refuse to handle that traffic?

A. No, sir.

Q. And some of it is handled that way, is it not?

A. Some of it is handled that way, yes, sir.

Q. So then, the real reason why the traffic has fallen off that way is the reason you assigned on your direct examination, is it not—that the solicitation of traffic that way by the Southern Pacific has lessened?

A. That is one reason. And the improved service and shorter line mileage via Omaha is the basic reason, I should say.

Q. The mileage is not much shorter via Omaha than it was in the old days, is it?

A. No; and probably the bulk of it moved that way in the old days.

Q. At the time when these two agencies were competing for business and the business was divided between the New Orleans gateway and the Omaha gateway, the comparative mileage was the same as it is now, substantially, wasn't it?

A. Yes, sir.

Q. And both lines have been much improved?

A. Yes, sir.

Q. So that there is really no valid reason that you can assign for the lessening of business via the New Orleans gateway, except

2566 the fact that they are not fighting for business that way as they used to?

A. Ostensibly the conditions are just the same as they were, as you have stated, yes, sir.

Q. And the business moves the other way because they try to move it the other way?

A. Yes, sir.

Q. By "the other way" I mean by Omaha.

A. Yes.

ND CLOSE IN CENTER

2567 F. W. BOLTZ,

being duly sworn as a witness on behalf of the Complainant, testified as follows:

Direct examination by Mr. SEVERANCE:

Q. Mr. Boltz, where do you live?
A. Cleveland, Ohio.
Q. How long have you lived in Cleveland?
A. A little over forty-five years.
Q. What is your business?
A. Traffic manager of the National Petroleum Association.
Q. How long have you occupied that position?
A. About three years.
Q. Previous to that what was your business?
A. I was engaged in the mercantile business for a period of a little over four years. Prior to that I was in the railroad service in the service of various railroad companies.
Q. Will you please state the names of the railroads in whose service you were engaged, the nature of the service which you performed, and the dates, as near as you can.
A. I was engaged in the service of the Lake Shore & Michigan Southern Railroad, in this city, in the general freight department, from 1881 until 1887, at which time I engaged in the service of the Chicago, Milwaukee & St. Paul Railway, as traveling freight agent, and subsequently as commercial agent of that line here at Cleveland. I was in the service of the Chicago, Milwaukee & St. Paul at Cleveland until 1898, at which time I was transferred to Sioux City
2568 as division freight and passenger agent at that point. I left the service of the Chicago, Milwaukee & St. Paul on January 1, 1899, I believe, and went into the service of the Iowa Central Railway as general agent at Cleveland, and remained with that company for a period of about three years, and then entered into the mercantile business at Cleveland.
Q. During the time when you were railroading here in Cleveland, previous to the consolidation of the agencies of the Southern Pacific and Union Pacific, were you acquainted with the gentlemen who represented those respective lines in this territory?
A. I was, yes, sir.
Q. Who were they?
A. Mr. J. D. Welsh was general agent of the Union Pacific Railway, located at Cincinnati, and had jurisdiction over this northern Ohio territory for the Union Pacific road. Mr. W. H. Connor was the representative of the Southern Pacific line, with headquarters at Cincinnati, having charge of the business from this territory for the Southern Pacific line.
Q. Did those gentlemen have subordinates who personally worked this territory?
A. Yes. The Union Pacific had Mr. A. G. Shearman, whose title, I believe, was freight and passenger agent, located here at Cleveland,

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and who had charge of the freight and passenger business for the Union Pacific Railroad, under Mr. J. D. Welsh. Subsequently Mr. D. W. Johnson (I think his initials are D. W.) represented the Union Pacific here at Cleveland, reporting direct to headquarters at Omaha.

Q. Did Mr. Connor have some subordinates in this territory?

2569 A. Yes, sir. Mr. Connor had traveling freight agents who covered this territory under his direction, but, outside of Mr. Hild, I do not recall their names.

Q. On transcontinental business which way did the Southern Pacific agents endeavor to route their traffic to the coast?

A. Why, they almost invariably endeavored to route it via the New Orleans gateway, in order to obtain the long haul for their line, I assume.

Q. Which way did the Union Pacific people endeavor to route their traffic?

A. Via the Omaha and Ogden gateway.

Q. As the agent of the Chicago, Milwaukee & St. Paul here at Cleveland, did you participate in the solicitation of business to the coast?

A. I did; yes, sir.

Q. In connection with which one of these routes?

A. In connection with the Union Pacific line via Omaha or Kansas City.

Q. How was this competition between the Union Pacific and the Southern Pacific, as to being active or otherwise?

A. It was extremely active in those days.

Q. In what way did this activity show itself?

A. Well, the representatives of the Union Pacific and the Southern Pacific lines were actively engaged as competitors in securing as much business as possible for their respective lines, and the Union Pacific endeavored to handle their business in connection with the lines via the Missouri River gateways; whereas, the Southern Pacific handled almost their entire business via the New Orleans gateway.

2570 Q. How would you say the traffic was divided in those days? Could you give any estimate as to percentages?

A. No; I would simply be guessing, and I would not want to guess at it. I am unable to state as to the approximate amount of business secured by each line.

Q. Was there a substantial business via New Orleans?

A. There was considerable business moved via the New Orleans gateway from this territory.

Q. As the agent of the Chicago, Milwaukee & St. Paul, did you run up against the competition of the Southern Pacific for that business?

A. Frequently.

Q. Where were you at the time the agencies of the Southern Pacific and Union Pacific in this territory were consolidated? Were you in Cleveland then?

A. To the best of my recollection that consolidation occurred in 1901, although I am not absolutely positive as to the date. My recollection is, however, that that was about the time; and I was then in the service of the Iowa Central Railway.

Q. You say you were with the Iowa Central. You represented them here at Cleveland, did you not?

A. Yes, sir.

Q. You were their general agent?

A. I had charge of their eastern business, with headquarters at Cleveland.

Q. When this consolidation of agencies took place, who was placed in charge of the joint business of the Union Pacific and the Southern Pacific? Of course we understand it was all
2571 placed in charge of Mr. Connor; but who was there under him here at Cleveland, if anyone?

A. I do not recollect that they ever had a joint agent located at Cleveland. Mr. D. W. Johnson was at that time representing the Union Pacific system, but his jurisdiction did not extend over the Southern Pacific, and, for that reason, I believe that I am wrong as to the date of the merger, because Mr. Connor subsequently came to Cleveland, and his jurisdiction extended over both the Southern Pacific and the Union Pacific. Mr. Johnson, however, did not represent the Southern Pacific, as I recall it; and, to the best of my recollection, the Southern Pacific did not have a representative located here. Mr. Connor came here himself and was represented by subordinates.

Q. Who traveled?

A. Who traveled under his directions.

Q. And you had no regular general agent located here in Cleveland?

A. No, sir.

Q. Mr. Johnson left the service of the company, of the Union Pacific, when the consolidation took place, or shortly after, did he not?

A. I am unable to remember the dates.

Mr. LOVETT. The consolidation of the agencies took place in September, 1901.

Q. Judge Lovett says that the consolidation was in September, 1901; so you were correct as to the date.

A. Yes.

Q. After the consolidation of the agencies took place, what traveling freight agents, or solicitors under Mr. Connor, worked this particular territory, if you know?

A. Mr. J. Stanley Orr, I think, was one of their repre-
2572 sentatives, and Mr. George Hild another, traveling under Mr. Connor.

Q. You state that you are at present and for two years or more have been the traffic manager of the National Petroleum Association?

A. Yes, sir; for a period of nearly three years.

Q. What is the business of that association?

A. The National Petroleum Association comprises thirty-odd independent oil refiners, located in the States of Ohio, Pennsylvania, New York, Kansas, and the Dominion of Canada, who refine a large proportion of various products of petroleum, and ship extensively all over the United States and Canada.

Q. As traffic manager of that association, what are your duties?

A. I have charge of their freight traffic.

Q. You mean routing the traffic?

A. I do not attempt to direct the routing in each specific case, but as a general proposition I have jurisdiction over the routing of their business.

Q. Is that a large traffic?

A. Yes, sir.

Q. To what parts of the country do the members of that association ship, Mr. Boltz?

A. They ship all over the United States and Canada and also to foreign countries.

Q. Including the Pacific coast?

A. Yes, sir.

Q. Are you called upon by soliciting agents of various lines looking for business?

A. Yes, sir.

Q. Does the joint agent of the Southern Pacific and Union Pacific call on you and solicit business?

A. Yes, sir.

Q. Does this agent express any preference as between the
2573 northern and the central gateways?

A. No, sir.

Q. I mean the southern and the central gateways?

A. No, sir.

Q. By that I mean the New Orleans or Omaha or El Paso or Kansas City.

A. He has never expressed any preference.

Q. He solicits generally for the two lines, does he?

A. Yes, sir.

Q. Do the other transcontinental lines have agents here soliciting business?

A. Yes, sir.

Q. Which lines?

A. The Santa Fe have a representative here.

Q. Over what lines does your traffic move to North Pacific coast points—Portland, Tacoma and Seattle?

A. As a rule, the business for northwest Pacific coast points moves via the northern lines—the Northern Pacific. Some moves via the Union Pacific for Portland, although our business to the north Pacific coast has not been very extensive.

Q. It is greater to California points, is it?

A. Yes, sir. I might say that that has been due very largely to the excessive freight rate.

Q. How is that?

A. That has been due very largely to the excessive freight rate which has existed to the Pacific coast from this territory, together with the fact that up to a period of about two years ago it was the custom to charge for the return of our empty tank cars from the Pacific coast to the Missouri river, which practically prohibited us from entering into successful competition on the coast. That, however, was adjusted about two years ago, since which time we have built up a very nice business on the Pacific coast.

2574 Q. Were the rates the same to the California Pacific coast points as to the north Pacific coast points?

A. Yes, sir.

Q. And this suggestion that the rates were excessive applied to the entire coast, did it?

A. Yes, sir.

Q. You say that two years ago there was some adjustment of this returning of tank cars?

A. Yes, sir. The former charge of $105 for returning empty tank cars from the Pacific coast to the Missouri River was canceled, at our request, and a readjustment in the rate was made, which enabled us to enter into successful competition to a greater extent than we had before enjoyed.

Q. Where do your refineries ship from to the Pacific coast?

A. From Pittsburg, Cleveland, Finlay, Oil City, Wellsville, New York, Warren, Pennsylvania, and many other refining points where we have refineries located.

Q. Over what lines does your traffic move to California points?

A. I would say that we use all of the transcontinental lines at times. Business for the northwest Pacific coast would probably move over the Northern lines—that is, I mean by that, the Northern Pacific and Great Northern—for San Francisco and points in California; northern California would move via the Union Pacific and Southern Pacific, and for Southern California points via the Santa Fe, or possibly via the El Paso gateway and the Southern Pacific.

Q. Does any of your business move via the New Orleans gateway?

A. At the present time very little is moving by the New Orleans gateway, although there has been some slight movement

2575 that way, which was due to the expressed wish of the consignees on the coast, who asked that the business be forwarded via the New Orleans gateway.

Q. Is your traffic usually routed by the consignor, or consignee?

A. No, sir; it is sometimes routed by the consignee. Where business is sold f. o. b. at point of shipment, the consignee directs the routing. That sometimes occurs; but not entirely so.

Q. When the consignee directs the routing, are you in the habit of being called on by the local agents of the line over which the car

has been routed, who have received advice from the west that requests you to respect that routing?

A. I do not believe I have ever had an experience of that kind, I do not recall it, since I have been in the service of the National Petroleum Association. That frequently occurred, however, when I was in the railroad service.

Q. It is a usual thing, is it not?

A. It is quite customary, yes, sir.

Q. Did you ever know of traffic to California points moving via the Canadian Pacific and boat line from Vancouver?

A. I have known considerable business to move via the Canadian Pacific Vancouver route, and sailing line from there to San Francisco, in the old days, for the reason that there was a differential rate in effect via that gateway.

Q. What kind of traffic moved that way?

A. Well, I do not recall any specific shipment; although it was natural to assume that traffic which would bear transfer
2576 would move via that gateway—handling from the cars to the steamers and from the steamer back to the cars, at Vancouver and at San Francisco.

Q. Does all of the product of the National Petroleum Association move in tank cars?

A. No, sir. The great bulk of it does, however.

Q. Do the shippers own their own cars?

A. Yes, sir.

Q. What is your opinion, Mr. Boltz, from your experience, as to the desirability of railroad companies (transcontinental lines) seeking business in this territory to the coast, maintaining officials here on the ground, a soliciting office, for the purpose of getting business?

A. I should say that it was the wise thing for them to do, for the reason that a line which is represented in a certain city or district is, unquestionably, able to secure a greater volume of business for their line than if they were not so represented.

Q. And if two lines are in competition with each other for business, and one line has a local agent and the other has not, is not the latter line at a disadvantage in securing competitive traffic?

A. I should so consider it, most certainly.

Q. What services are performed for the shippers by the soliciting agencies of railroads?

A. Why, it is frequently the case that shippers desire certain business transported with as little delay as possible. In that case the local representative endeavors to trace the cars through, sometimes by wire, but in every instance endeavors to hasten the delivery of the shipment with as little delay as possible. It also occurs
2577 at times that when changes in rates are pending, local representatives have knowledge of changes that have become effective, and give the information to the shipper, who avails himself of the opportunity to ship during the time when the rates are most advantageous.

Q. What effect does the performance of these services have upon the ability of the soliciting agents to get business from the shippers?

A. Well, a good live wire would naturally secure a great deal more business than one who did not give attention to the detail of the movement of the business and endeavor to give the shipper all the information he could, concerning changes in rates, and so on.

Cross-examination by Mr. LOVETT:

Q. During what period was it that you represented the North-Western, Mr. Boltz—or was it the St. Paul?

A. The St. Paul. During what years?

Q. Yes.

A. I represented the St. Paul here at Cleveland, from 1887 until 1898.

Q. 1898?

A. Yes, sir.

Q. And in soliciting traffic for the Pacific coast, over what line did you seek to move it, did you say?

A. We endeavored to move our traffic over the Union Pacific via the Omaha or Kansas City Gateway, and also in connection with other west Missouri River lines, such as the Santa Fe or the Missouri Pacific, and we frequently had business to move via all of the
2578 western Missouri River lines. We were simply seeking the haul to the Missouri River.

Mr. SEVERANCE. I did not hear that question and answer.

Mr. LOVETT. I asked him over what lines he sought to move traffic to the Pacific coast when he was soliciting for the St. Paul, and his answer was "via the Union Pacific and also by other western lines, west of the Missouri River—the Atchison."

Q. The Union Pacific was your preferred connection, though, was it not, Mr. Boltz?

A. Yes, sir, it was.

Q. You moved it that way, whenever you could, by way of Omaha, did you not?

A. Yes, sir. That is, I am speaking now of business for California points.

Q. Yes. Well, that is the business I was inquiring about—business from Portland south.

A. That wasn't especially true to Portland, for the reason that we had other connections via St. Paul that we worked in connection with our business for the northwest Pacific coast.

Q. Including Portland and the northwest—Puget Sound points?

A. Yes.

Q. But for all points south of Portland you preferred the Union Pacific; that is, you sought to move your business that way?

A. The Union Pacific was our natural connection, and we did work very closely with that line.

Q. Such business as you secured by way of the Union Pacific for points south of Portland necessarily went over the Southern Pacific a portion of the way, did it not?

A. Yes, sir, from Ogden west.

2579 Q. Yes, from Ogden west. About how long a haul did you get out of that business from this territory?

A. About 500 miles.

Q. And the Union Pacific about 1,000?

A. I should say perhaps a little over a thousand.

Q. From Omaha to Ogden it is just about 1,000 miles?

A. Yes.

Q. And from Ogden to San Francisco at that time was about 850 miles?

A. Over the Southern Pacific, yes, sir.

Q. So your work in that case inured to the benefit of both the Union Pacific and the Southern Pacific necessarily, did it not?

A. Yes, sir.

Q. The Union Pacific had no other outlet at that time for business south of Portland than the Southern Pacific, had it?

A. No.

Q. And so, in soliciting for itself, it necessarily solicited for the Southern Pacific, for the haul from Ogden to Pacific coast destinations?

A. Yes, sir.

Q. You never knew of any attempt to move freight to California points over the Union Pacific and Short Line and Oregon Railroad & Navigation Company to Portland, and thence by boat down to California, did you?

A. To the best of my recollection there was an arrangement whereby business did move for a certain period by the Union Pacific, Oregon Short Line, and steamer line, via Portland for California points, but I have forgotten just what the nature of the arrangement was; nor am I able to state at this time how long that arrangement continued in effect.

Q. Are you able to state positively that there was such an

2580 arrangement?

A. To the best of my recollection there was such an arrangement.

Q. Did you ever attempt to solicit business that way for California points, Mr. Boltz?

A. I did not.

Q. Your solicitation was for the direct line by way of the Union Pacific and the Ogden route of the Southern Pacific?

A. Yes, sir.

Q. That was true during the whole period when they had separate agencies, so far as you knew, was it? That is to say, that the Union Pacific and the St. Paul traffic for California was routed over the Union Pacific and over the Southern Pacific by way of Ogden, so far as it could be controlled?

A. Yes, sir; that is true. I do not recall any business having gone via the Portland route just referred to.

Q. Was not your solicitation largely in connection with the Union Pacific agents as against the Atchison line to California?

A. Yes; for the reason that the Atchison had their own line into Chicago and did not work as closely with our line as the Union Pacific did.

Q. So you naturally worked with the Union Pacific as against the Atchison?

A. The Santa Fe, yes, sir.

Q. I believe you stated that the Southern Pacific during that time solicited business preferentially by way of New Orleans?

A. Yes, sir.

Q. And did they seek to get it by way of El Paso if they could not get it by way of New Orleans?

2581 A. I am unable to state whether any business moved by the El Paso gateway at that time. I do know of a number of instances where business moved via the New Orleans gateway, but I do not recall any business having moved via the El Paso gateway; but it is my impression that the Southern Pacific endeavored to work as much business as possible via the New Orleans gateway, in preference to the El Paso gateway, for the reason that the New Orleans route would give them the longer haul.

Q. There were a good many other lines, like the St. Paul, soliciting for the Ogden route, weren't there?

A. Yes, sir.

Q. There was the Union Pacific, the St. Paul; the North-Western was in the same situation as the St. Paul in that respect, was it not?

A. Yes, sir.

Q. What other lines would you mention as soliciting, necessarily?

A. Almost all.

Q. The Burlington?

A. Almost all of the eastern lines, the lines east of the Missouri River, lines running from St. Louis, would work in connection with the Missouri Pacific.

Q. Including the Burlington?

A. The Burlington did work some business in connection with the Union Pacific.

Q. And that that it did not work in connection with the Union Pacific it worked in connection with the Denver & Rio Grande?

A. Yes, sir.

Q. It also went over the Southern Pacific?

A. Yes, sir.

Q. In other words, my question had more direct reference to the situation of the Southern Pacific's Ogden route than the Union

2582 Pacific. The Southern Pacific was the outlet for the Denver & Rio Grande, as well as for the Union Pacific at Ogden?

A. Yes, sir.

Q. So that the Burlington, whether working either via the Union Pacific or the Denver & Rio Grande connection, would be working for the Southern Pacific, in either event?

A. Yes, sir.

Q. And that would be true of the Rock Island, would it not, prior to the opening of its line to El Paso?

A. Yes, sir.

Q. And true, also, as to a portion of the Missouri Pacific?

A. Yes, sir.

Q. The Missouri Pacific having two outlets—one by way of Denver, or Pueblo, rather, and the other by way of the Iron Mountain, down through Texas?

A. Yes, sir.

Q. And the Southern Pacific to El Paso?

A. Yes.

Q. So those lines were all in that way working in this territory for the Southern Pacific indirectly as well as for themselves directly?

A. Yes, sir.

Q. Does the Rock Island actively solicit traffic from this territory for the El Paso route now?

A. Yes, sir.

Q. And the Missouri Pacific?

A. Yes, sir.

Q. The Missouri, Kansas & Texas?

A. Yes, sir.

Q. And all of the lines leading to the southwest and to the west?

A. Yes, sir.

Q. The service of the transcontinental lines—that is, the all-rail lines from here to California, as well as to the northwest—has been very much improved in recent years, has it not, Mr. Boltz?

A. Very materially so; yes, sir.

Q. The route by way of New Orleans was always a pretty good route in the matter of time, was it not?

2583 A. I do not know so much about that, for the reason that I never traced any shipments moved that way. I was not interested in the movement via the New Orleans gateway.

Q. Is it not your understanding that the relative improvement in the all-rail service from here to California—that is, the direct rail service—has been very much greater than by way of New Orleans?

A. I should say there had been very great improvement in the service via New Orleans and the Southern Pacific gateway to the Pacific coast.

Q. That is, including all lines leading in that direction?

A. Via all lines, yes, sir.

Q. Hasn't your interest as a shipper to the Pacific coast been efficiently served by the joint agent, Mr. Connor and his representatives?

A. Yes, sir, I should say so.

Q. Haven't they been diligent in performing all the functions which a commercial agency could do?

A. They have entirely so.

Q. You spoke about some readjustment that occurred. I think you said about two years ago——

A. On May 29th.

Q. ——in reference to charges on return cars. Just what was that, Mr. Boltz?

A. Prior to May 29, 1906, through rates on petroleum to the Pacific coast were made on combination of locals to and from Chicago, and a charge of $105 was assessed for the return of empty tank cars from the Pacific coast to the Missouri River. We endeavored to have the Chicago rate established from all of our refining points in the east to the Pacific coast, which was the basis in effect on
2584 various other commodities, and asked that the return charge of $105 per car for the empty tank cars, be eliminated. After a conference with the representatives of the transcontinental lines, held at Chicago in April, 1906, they agreed to establish a blanket rate of 90 cents per hundred on our products, from all points east of the Missouri River to the Pacific coast terminals, and to waive the charge of $105 formerly made for returning empty tank cars. That arrangement continued in effect until January 1st of this year, at which time the rate was advanced to $1.00 per hundred pounds.

Q. How about the return charge? That wasn't made?

A. No, sir. The cars are now returned free.

Q. The arrangements you described went into effect on May 29, 1906?

A. May 29, 1906.

Q. And continued in effect until the first of January, 1909?

A. Yes, sir.

Q. When the rate was advanced from 90 cents to a dollar a hundred?

A. Yes, sir.

Q. But still with no charge for the return of the car?

A. That is correct, yes, sir.

Q. Do you happen to recall that when the charge for the return car was abolished in May, 1906, that the rate which was formerly 80 cents from Chicago west, was advanced to 90 cents also?

A. From 78½ to 90. The rate was 78½ cents. It was advanced to 90 cents.

Q. Yes. The same rate made for all this territory?

A. Yes, sir.

2585 Q. I believe you stated that your shipments to the Pacific coast—that is, for the companies that you represent now—are not very large?

A. There has been a very decided increase in our Pacific coast trade since the blanket rate of 90 cents per hundred pounds was made effective. The advance to $1.00 per hundred pounds, however, will again eliminate competition on the coast, so far as the independent refiners are concerned, to a very great extent.

Q. Well, by the advance, or putting the rate at 90 cents, and the abolition of the charge for the return car, and by the increase of the Chicago rate to 90 cents, you were put on an equality with the territory about Chicago, too, weren't you?

A. Yes, sir; we were put on an equality with the Whiting and Wood River refineries of the Standard Oil Company, but were unable to meet the local competition on the coast.

Q. There is a very large oil production in California, is there not?

A. Very large, yes, sir.

Q. That continues now?

A. Yes, sir.

Q. That is in Southern California?

A. Yes, sir.

Q. Is there any production in the Puget Sound territory?

A. Not to my knowledge; although there is considerable movement from California to——

Q. By water?

A. ——not only to Puget Sound territory, but back as far east as Spokane.

Q. But the production is in California?

A. Yes, sir.

Q. Southern California?

A. Yes, sir.

Q. Well, that I suppose also accounts somewhat for the
2586 fact that your business in Southern California is not larger, does it not?

A. Oh, yes. If there were no local production there we would of course be enabled to do a much larger business on the coast.

Q. You never shipped anything to Portland at any time by way of New Orleans and the Sunset route, did you, Mr. Boltz?

A. No, sir; not to my knowledge.

Q. Shippers are not interested in the division of the through rate as between the carriers, are they?

A. They have no reason to be. I do not believe they are.

Q. You know of no reason why they should be?

A. I do not know of any reason why they should be interested.

Re-direct examination by Mr. SEVERANCE:

Q. You stated that you had a meeting with the Transcontinental Traffic Association—some representatives of that association in Chicago—and this rate adjustment was made. When was that conference?

A. The conference was early in April, 1906.

Q. Do you recall who represented the different lines at that conference?

A. I can recall some of the representatives who were present. Mr. G. W. Luce, general freight agent of the Southern Pacific line at San Francisco; Mr. Edward Chambers, assistant freight traffic manager of the Santa Fe line at San Francisco was present; Mr.

John Baird, general freight agent of the Northern Pacific at St. Paul was present; and a number of other representatives, but I
2587 cannot recall their names at the present moment.

Q. Do you remember whether someone there represented the Union Pacific, or did Mr. Luce represent both the Southern and the Union Pacific?

A. As I understand it, Mr. Luce represented both the Union Pacific and the Southern Pacific lines.

Q. How is that?

A. As I understand it, Mr. Luce represented both the Union Pacific and the Southern Pacific; although I am under the impression that Mr. J. A. Munroe was also present; at least he was in Chicago at the time, and I think perhaps represented the Union Pacific line in the meeting, although I am not positive as to that.

Q. Prior to that time what had been your rate from here to California?

A. The rate from all points east of Chicago was based on the combination of locals to and from Chicago; that is, by taking the rate from the point of origin to Chicago, added to the 78½-cent rate beyond.

Q. Whiting, Indiana, takes the Chicago rate, does it not?

A. Yes, sir.

Q. So that previous to this adjustment the Standard Oil refineries at Whiting had the 78½-cent Chicago rate?

A. Yes, sir.

Q. Your refineries farther east paid that rate in addition to the local rate into Chicago?

A. Yes, sir.

Q. Now, you say the rate was advanced from Chicago and blanketed over this territory?

A. Yes, sir, the 90-cent rate was established from all points east of the Missouri River.

2588 Q. What is the revenue that the railroads receive on a 90-cent rate—ordinary tank car?

A. Why, I have forgotten what the divisions are.

Q. I do not mean the divisions; I mean what is the total freight per carload. What is the weight of a tank?

A. Oh, the weight?

Q. Yes. How much do they get?

A. The weight of an ordinary tank car would probably be about 50,000 pounds. That would be about a fair average, I think.

Q. That would be, at 90 cents, $450 a car?

A. Yes, sir.

Q. And the previous rate from Chicago had been 78½ cents?

A. 78½ cents, yes, sir.

Q. The increase was 11½ cents?

A. Yes, sir.

Q. And they eliminated the return charge, you say, of $105 a car?

A. Yes, sir.

Q. Previous to that rate adjustment were your companies able to do any business on the coast in competition with Chicago?

A. We were able to do a very limited amount of business on the coast.

Q. Well, after that 90-cent rate went into effect, how were you situated?

A. The business increased very materially from that time on; that is, as soon as they could get their traveling men at work and have them show results.

Q. How is that, sir?

A. As soon as they could get their traveling men at work in the field and give an opportunity to show results, I say.

2589 Q. You mean the traveling men of the oil companies?

A. Yes, sir.

Q. Then you were able to do business into that territory to a very large extent after that rate adjustment?

A. To a very considerable extent, yes, sir.

Q. You stated that on the first of January, 1909, that rate was advanced to a dollar?

A. Yes, sir.

Q. What effect has that had on your business?

A. It has had the effect of preventing our entering into successful competition on the coast, and has compelled some of our people, who have contracts on the coast, to use the water line via New York.

Q. Which way via New York?

A. Via New York and the Isthmus.

Q. The American-Hawaiian line?

A. The American-Hawaiian line and the Panama Steamship Company.

Q. From what point is oil moved to New York and thence around across the Isthmus or via the American-Hawaiian line?

A. There has been no business moved as yet via that route, for the reason that we have entered a vigorous campaign against the advance in the rate from 90 cents to $1.00 per hundred, and hope to induce the transcontinental lines to restore the former rate of 90 cents per hundred pounds.

Q. Then, no traffic has as yet moved by the boat line?

A. There has been no business moved yet, although there is business ready to move in case we are unable to bring about this restoration in the rate. The matter is now being considered.

2590 Q. How do you handle business when you have to transfer from the cars to ships and then again to cars and again to ships?

A. It is handled through some transfer company.

Q. Well, do you have tank shipments?

A. No; we ship only in barrels when we ship by water.

Q. Oh, in barrels. That is what I supposed. Then, that would not help you so far as shipments in tank cars are concerned?

A. No, sir.

Q. Mr. Stubbs was not present at that conference in Chicago where the rate adjustment was made?

A. No, sir. Mr. Stubbs was not present.

Q. You know Mr. Stubbs, do you not?

A. Yes, sir; I have had the pleasure of meeting the gentleman.

Q. When that dollar rate was put in the first of January it applied to all points from which the 90-cent rate had applied?

A. Yes, sir.

Q. Chicago, as well as this territory?

A. Yes, sir.

Q. Then the effect of that 10 cents increase was not to enable Chicago to more effectively compete with you, but to put you at a disadvantage with the local production in California?

A. Yes, sir.

Q. And Chicago was placed at the same disadvantage?

A. Yes, sir; although it does not operate as much against the Standard Oil Company as it does against the independent oil companies, because they are able to ship by water from their At-
2591 lantic seaboard refineries, in their own tank steamers, I believe—tank barges.

Q. Well, they have done some business at times locally in California, too, haven't they?

A. Yes, sir.

Q. They have made some oil out there?

A. I believe it is a matter of record that they have done some little business in California.

Q. So they might possibly get along and supply the production locally?

A. Yes, sir; quite successfully, too.

Q. Has the Standard Oil joined with you in this protest against the increase?

A. Not to my knowledge, no, sir.

Q. Mr. Boltz, you stated, in answer to Judge Lovett, that Mr. Connor's agency has been diligent in performing services for you as a shipper. That is true? In tracing cars, or anything of that sort, Mr. Connor has done the best he could, has he not?

A. I do not think there was ever any time when I called upon Mr. Connor for any information of any kind, or any help that he could grant, that he was unwilling to give me the best accommodation possible—the best service.

Q. Then, the only change in the situation, so far as Mr. Connor is concerned, that you have observed, is that formerly he tried to send his business via New Orleans and now he is indifferent as to whether it goes via New Orleans or Omaha?

A. Yes, sir.

Q. He is no longer competing for coast business, as between the Southern Pacific and Union Pacific?

A. No, sir.

Q. You were also asked by Judge Lovett with reference to the improvement in service by the Missouri River gateways to
2592 the coast. Hasn't there also been a very great improvement in the service by the Sunset Route—a large amount of money spent on that line?

A. Yes; there has been considerable improvement in the service on all railroads. I should say, in the past decade.

Q. Well, that is what I wanted to get at. The Union Pacific have no monopoly on improved service or improved roadbed, have they?

A. No, sir.

Q. That is one thing in which other lines compete?

A. Yes, sir.

Q. And the lines east of the Missouri River, even, have improved their road-beds, have they not?

A. Very considerably, yes, sir.

Q. Well, it has been essential to improve the roads in order to get business at all?

A. Yes, sir.

Q. Is it not a fact that some of them are doing it?

A. Yes, sir; and by reason of the fact that heavier equipment is being used.

Q. Larger cars?

A. Yes, sir.

Q. And heavier locomotives?

A. Heavier engines, yes, sir.

Q. So that the lines all over the country have been reducing grades, straightening curvature, and putting on bigger equipment?

A. That is true, yes, sir.

Q. Judge Lovett also brought out from you that you had a recollection of business having been handled for a time to California points by rail to Portland and thence by boat. There is no
2593 reason why that is not as feasible a route as the route by the Canadian Pacific and then by boat from Vancouver to California, is there?

A. No, sir.

Q. It is a shorter route, is it not?

A. It is shorter via Portland, yes.

Q. The rail haul and the steamship haul are both shorter?

A. Yes, sir.

Recross-examination by Mr. LOVETT:

Q. As far as the Union Pacific is concerned in using that route, it would be rather hauling it away from destination in getting it to Ogden and taking it up to Portland, wouldn't it?

A. Yes; rather an indirect route, Judge.

Q. And I believe you testified before that during the time you were soliciting transcontinental freight you never sought to move any that way?

A. No, sir, I never did.

Q. And you have an impression that at some time or other there was some freight that was open for——

A. Yes, sir, there was an arrangement whereby business could move via the Portland gateway and steamship line from there to California points—that is, San Francisco; but I do not recollect just when that arrangement was made or how long it continued in effect.

Q. And you do not know that any freight moved that way?

A. I do not know of any business ever having been moved that way.

Q. All these gateways have been kept open all the time, have they not? A shipper can send his freight by way of New
2594 Orleans to-day, if he wants to, can he not?

A. Yes, sir.

Q. Or by way of El Paso?

A. Yes, sir.

Q. And all these gateways?

A. Yes, sir.

Q. Aside from the time when the Canadian Pacific had this differential, none of the northern lines have ever attempted to work California business—made any serious attempt to do it—by way of Portland or Puget Sound, have they?

A. No, sir. No, sir, I think not.

Q. The Canadian Pacific had that differential only a short time?

A. Well, I would not want to say the length of time that differential was in effect, but my impression is it was in effect for a period of several years; three or four years, possibly.

Q. You think that long?

A. I would think so, yes, sir. I would say so.

Q. And when was that?

A. I should say late in the '80's. From 1885 perhaps for a period of three or four years thereafter, according to my recollection.

Q. Well, after that differential was abolished, the Canadian Pacific retired from the California business from this territory, practically, did it not?

A. Yes, I think so.

Q. The Northern Pacific and Great Northern do not attempt to work business that way to California, do they?

A. I do not believe they actively solicit any business for California points via the Portland gateway.

By Mr. SEVERANCE:

Q. Just one question suggested by a question Judge Lovett
2595 asked you. He brought out from you that the route to San Francisco by way of Portland is rather a roundabout route.

A. Rather indirect, yes, sir.

Q. Rather indirect. Now, the evidence in this case has shown that a very large traffic has moved from the Atlantic seaboard territory to California by the Morgan Steamship line to New Orleans

and thence by rail. That is a longer route to California, is it not, than a route by Portland and then steamship from there?

A. Yes, I should say it was. The distance would be greater by the Morgan line and by New Orleans than it would be via Portland.

Q. And the distance is much greater by the American-Hawaiian line, across the Tehuantepec, or by the Panama route across the Isthmus, or by Clipper ships around the Horn, is it not?

A. Yes, sir, very considerable.

Q. So that the matter of distance really does not figure very much in the movement of traffic, does it, unless it is something that demands speed in transfer—express service?

A. Well, the question of distance does enter as a factor into the successful securing of freight by different lines, for the reason that shippers naturally prefer the most direct route, all things being equal.

Q. But this matter of distances can be overcome by other considerations such as rates?

A. Oh, yes; if there were any preferential rates via an indirect line, it is natural that that line would get a certain percentage of the business which they would not otherwise get—a greater percentage.

2596 Q. You are familiar with the facts, by reason of your connection with the eastern business, that the rates, via the Morgan line, to California, are just the same as they are by all-rail lines, are you not?

A. Yes, sir.

Q. In spite of the additional distance they are able to get a large traffic by that route?

A. Yes, sir. They do get considerable traffic from the east; not very much traffic from this interior territory.

Q. I suppose very little?

A. Yes, comparatively.

Q. They do not absorb the rate west of Pittsburg, do they?

A. I think not.

By Mr. LOVETT:

Q. About how long does it take a shipment to move by Cape Horn from this territory to California?

A. Usually from four to five months; something of that kind.

Q. And the all-rail route takes about how long, ordinarily?

A. Oh, I presume twelve to fourteen days would be a fair average time.

Q. The rate via Cape Horn is very much lower usually, is it not?

A. Yes, sir.

Q. And so it is very much lower by way of Panama and Tehuantepec, is it not?

A. The rate is considerably lower via both of those lines than it is by the all-rail line.

Q. Of course, there is a very short rail haul in both of those routes?

A. Yes, sir.

Q. And the rate is very much lower by both Panama and
2597 Tehuantepec?

A. Yes, sir.

Q. Are you familiar with the conditions under which the line mentioned by Mr. Severance is operated by the Southern Pacific from New York to San Francisco by way of New Orleans? I say are you familiar with the conditions under which that line is operated?

A. I do not quite understand what you mean by the conditions.

Q. Well, for example, you are aware, in the first place, that it is a single line from the point of origin in New York, practically a single management?

A. Yes, sir.

Q. From point of origin to final destination?

A. Yes, sir.

Q. Whereas the Union Pacific lines do not extend east of the Missouri River?

A. Yes, sir.

Q. And it is dependent on its connections for carrying the freight?

A. Yes, sir, I understand that.

Q. You are also aware of the fact that the Southern Pacific and the line from New York to New Orleans and Galveston has three fast ships a week; it collects the freight on the piers there, puts it on those ships three times a week, sends it to New Orleans or Galveston, where it has very extensive docks and terminals, has the freight transferred direct from the ship into cars standing on the dock, and sends it through in practically solid train lots, without break, to California? Are you aware of those conditions?

A. I am aware that those conditions do exist to a certain extent; yes, sir.

Q. And that the Union Pacific, in attempting to pick up
2598 freight in the middle of the continent, depending on the connections going to it, to put in broken lots, and carrying it by way of Portland, would not be so favorably situated as the Southern Pacific, would it?

A. That is quite true.

Q. Isn't this a very important consideration, too, Mr. Boltz: that the Union Pacific is a direct connection with the Southern Pacific at Ogden and itself is a part of the all-rail system across the country, and must be benefited by a very large interchange of traffic with the Southern Pacific at Ogden?

A. Yes, sir.

Q. And that if it should attempt to work the Portland route as against the Southern Pacific, for California business, it might, if the two sytems were independent, jeopardize that relation?

A. Yes, sir, I think so.

By Mr. SEVERANCE:

Q. If the two systems were independent and competing with each other, and business was worked by the Portland gateway, as you

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said—that is, by boat line—at a differential, the natural result of that would be to bring down all the transcontinental rates, would it not?

A. I believe it would have that effect; yes, sir.

Q. And that would affect all movement of traffic by the Sunset Route of the Southern Pacific?

A. Yes, sir.

By Mr. LOVETT:

Q. Do you think any sane man operating the Union Pacific and being responsible for it, would attempt, under those condi-
2599 tions, to bring down the rates in that way, Mr. Boltz?

A. I do not believe, unless there were some good reason for the establishment of differential rates via the Portland gateway to California points, that the rates would be reduced.

Q. And you cannot see any good reason, from a railroad standpoint, can you?

A. If the line via Portland and steamer was thoroughly advertised in the East, and its service was even fair, and its rates placed on a differential basis, I believe that it would be considered a feasible route on certain classes of traffic.

Q. Well, of course, any line can do business on a differential basis; can it not?

A. If the differential is great enough.

Q. That would depend, in a large measure, upon what its rivals would allow it to do?

A. Yes, sir.

Q. But at equal rates you do not think considerable business would move that way, do you?

A. I think not, no, sir.

Q. And from your knowledge of the situation, still assuming the Union Pacific and the Southern Pacific independent, if the Southern Pacific diverted at least all of its unrouted traffic to the Denver & Rio Grande as against the Union Pacific, wouldn't you say that the Union Pacific would lose very much more than it would gain from that sort of enterprise?

A. I should think so.

By Mr. SEVERANCE:

Q. Now, that brings up another question. You say you
2600 think considerable traffic could move that way at a differential?

A. Yes, sir.

Q. Well, the evidence in this case shows that the differential exists between the boat line to Portland and the rail line to Portland from San Francisco; so we have the differential on that end.

Mr. LOVETT. Shows what?

Mr. SEVERANCE. There is a differential between the boat line and the Shasta route. The boat line is cheaper.

Q. So that the differential is already in force between Portland and San Francisco. Now, suppose the Southern Pacific, on this interchange of business from the Missouri River to San Francisco, the through business, should undertake to exact unfair division of the through revenue from the Union Pacific: the Union Pacific would be very well protected against such demand, would it not, by the possession of the route to Portland and the boat line to San Francisco?

A. Most certainly, yes, sir.

Q. So that by the possession of that rail line and the boat line down, they are able to protect themselves against an unfair exaction on the part of the Southern Pacific of through business?

A. I would say so, yes, sir.

By Mr. LOVETT:

Q. I believe you have already testified that the public is not interested as to the division of the through rate?

A. Yes, sir; the public has no interest.

Q. You, as a shipper, do not care whether the Union Pacific
2601 or the Southern Pacific gets the big end of the through rate?

A. No, sir.

Q. And if the Union Pacific should attempt to use that Ogden route and boat line with the Southern Pacific, on which a large volume of traffic originates on the Pacific coast, it would naturally divert that to the Denver & Rio Grande, if it is operated by sane men, would it not, Mr. Boltz?

A. Yes, sir; that would be the natural inclination.

Q. And don't you think that in a controversy of that sort the Union Pacific would probably suffer more than it would gain by using the Portland route?

A. I believe so, yes.

Q. Railroad managers as a rule are about as much alive to their interests as other people, are they not?

A. As a rule that is true.

By Mr. SEVERANCE:

Q. The natural way for the Southern Pacific to send unrouted traffic from the East to California points is by the Southern Pacific route, where they can control it, so as to get the long haul, rather than get the short haul via Ogden?

A. Yes; that would be their effort if it were not that the merger is in effect, and that they were interested in the Union Pacific line east of Ogden.

Q. Yes; I am assuming that they are separate lines, as they used to be.

A. That would be the natural conclusion, yes, sir.

Q. The natural thing. So that the traffic that is moved by Ogden would be the traffic—that is, the through traffic
2602 from the west—that the consignees wanted to send that way?

A. Yes, or traffic which might have been secured through the efforts of some individual freight solicitor representing one of the other lines.

Q. Yes; of the Union Pacific?

A. Yes, sir.

Q. East of Ogden?

A. Or the representative of some of the eastern Missouri River lines, who was located on the coast.

Q. So that if the Southern Pacific undertook to fight back the Union Pacific by diverting unrouted traffic to the Rio Grande, they would have to take that unrouted traffic from the Sunset Route, where they get the long haul, and divide it up with the Rio Grande, in order to hit the Union Pacific?

A. Yes.

Q. That wouldn't pay very well, would it?

A. I think not.

Q. If you are still assuming, as Judge Lovett suggests, that railroad men are sane and that they are like other people?

[No response.]

By Mr. LOVETT:

Q. Well, I will follow that a little bit. There is a great deal of this transcontinental traffic that moves all-rail in spite of the Southern Pacific Sunset Route, is there not?

A. Oh, yes.

Q. So, assuming that no more traffic was moved during this controversy that we have assumed than moves now, why, the
2603 Southern Pacific could divert that same amount of traffic to the Denver & Rio Grande from the Union Pacific, could it not?

A. Most certainly.

Q. As it is now, the Union Pacific is the preferred connection of the Southern Pacific at Ogden?

A. I so understand it, yes, sir.

Q. And if this controversy were to arise, why, the Southern Pacific would naturally change that situation and divert the unrouted traffic to the Denver & Rio Grande that it could not get by way of the Sunset Route?

A. Yes, sir.

Q. And there is necessarily a very large volume of traffic that will not move by the Sunset Route? That is and always has been true, has it not?

A. That is true.

Q. The Atchison is pretty active in the field?

A. Yes, sir.

Q. And if the Southern Pacific insists on taking it via the Sunset Route, and would not take it by way of Ogden, it would go by the Atchison, naturally, wouldn't it?

A. Yes; business which was not routed by the shipper would move that way.

Q. There is this established line by way of Ogden, the only outlet being the Southern Pacific line west of Ogden?

A. Yes.

Q. And at Ogden it has the two eastern outlets?

A. Yes, sir.

Q. The Denver & Rio Grande and its connections?

A. Yes, sir.

Q. And the Union Pacific and its connections?

A. Yes, sir.

Q. And it can select either of these?

A. Yes, sir.

Q. And very much the larger proportion of the traffic to and from the Pacific coast, ever since the transcontinental lines have
2604 been opened, has moved all-rail? Don't you understand that to be true?

A. Yes, sir, I do.

Q. And that the Southern Pacific could not move that by the Sunset. It has either got to come over the Denver & Rio Grande or the Union Pacific or the Atchison?

A. Yes.

By Mr. SEVERANCE:

Q. Well, it could move by rail to New Orleans and then by some other railroad?

A. Oh, yes. I want to qualify that statement by stating that if it moved via the Ogden gateway it must necessarily move over the Union Pacific or the Denver & Rio Grande; but it might move via the Sunset Route via New Orleans.

Q. Or El Paso?

A. Or El Paso, yes.

2605 JOHN F. RYAN,

being duly sworn as a witness on behalf of the Complainant, testified as follows:

Direct examination by Mr. SEVERANCE:

Q. Mr. Ryan, where do you live?

A. Toledo, Ohio.

Q. What is your business?

A. I have charge of the traffic of the National Supply Company.

Q. What is the business of the National Supply Company?

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A. Manufacturing oil and gas well supplies.
Q. Is that a large concern, Mr. Ryan?
A. Yes, sir.
Q. One of the largest of the kind in the country, is it not?
A. Yes, sir.
Q. I will ask you again, what kind of product do you put out?
A. We manufacture oil and gas well supplies, except the pipe that produces the oil from the ground. The pipe, we are agents for the National Tube Company. But boilers, machinery, cordage, valves, and fitting we manufacture ourselves at our own factory and ship from our own factory to our warehouses and stores in the southern California oil fields. We have eight or nine warehouses in southern California.
Q. Do you manufacture tanks?
A. Yes, sir.
Q. How long have you been in that business, Mr. Ryan?
A. About ten years.
Q. In charge of the traffic during that time?
A. Yes, sir.
Q. Is your traffic to California points large or otherwise?
A. I beg pardon?
2606 Q. Is your traffic large to California points?
A. Yes, sir, very heavy—that is, to the oil country, the oil field.
Q. That is what I mean. That is in Southern California?
A. That is in Southern California.
Q. At what points do you have warehouses there?
A. Los Angeles, Bakersfield, McKittrick, Coalinga, Orcutt, Sunset.
Q. Some of those points are on the Santa Fe and some on the Southern Pacific?
A. Yes, sir.
Q. And some on both?
A. Some on both.
Q. Do you recall the time that the Southern Pacific and the Union Pacific had separate representatives in this territory?
A. I do.
Q. Who represented the Southern Pacific interests in the Toledo district?
A. Mr. Connor, of Cincinnati.
Q. Did he personally come there?
A. He did.
Q. Did he have any subordinates who came there?
A. The subordinates never called on me.
Q. Mr. Connor himself came to see you?
A. Personally.
Q. And who represented the Union Pacific in that territory?
A. Mr. Johnson and Mr. Carney.
Q. At the time these separate agencies were in existence, were they competing with each other for coast business?

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A. They were.
Q. How is that?
A. Yes, sir, they were.
Q. Actively or otherwise?
A. Actively.

Q. Which way did Mr. Connor endeavor to route his coast
2607 traffic?

A. Via New Orleans and the Sunset Route.
Q. And the Union Pacific people via Omaha?
A. Ogden and Omaha.
Q. Was your traffic as large then as it is now?
A. Not quite so large, I don't think.
Q. But it was a very considerable traffic then?
A. Yes, sir, it was.
Q. Since the consolidation of these agencies here, who has called on you in the interest of the two lines soliciting business?
A. Mr. Choate has called on me in the last few years.
Q. Where does he live?
A. Detroit, Michigan.
Q. He represents both the Southern and the Union Pacific?
A. He does.
Q. In soliciting business, does he make any distinction between the two?
A. No, sir.
Q. Are there in this district any persons at the present time, since the consolidation of the agencies under Mr. Connor, who are representing separately those two lines and conducting the competition which was formerly conducted by Mr. Connor and the other people?
A. No, sir.
Q. How does your traffic move to Southern California; over what routes?
A. Well, most all of the gateways via El Paso—Santa Fe, Union Pacific, Southern Pacific, Ogden, Salt Lake route.
Q. Does any of it move now by New Orleans?
A. Some. Not very much.

Q. In the old days when competition between the Union
2608 and the Southern Pacific was active, did traffic move via New Orleans?

A. It did.
Q. How much, as compared with the amount that moves that way now? More or less?
A. Less.
Q. Less then than now?
A. Yes, sir.
Q. Perhaps you misunderstood my question. I say at the time when Mr. Connor represented the Southern Pacific alone and, as you say, was endeavoring to move business via New Orleans, did he get a larger share of your business that way than goes that way now?

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A. Yes, sir, he did.
Q. He did?
A. Yes, sir.
Q. You misunderstood my question. Is your business low-grade or high-grade, in the way of classification?
A. Well, it is high-grade. It takes the machinery rate.
Q. Does that move under a commodity tariff or under a class rate?
A. Under a class rate.
Q. Which? Fifth-class?
A. Class A.
Q. Do you ship at all by boat, Mr. Ryan?
A. Yes, sir.
Q. Which line?
A. The American-Hawaiian Tehuantepec route.
Q. From Toledo?
A. From Toledo.
Q. How does the traffic move to the seaboard?
A. Via the Lake Shore, D. L. & W.
Q. Moves all-rail, does it?
A. All-rail.
Q. And what is the port on the Pacific coast at which that traffic is delivered out by the Hawaiian line?
A. San Diego.
Q. And then distributed over the Santa Fe?
A. The Santa Fe.

Q. How long does it take to get a shipment from Toledo to
2609 San Diego by the American-Hawaiian line ordinarily?

A. From 35 to 45 days.

Mr. LOVETT. You said "to San Diego." You mean to final destination?

Mr. SEVERANCE. Well, San Diego.

Q. And it is only a very short journey from San Diego up to the oil fields, is it not?
A. To Los Angeles.
Q. To Los Angeles?
A. Yes, sir.
Q. Does your product that goes to San Diego go into your storehouse at Los Angeles altogether?
A. Yes, sir; and then re-shipped to the interior.
Q. You ship everything, then, in the first instance, to Los Angeles, do you?
A. That we ship by water. Shipments all-rail to interior points in southern California go by all-rail.
Q. To save re-handling?
A. To save re-handling.
Q. You do not have any warehouse at San Diego?
A. No, sir, we do not.
Q. The American-Hawaiian ships do not put in at San Pedro?

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A. No, sir.

Q. At least they do not discharge your goods there?

A. They do not discharge our goods there. San Diego.

Cross-examination by Mr. LOVETT:

Q. I believe you stated that formerly more of your traffic for California moved by way of New Orleans than now, Mr. Ryan?

A. Yes, I think it did, for the first few years, yes, sir.

2610 Q. If there was a separate solicitor put in this territory for the New Orleans route exclusively, as against all the all-rail lines, are you prepared to say whether it would probably affect the movement of your traffic in that direction?

A. I am not prepared to state.

Q. Don't you believe it would not?

A. Well, that would depend a great deal upon the personnel of the solicitor for business.

Q. You think that the right sort of a solicitor might be able to influence some of your freight that way?

A. I think a great deal depends upon the personnel of the solicitor.

Q. What are the particular qualities—can you describe them, Mr. Ryan—I would really like to know—in a solicitor who would control traffic under those conditions? because we would like to look out for a man of that kind. I ask that for Mr. Stubbs' benefit.

Mr. SEVERANCE. I think you have one now, and have had him all the time.

Q. Mr. Connor?

A. Mr. Connor, I think, is——

Q. You think he fills the bill, do you?

A. I think he fills the bill.

Q. You think, then, that if we were to get some other man—I would not say a man equal to Mr. Connor, but if we would get some other average solicitor to take his place, so far as the Ogden line is concerned, and let Mr. Connor devote his time exclusively to

2611 the New Orleans line—do you think that would probably get more business for the New Orleans line—more of yours?

A. If he was working exclusively for that line, yes.

Q. And that would be at the expense of what line—the Union Pacific-Ogden line and the Santa Fe?

A. Yes, sir.

Q. You think he might get some of that?

A. Yes, sir.

Q. I believe you say most of your shipments go to Southern California?

A. Yes, sir.

Q. What is about the most direct route for those shipments, Mr. Ryan?

A. Via the Santa Fe and the Salt Lake, and Union Pacific and Southern Pacific via Ogden.

Q. You mean what is commonly called the San Pedro route?

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A. Yes, sir.
Q. And then by the Union Pacific and Ogden?
A. And Ogden.
Q. In connection with the Southern Pacific?
A. The Southern Pacific.
Q. About how many miles would you say that distance is, roughly speaking, as against the New Orleans line?
A. I should say 500 miles.
Q. The service by the all-rail lines to the Pacific coast has been very much improved in recent years, has it not, Mr. Ryan?
A. It has.
Q. From this territory?
A. Yes, sir.
Q. Hasn't it improved relatively more than the line by New Orleans?
A. Well, I am not prepared to state.
Q. You are not prepared to state as to that?
A. We have shipped a great deal of tonnage from the east
2612 via the Morgan line to Galveston and the Sunset Route to California.
Q. From the east. What do you mean by that?
A. Seaboard territory.
Q. Seaboard territory—east of Buffalo and Pittsburg?
A. Yes, sir.
Q. You still ship that way from that territory, do you not?
A. Yes, sir.
Q. In the former days, when there was freight solicitation by both the Union Pacific and the Southern Pacific, all your traffic that passed over the Union Pacific to California passed over the Southern Pacific also, did it not, west of Ogden?
A. It did.
Q. No other outlet for it?
A. No other outlet. I never used any other gateway except——
Q. I say there was no other gateway for that passing over the Union Pacific, was there?
A. No, sir.
Q. You never attempted to ship over the Union Pacific to Portland and thence by boat down from Portland, did you?
A. No, sir.
Q. Have you ever made any shipments to Portland proper?
A. No, sir.
Q. You are not interested in the division of the through rate between the different carriers participating in the haul, are you?
A. No, sir.
Q. You do not care what each one gets out of the rate, do you?
A. No, sir.

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2613 E. D. RYAN,

being duly sworn as a witness on behalf of the Complainant, testified as follows:

Direct examination by Mr. SEVERANCE:

Q. Mr. Ryan, where do you live?

A. Toledo, Ohio.

Q. What is your business?

A. Traffic manager for the Milburn Wagon Company.

Q. How long have you been in that position, Mr. Ryan?

A. Well, I was first employed with the intention of letting me handle all the traffic; but two weeks after I entered the service, on account of a shipping clerk resigning, it was necessary to turn over about two-thirds of his work to me and divide what I had been doing. For that reason the traffic work was divided. I handled the checking of freight charges and took care of the shipping; and Mr. F. D. Sudam, who was then secretary, now president, received the freight solicitors. After that, H. W. Sudam succeeded F. D. as secretary and he handled the freight solicitors and such matters up to I guess about the year 1902, or such a matter.

Q. Since then you have seen them?

A. Yes, sir. Well, there was a short time when a stenographer of H. W. Sudam helped out, for a period of about a year.

Q. Since you have been in charge of the traffic and have been called on by freight solicitors, have the Union and Southern Pacific had separate soliciting agents calling on you, or only one man?

A. Only one man.

Q. And who is that?

A. F. B. Choate, Detroit.

2614 Q. Did Mr. Choate call on you frequently?

A. Yes, sir; quite frequently.

Q. And how does he solicit California business?

A. Well, he solicits the long haul. He leaves it optional with us as to what route we shall choose, but, of course, always tries to get the long haul.

Q. By the long haul which do you mean?

A. Care of the Union Pacific at either Kansas City or Omaha.

Q. Yes; but he does not solicit by New Orleans?

A. Well, not for Portland; but for San Francisco. But if he learned that we were going to route a shipment via the El Paso gateway, in that case he would solicit care of New Orleans by the Southern Pacific.

Q. That is, he would try to get it over the New Orleans way, instead of taking it at El Paso?

A. Yes, sir.

Q. But otherwise, you say, on San Francisco business he does not try to work it by the south?

A. No, sir.

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Q. But by Omaha or Kansas City.

A. Yes, sir.

Q. Now, are there other solicitors representing transcontinental lines in the field?

A. Yes; there are several others—the Great Northern, the Northern Pacific. The Canadian Pacific is also soliciting.

Q. The Atchison?

A. The Atchison.

Q. When Mr. Choate finds that you are contemplating routing a shipment via El Paso, we will say, does he endeavor to change it and have it go via Omaha?

A. No; not to my knowledge.

Q. Or, if you are going to route it by Omaha, does he try
2615 to take it away from the Union Pacific and send it by El Paso or New Orleans?

A. No, sir.

Q. That is, he is not trying to play one of those lines against the other?

A. No, sir; but a few shipments have moved by way of the El Paso gateway; only a few cars.

Q. Only a few cars?

A. Yes, sir.

Q. Does the Milburn Wagon Company ship a good deal of its product to the Pacific coast?

A. Well, up to the fall of 1895—that is three or four months after I entered the service—we had quite a number of cars; but from that time until the spring of 1900 we had no shipments. The reason for that is that we had a large business, and, on account of the wagons for the coast territory being special, we found that we could not make them; they interfered too much with our other work.

Q. How has it been since 1900?

A. Well, conditions changed. Since then we have had a large number, with the exception of the past year.

Q. Had a large business on the coast?

A. Yes, sir.

Q. And over what lines does your traffic to California move?

A. To California? Well, as a rule we have divided that traffic about equally between the Santa Fe and the Union Pacific.

Q. How does your Portland business move?

A. Portland business? We aim to give about fifty percent of that to the C. & N. W., the Union Pacific and Oregon Short Line; and the balance we divide via all the routings—that is, the Denver gateway—the Great Northern and Northern Pacific. A few cars we have shipped by the Canadian Pacific. The first two or
2616 three were shipped on account of washouts and blockades, on the American lines—that is, the northwest lines.

Q. You say that all these lines out there have agents in the field here soliciting your business?

A. Yes, sir.

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Q. That is, the Canadian Pacific, the Northern Pacific and the Great Northern—Mr. Choate representing these lines?

A. Yes, sir.

Q. And the Atchison?

A. Yes, sir.

Q. How often do those men come to see you, looking after business?

A. Of the other lines?

Q. Yes.

A. Now, that is a hard matter. Sometimes they call once a week; and again, I suppose on account of their business taking them to other places, they do not call oftener than once a month.

Q. They constantly keep tab on the business?

A. Yes, sir.

Q. And it is an active solicitation, is it?

A. Yes, sir. They either call on me personally or in some other way—telephone—every time they visit the city.

Q. They write to you, I suppose?

A. Yes; and write to me.

Cross-examination by Mr. LOVETT:

Q. Do the representatives of these other lines call on you any oftener than the representatives of the Union Pacific and Southern Pacific, Mr. Ryan?

A. No, sir.

Q. Are any of them more diligent in soliciting than the Union Pacific and Southern Pacific?

A. Well, Mr. Lovett, I dislike very much to tell you what I
2617 think of Mr. Choate, because there are other railroad representatives here. While the western lines are pretty well represented, still I will have to say that I rather think Mr. Choate has just a little bit the better of any of them.

Q. A little the better of them?

A. Yes, sir. And I wish to qualify that by saying that while there are a few other railway solicitors who have nerve enough to argue with a shipper, Mr. Choate goes a little bit better on that.

Q. He does?

A. Yes. I wish to say that on account of him liking to get into an argument, I have learned many things about the railroad business—things that I did not know or had not learned when in the railroad service.

Q. You wouldn't think it necessary, then, to strengthen the Southern Pacific and Union Pacific representation any?

A. No, sir, I would not.

Q. Such business as you ship to California over the Union Pacific passes over the Southern Pacific, does it not, Mr. Ryan?

A. Yes, sir.

Q. From Ogden?

A. Yes, sir.

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Q. You never shipped any to Portland by way of the Sunset, did you, via New Orleans?

A. No, sir; no shipments for Portland ever moved that way, to my knowledge.

Q. Did you ever ship any to California points by way of Portland and then by boat down?

A. No. When I first entered the service of the Milburn Wagon Company we were taught, by experience gained on shipments to Texas, that the service would be very poor—first, on account
2618 of the slowness, and, secondly, on account of our wagons being damaged.

Q. In the transfer?

A. Yes, sir. It would take a differential rate of at least twenty cents better than the all-rail rate to pay us for making shipments via any such routing. If we crated wagons, why, the cost would be greater than twenty cents a hundred. As I said before, the damage would amount to a good deal more than twenty cents per hundred on the wagons if we didn't crate them.

Q. All the lines extending from this territory to El Paso or the Missouri river gateways and the Rocky Mountains actively solicit business for California, do they not?

A. Yes, sir.

Re-direct examination by Mr. SEVERANCE:

Q. You said in answer to Judge Lovett that you did not think it was necessary for the Union Pacific and Southern Pacific to strengthen their representation. That was in reference to Mr. Choate?

A. Yes, sir; so far as his abilities are concerned.

Q. You mean by that that you do not think it is necessary to have anybody who could put up a stronger argument than he does? You say he argues very strongly?

A. Yes, sir. Well, he is a man who understands his business in every detail. Things that I hardly thought he knew of in local offices—the handling of freight business in local offices as well as general offices——

Q. How is that?

A. I say he understands the handling of all traffic matters
2619 from the ground up: local offices, general offices and all.

Q. And financing the road, too, I suppose?

A. Well, I don't know anything about that. That is something I am not interested in. I am not very high up in finances.

Q. If the Union Pacific had Mr. Choate's services exclusively and he did not have to divide his allegiance between that line and the Southern Pacific, with this capacity that he possesses, he might get a larger percentage of the business for the Union Pacific, might he not?

A. Well, I rather think he would if the representative of the Southern Pacific were not as good a man as he. I beg your pardon; I

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wish to add to that. He would anyhow, on account of the service being better by the Union Pacific and Southern Pacific than via New Orleans and the Southern Pacific.

Q. Yes, but leaving the matter of service out of the question for the moment; Mr. Choate's ability as a railroad man, if devoted to one line instead of to two, might make a difference in the distribution of the traffic between those lines; isn't that true?

A. Well, if he were a Union Pacific man, of course.

Q. Yes, that is what I mean.

A. But if he were a Southern Pacific representative, I doubt whether he would be able to secure any business via that line or New Orleans.

Q. You do not think he could?

A. I do not think he could.

Q. Or via El Paso?

A. He might via El Paso, but not via New Orleans.

Q. You heard the testimony of your namesake who was just on the stand, didn't you?

A. Yes, sir.

2620 Q. Who thought that Mr. Connor could return to his former allegiance and represent the Southern Pacific alone and he could get more business to move by the Southern route, as he formerly did. Now, don't you think Mr. Choate would be as strong in that way as Mr. Connor?

A. I am not personally acquainted with Mr. Connor. For that reason I have no knowledge of his ability. He may be just as good a man as Mr. Choate.

Q. Well, if Mr. Choate could not move business via New Orleans and Mr. Connor could, then evidently Mr. Choate is not the stronger man?

A. Well, I doubt whether——

Q. That is all, Mr. Ryan.

2621 JOHN D. KLEUTER,

being duly sworn as a witness on behalf of the Complainant, testified as follows:

Direct examination by Mr. SEVERANCE:

Q. Mr. Kleuter, where do you live?

A. Toledo.

Q. What is your business?

A. In charge of the traffic department of the Gendron Wheel Company.

Q. Is that a concern of considerable size, Mr. Kleuter?

A. Yes, sir.

Q. To what parts of the country do you ship your product?

A. We ship it all over the world.

Q. Including the Pacific Coast?

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A. Yes, sir.

Q. How long have you been connected with that company?

A. I have been with the company about sixteen years.

Q. How long have you been in charge of their traffic?

A. Something over ten years.

Q. Do you remember the time when the Southern Pacific and the Union Pacific had separate commercial agencies in this field?

A. I do.

Q. Did both of those agencies solicit your traffic?

A. Yes, sir.

Q. Which way did the Southern Pacific endeavor to route its traffic?

A. Via New Orleans.

Q. And the Union Pacific by the Missouri River?

A. Yes, sir.

Q. Who representing these two roads calls on you now since the consolidation of the agencies?

A. Mr. Choate, of Detroit.

2622 Q. Does he discriminate between the two lines in soliciting business?

A. No, sir.

Q. How does your traffic move to the coast?

A. Generally via Omaha—Union Pacific.

Q. How is that?

A. Union Pacific.

Q. Do you ship to Southern California?

A. Yes, sir.

Q. How does it move to Southern California?

A. Santa Fe. Not very much, though, Santa Fe. Generally Salt Lake route.

Q. Salt Lake route?

A. Yes, sir.

Q. That is the Union Pacific and the Salt Lake route?

A. Yes, sir.

Q. And to San Francisco, by the Union Pacific and Southern Pacific?

A. Yes, sir.

Q. Do you ship to Portland?

A. Yes, sir.

Q. And how does your traffic move to Portland?

A. Always Northern Pacific or Great Northern.

Q. Does any of it go by the Union Pacific and the Oregon Short Line?

A. I do not remember of any going that way.

Q. Do you ship any by the Canadian Pacific?

A. No, sir.

Q. Or by the steamship lines?

A. Never.

(No cross-examination.)



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2623 W. F. RAND,

being duly sworn as a witness on behalf of the Complainant, testified as follows:

Direct examination by Mr. SEVERANCE:

Q. Mr. Rand, where do you live?
A. 1317 East 78th Place Northeast.
Q. How long have you lived in Cleveland?
A. Since 1881.
Q. What is your business?
A. Railroad clerk.
Q. In what office?
A. Lake Shore local freight office.
Q. How long have you been with the local freight office of the Lake Shore?
A. From October, 1889, I was with the Union Pacific until 1890. I could not state exactly what month I left them. I returned to the Lake Shore office after I had left the Union Pacific. I have been there ever since.
Q. So that you have been with the Lake Shore since 1887 down to the present time, with the exception of part of two years?
A. About one year.
Q. About a year?
A. Yes, sir.
Q. And at that time you were with the Union Pacific?
A. Yes, sir.
Q. What is your business in the freight office of the Lake Shore?
A. Why, east-bound billing department I had jurisdiction over up until a year ago; and then they consolidated the departments and made one head, east and west-bound; but I am assistant to the chief bill-clerk. We have charge of the east-bound billing.

Q. Previous to that what were you doing in the freight office,
2624 after you left the Union Pacific? Or were you all the time in charge of that billing?
A. Yes, sir; I was in that same department, but did not have charge of it.
Q. Previous to going with the Union Pacific what were you doing here in the Lake Shore office?
A. In the billing department—east-bound.
Q. Billing; east-bound?
A. Yes, sir.
Q. Who engaged you in the service of the Union Pacific?
A. Mr. James D. Welsh.
Q. And where did Mr. Welsh live?
A. Why, I think he lived at Cincinnati; at Chestnut Hill, I think.
Q. And in what capacity were you employed by Mr. Welsh?
A. As solicitor of freight.
Q. In what place, or what places?

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A. Just here in this territory.

Q. Locally, in Cleveland?

A. Yes, sir.

Q. Or in the region about Cleveland?

A. Just in Cleveland.

Q. Only in Cleveland. During that time were there any other freight solicitors employed here by the Union Pacific?

A. No, sir.

Q. Who had been locally employed by the Union Pacific previous to your employment?

A. A man by the name of John Moran.

Q. How long had he been here, do you know?

A. Why, I could not exactly state. To the best of my knowledge he had been there for two years.

Q. Do you remember who was his predecessor?

A. I was.

Q. No. His predecessor—the man before him. Were you there twice?

A. No, no. Oh, predecessor. I beg your pardon.

2625 Q. Predecessor, yes.

A. No; I couldn't say as to that.

Q. You do not remember?

A. No, I do not.

Q. When you quit the service of the Union Pacific and went back to the Lake Shore, who took your place here?

A. Why, the offices were closed up. They had closed the offices in several cities, and this being one, they also closed it; and Mr. Shearman (I think he traveled) who was then passenger agent, under whose jurisdiction I was, went back to Cincinnati. He reported to Cincinnati under Mr. Welsh.

Q. Well, they continued their solicitation of business through traveling men after that?

A. I think they did, yes sir; through traveling men.

Q. But did not maintain a separate office here?

A. No, sir.

Q. While you were in the employ of the Union Pacific did you have a regular office?

A. We had an office at the Kennard House, yes, sir.

Q. And after you left the service the business that you had been doing here was taken over by traveling men?

A. Yes, sir.

Q. Just what were your duties as freight solicitor here?

A. Just simply going out looking up business and having it routed by the Union Pacific at the Missouri river gateways, working in conjunction with the C. M. & St. P., the Northwestern, the Chicago & Alton, and sometimes with the Q. and the Rock Island.

Q. Any connection you could get to work with, I suppose?

A. Yes, sir.

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Q. That is customary, is it not, for all freight solicitors
2626 to work with their connections?

A. Yes, sir.

Q. To work with anybody?

A. Yes, sir.

Q. To get the business?

A. Yes, sir.

Q. And you said that your duties were confined wholly to Cleveland proper?

A. Cleveland, yes, sir.

Q. At that time who represented the Southern Pacific in this territory?

A. To the best of my knowledge, Mr. Connor, from Cincinnati. I met the gentleman once, and that was the first time and the last time.

Q. You met him, you say, once?

A. Yes, sir. I think it was through Mr. Krause, the Big Four commercial agent.

Q. That was in those days when you represented the Union Pacific?

A. Yes, sir.

Q. And you have not seen him since?

A. Not until the other day—I happened to see him across the street when he was going to the Northwestern office.

Q. Well, you are unfortunate if you don't see him often. Did you have anything to do with the solicitation of passenger business for the coast when you were——

A. Well, I occasionally did go out to see a party; but my business was more in the freight line. I was not familiar with the passenger business; but if I got next to any people going to the coast, I would always advise Mr. Shearman and he would go after them or advise some intermediate line between Chicago and the Missouri River and put them next to it and they would probably go out and see them.

Q. Who was Mr. Shearman?

A. He was the traveling passenger agent. His title was——
2627 Q. Of the Union Pacific?

A. Yes, sir.

Q. And did he have anything to do with freight business?

A. Well, he had that title, but he never solicited any freight to my knowledge.

Q. How did he work passenger business; what way?

A. I was not familiar with that, but I think they used to work it Northwestern, C., M. & St. P. or Q., by the Union Pacific gateway.

Q. By the Union Pacific?

A. Yes, sir.

Q. What methods of solicitation are used in getting passenger business?

A. That I couldn't say. I never tried to solicit any passenger business.

Q. Oh, you never had anything to do with that?

A. No, sir.

Q. You said Mr. Shearman was doing that work——

A. He was doing that.

Q. ——and I didn't know but you might know. Now, in soliciting business here for the Union Pacific did you solicit for Portland business too?

A. Yes, sir.

Q. Which way did Mr. Connor endeavor to work the business for the Southern Pacific?

A. I presume by the New Orleans gateway. That was his proper route.

Q. That was his route?

A. Yes.

Q. How was the competition as between the Union Pacific and the Southern Pacific for California business at that time?

A. Very active.

Q. What company was your strongest competitor for California business?

A. The Southern Pacific.

(A recess was here taken until 2 o'clock p. m.)

2628 Q. Mr. Rand, at the time you were employed by the Union Pacific, were you working business to Portland?

A. Yes, sir.

Q. Who were your chief competitors in the Portland business, what transcontinental lines?

A. The Northern Pacific.

Q. And did the Canadian Pacific do any business into Pacific coast points, in the United States, at that time?

A. Not that I know of. I presume they did at that time. I have heard of some shipments going by that route on a differential.

Q. I will have to ask you to speak a little louder.

A. I say I have known of some cases where shipments went via that route on a differential basis—that is, California business.

Q. They went all-rail to Vancouver, and then by boat to San Francisco?

A. I presume that is the way they went, yes, sir.

Q. Were they competing with you for business into Portland?

A. Not that I know of.

Q. Do you remember any particular business that the Canadian Pacific took from you or were able to get, in competition with you, for California?

A. I remember several carloads of machinery going that way—that is, sewing machines, going by that route for San Francisco.

Q. When you represented the Union Pacific, in competing for business to the coast, did the matter of equipment have

2629 anything to do with it?

A. Not at that time, that I know of; but I understood there were large cars on the Union Pacific, what they call furniture cars,

that we could get in case we needed them for for any special business, such as stoves—gasoline stoves that were shipped by the Standard Lighting Company or the Snyder-Trentkant Company.

Q. Were any shipments moved in that kind of equipment?

A. There were some, yes, sir, but we did not manage to get the business. It went by the C. B. & Q. and the Rock Island.

Q. Did Mr. Welsh personally do any work in this locality in getting business at the time you were employed by him for the Union Pacific?

A. He did occasionally, yes, sir.

Q. In connection with what kind of business, if any special kind?

A. Any business that I could not control, why, I would simply wire him and advise him what business was in his territory, and he would come here and look after it himself.

Cross-examination by Mr. LOVETT:

Q. This business that you say went by way of the Rock Island and Burlington, went over the Southern Pacific to California from Ogden, didn't it?

A. No, they would haul that to Denver, Colorado, and turn it over to the Union Pacific at that point, to get the long haul. That is why they furnished the cars in this territory, to get the business to that junction.

Q. Then how did it go?

A. Went over the Union Pacific, I presume, to Ogden.

2630 Q. And then how?

A. Over the Southern Pacific.

Q. All business that you secured in your efforts in soliciting, ultimately went over the Southern Pacific, did it not, Mr. Rand?

A. Over the Southern Pacific?

Q. Yes, from Ogden.

A. From Ogden, yes, sir.

Q. It went over the Union Pacific to Ogden, and thence to destination over the Southern Pacific.

A. My instructions were to work all the business via the Missouri River, to go via the Union Pacific, via the Kansas City and Omaha gateways.

Q. You understood that all the business you secured that way would have to go over the Southern Pacific to California?

A. Yes, sir.

Q. Now, that was true also of the Burlington and Rock Island, largely, wasn't it?

A. Yes, sir.

Q. They would turn it over either to the Union Pacific or the Denver & Rio Grande?

A. Yes, sir.

Q. And they in turn would carry it over the Southern Pacific?

A. Over the Southern Pacific, yes.

Q. There were a great many solicitors soliciting in that way for the Ogden route or the Union Pacific, weren't there?

A. Yes, sir, there were. The Rock Island and the "Q." were soliciting mostly that way.

Q. All of those lines soliciting for themselves necessarily solicited for the Southern Pacific by the Ogden route?

A. Yes, sir.

Q. Was the Atchison working for business then?

2631 A. Yes, sir, they were. They were very strong competitors of ours, very active in the field.

Q. You never solicited any business for California by way of Portland and the boat line down?

A. No, sir, I did not; I never had authority to do so.

Q. You never knew of any business moving that way?

A. No, sir, I did not.

2632

## R. F. LONGACRE,

being duly sworn as a witness on behalf of the Complainant, testified as follows:

Direct examination by Mr. SEVERANCE:

Mr. Longacre, where do you live?

A. 2105 Wann Road, Lakewood, Ohio.

Q. What is your business?

A. Traffic manager of the Atlantic Terminal Line.

Q. What is the business of the Atlantic Terminal Line?

A. That is an association of several manufacturers who have freight business which we handle.

Q. Where are the factories of these manufacturers located?

A. They are located in this city.

Q. About how many of them are there?

A. There are three manufacturing plants.

Q. Three plants?

A. Yes, sir.

Q. How long have you been in that position?

A. Five years the 22nd of this month.

Q. Previous to that time what was your business?

A. Previous to that time I was connected with various railroads, starting in 1884 with the Nickel Plate Railway.

Q. Where?

A. In this city, in the general freight office. I was with them until 1895. Then I was connected with the Erie Railroad until the spring of 1901.

Q. Then, what were you doing between that time and the time you went with the Terminal line?

2633 A. I was in New York with the Delaware, Lackawanna & Western road.

Q. To what territory does your traffic move?

A. All over the United States.

Q. What kind of manufactured goods are those that you handle?

A. All kinds of oils, lubricating oils, paints and greases, and numerous specialties which oil people manufacture.

Q. Then, is your business all in connection with oil shipments of one sort or another?

A. Yes, sir; paints, too.

Q. Oil products?

A. Yes, sir.

Q. Over what routes does your business move to California points?

A. Moves over all the different routes, over the Southern Pacific via New Orleans and via the Union Pacific and Ogden, and over the Santa Fe road too. We aim to divide it up as nearly as we can among the different roads. It is mostly less than carload shipments, though.

Q. Do these manufacturers sell their product to railroads?

A. With only a few exceptions, some small roads; none of the large roads.

Q. Then you ship to Portland and Puget Sound points?

A. Yes, sir.

Q. How does the traffic move to those points?

A. Some of it moves in connection with the Union Pacific and Oregon Short Line, and some in connection with the Northern Pacific and Great Northern.

Q. Do these various lines have their traffic solicitors call on you looking for business?

A. Yes, sir.

2634 Q. Who calls on you representing the Southern Pacific and the Union Pacific?

A. Mr. Hild and Mr. Connor.

Q. Do they endeavor to route the traffic to the coast over one line as against the other, or whichever way they can get it?

A. No, sir; they are glad to get the business any way.

Q. What was your position with the Erie road when you were with them?

A. The last three years I was with them I was division freight agent at Meadville, Pennsylvania.

Q. And before that?

A. Before that I was a rate clerk, and then chief clerk for the general freight department.

Q. You were familiar with the movement of transcontinental traffic in those days, weren't you?

A. Yes, sir.

Q. At that time did the Southern Pacific and the Union Pacific maintain separate agencies?

A. Yes, sir.

Q. Were they competing with each other for business?

A. Yes, sir.

Q. Actively, or otherwise?
A. Yes, sir, very actively in my territory.
Q. Who represented the Union Pacific?
A. Mr. Choate was their general agent there, and Mr. Toynbee, I believe, was his traveling man.
Q. Who represented the Southern Pacific?
A. Mr. Herring.
Q. That was when you were at Meadville?
A. Yes, sir.
Q. How did the Southern Pacific endeavor to route the traffic they secured?
A. That busines they wanted via Cincinnati and New Orleans.
Q. And the Sunset Route from New Orleans?
A. Yes, sir.
2635 Q. Which way did the Union Pacific endeavor to route it?
A. The Union Pacific wanted their business via the Missouri River.
Q. Do you make any shipments now by boat to the coast?
A. We do to north Pacific coast points, during the season of navigation, by Duluth and via other water routes to the northwest.
Q. Does any of your traffic move by the lakes to Duluth and then by the Omaha road to Omaha and then over the Union Pacific?
A. No, sir.
Q. It goes by the northern lines?
A. Northern Pacific and Great Northern.
Q. Do you ship anything to the coast by the Atlantic lines, by boat?
A. No, sir.
Q. Do you ship anything by the American-Hawaiian line?
A. No, sir.
Q. Is Meadville one of the Pittsburg common points?
A. Yes, sir.
Q. Does traffic move from Meadville by the Morgan line, or only by rail to New Orleans?
A. I don't remember of anything ever moving out of that territory via New York and Morgan line.

Cross-examination by Mr. LOVETT:

Q. Mr. Longacre, I understood you to testify that at one time, when the Union Pacific and the Southern Pacific had separate agen-
2636 cies, competition between them for California business was quite active?
A. Yes, sir.
Q. Such business as the Union Pacific agents secured in that competition moved how to California?
A. Well, to San Francisco, points in that vicinity, it would have to move via Ogden and the Southern Pacific.
Q. Didn't all of it to the Pacific coast, except Portland?
A. All that moved in connection with the Union Pacific did.

Q. All that moved over the Union Pacific to points on the Pacific coast south of Portland, moved over the Southern Pacific from Ogden to final destination? Is that true?

A. Yes, sir.

Q. And a great many other lines were soliciting business that moved ultimately over the Southern Pacific from Ogden to the Pacific coast, were there not?

A. Yes, sir; all the Missouri River lines would solicit that business too.

Q. The traffic controlled by the representatives of the North-Western, the St. Paul, the Burlington, the Rock Island and the Missouri Pacific for California points, would naturally go over the Southern Pacific from Ogden, would it not?

A. Yes, sir.

Q. You never shipped any business for California to Portland and by the boat-line down?

A. I have no recollection of any business moving that way.

Q. Did you ever ship any to Portland by way of New Orleans?

A. No, sir.

Q. You never knew of any to move that way, did you?

A. No, sir.

2637

## A. J. HENDERSON,

being duly sworn as a witness on behalf of the Complainant, testified as follows:

Direct examination by Mr. SEVERANCE:

Q. What is your business, Mr. Henderson?

A. Traffic manager for the White Sewing Machine Company and the White Company.

Q. And where are you located?

A. Cleveland.

Q. How long have you been traffic manager for the White Sewing Machine Company?

A. Fifteen years.

Q. Does that company have a large output?

A. They do.

Q. To what part of the country do you ship?

A. We ship all over the world.

Q. Do you ship large quantities to the Pacific coast?

A. We do.

Q. Have you for many years?

A. Yes, sir.

Q. Do you manufacture anything except sewing machines?

A. Automobiles—that is the White Company.

Q. Do they move to the Pacific coast, too?

A. Yes, sir.

Q. Not under their own power, though?

A. Hardly. We can, though, if necessary.

Q. Can you give an idea of the extent of your traffic annually to the coast?

A. Oh, probably three hundred carloads.

Q. What routes does your traffic go over to California points?

A. We generally divide it up among all the lines.

2638 Q. Divide it which way, having reference to the transcontinental lines?

A. Missouri River lines via Ogden, Omaha, El Paso.

Q. Do you ship by the Santa Fe, too?

A. Yes, sir, by the Santa Fe.

Q. Do you ship anything by New Orleans?

A. No, sir.

Q. Have you ever shipped that way?

A. We did years ago.

Q. How long ago?

A. Probably ten or twelve years ago.

Q. Do you remember when the Union Pacific and the Southern Pacific had separate agencies soliciting traffic in this region?

A. Yes, sir.

Q. Who represented the Southern Pacific?

A. Mr. Connor.

Q. You know Mr. Connor, do you?

A. Yes, sir.

Q. Did he call on you soliciting business?

A. He did.

Q. Who represented the Union Pacific?

A. Mr. Johnson.

Q. Which way did Mr. Connor endeavor to route traffic to the coast?

A. By New Orleans.

Q. Was he successful with you in routing traffic that way?

A. Yes, to a certain extent.

Q. And at the present time who calls on you in the interest of the Southern Pacific and the Union Pacific?

A. Mr. Connor and Mr. Hild.

Q. And your traffic all moves, so far as they get a share of it, by the Union Pacific now, does it?

A. Some of it still goes via El Paso.

Q. Some by El Paso.

A. Yes, sir.

2639 Q. But none by New Orleans?

A. No, sir.

Q. In soliciting traffic from you on behalf of the Southern and the Union Pacific, do they discriminate as between the two, or endeavor to get it to go one way or the other?

A. No, sir.

Q. When Mr. Johnson secured your business, which way did he endeavor to route it when he represented the Union Pacific?

A. Via Omaha.
Q. How does your Portland business move?
A. By the northern lines.
Q. All-rail?
A. Yes, sir.
Q. All the year round?
A. Yes, sir.
Q. By the northern lines you mean the Great Northern and Northern Pacific?
A. Great Northern and Northern Pacific, yes.
Q. Have you considerable traffic into Portland?
A. Oh, quite a little, yes.
Q. In those days when there was competition between the Union Pacific and the Southern Pacific for coast business, was that competition active or otherwise?
A. Very active.
Q. How does your business to the Orient move?
A. Principally by Vancouver—Canadian Pacific.
Q. Does any of it move by American lines?
A. No, sir.
Q. Have you at any time shipped by American lines?
A. No, sir.
Q. You never shipped to the Orient by way of San Francisco?
A. Yes, we have. I beg your pardon. We have made a few shipments that way.

2640 Q. By what steamship lines did the traffic move from San Francisco to the Orient?

A. Occidental-Oriental, I believe. I would not be sure whether that is the right name or not.
Q. That is one of the lines?
A. Yes.
Q. Did any of it move by the Pacific Mail?
A. Not to my recollection.
Q. What is your opinion, Mr. Henderson, about the value to railroad companies of local soliciting agencies?
A. Why, I think if the line is represented by a local man there is a better chance of getting business.
Q. What can these local men do in the way of securing business? How do they get it?
A. Oh, they assist in getting equipment, looking after forwarding and making up a report passing points, and such as that.
Q. Is it your experience that the active solicitation of local men does secure business?
A. Yes, sir.

Cross-examination by Mr. LOVETT:

Q. Are not the Union Pacific and the Southern Pacific representatives about as active in their solicitation for that business as they ever were, Mr. Henderson?

A. I believe they are.

Q. They do not let any of it get away from them that they can control?

A. Not if they can help it.

Q. There are a good many other solicitors for other lines in this field, aren't there?

A. Yes, sir, a great many.

Q. All the business that the Union Pacific controlled in the days when they had separate solicitors from those of the
2641 Southern Pacific, for California or points south of Portland, went out over the Southern Pacific west of Ogden, didn't it?

A. Yes, sir.

Q. Your business went that way?

A. Yes, sir.

Q. So, to that extent and in that way the Union Pacific solicitor was working for the Southern Pacific, too?

A. Ultimately, yes.

Q. Now, the St. Paul and the North-Western were both soliciting business by that route, weren't they?

A. Yes, sir.

Q. And are still?

A. Yes, sir.

Q. And so with the Rock Island—either that way or by El Paso?

A. Yes, sir.

Q. Are the Denver & Rio Grande soliciting in this territory?

A. Yes, sir.

Q. And the Missouri Pacific?

A. Yes, sir.

Q. And all the principal lines lying to the westward are actively soliciting for that business?

A. Yes, sir.

Q. Hasn't there been a very considerable improvement in the service of the transcontinental lines in recent years, Mr. Henderson?

A. Yes, there certainly has.

Q. Do you know anything about the New Orleans line and the Southern Pacific Sunset Route? Do you know whether it has relatively improved, in the same way?

A. I could not say as to that.

Q. About what is the difference in distance, would you say—the difference in time—for your shipments from this territory to
2642 San Francisco, we will say, by way of New Orleans, as against the Ogden route?

A. Well, I couldn't say. I haven't had any business that way. I couldn't judge.

Q. It is very considerable, isn't it?

A. It must be, yes.

Q. You never shipped anything to California points by way of Portland and by boat down, did you?

A. No, sir.

Q. Nor to Portland by way of New Orleans?
A. No, sir.
Q. You never shipped anything to the Orient by way of Portland, did you?
A. Not to my recollection.
Q. You don't care how through rates are divided, do you?
A. No, sir.
Q. So long as you have to pay?
A. We don't care, no.

By Mr. SEVERANCE:

Q. Judge Lovett asked you if it was not a fact that the Union Pacific and the Southern Pacific representatives were still very active in soliciting business, and you said they are. But they solicit business for the two lines together, don't they?
A. They certainly do, yes, sir.
Q. For the consolidated system?
A. Yes, sir.
Q. But they do not solicit for the Union Pacific as against the Southern Pacific, or vice versa?
A. No, sir.
Q. And in the old days when they had separate agencies, they were competing with each other?
A. Yes, sir.
Q. Now they are not?
A. No, sir.

2643 WALTER RUSHFORTH,

being duly sworn as a witness on behalf of the Complainant, testified as follows:

Direct examination by Mr. SEVERANCE:

Q. Mr. Rushforth, where do you live?
A. I am living in Meadville, just now.
Q. What is your business?
A. I have charge of the traffic and freight of the W. S. Tyler Company.
Q. What is the business of the W. S. Tyler Company?
A. We manufacture all kinds of wire screen, for almost every business in the United States. There is a little of something goes into almost all businesses anywhere, I might say, where there is any business at all done. It is not heavy. Small quantities, a great deal of it.
Q. But the aggregate output is very large?
A. No, not heavy at all. It is nearly all special work that we have; it is all woven from wire, and we make it right down from very fine material, perhaps 50,000 holes to the square inch, probably down to 2 inch openings. So you see there is no limit, although it is

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nearly all special work. We haven't got anything that we can specialize.

Q. You say you make wire screen?

A. Wire screen.

Q. The ordinary wire screen?

A. Yes, sir, for locomotives and——

2644 Q. For windows?

A. For windows. Well, we used to make that, but we have gone out of that business. We used to make that extensively.

Q. And you manufacture the wire screens that are used in locomotives?

A. Yes, sir.

Q. Where do you ship the traffic?

A. All over the world.

Q. How long have you had charge of their traffic?

A. Eighteen years.

Q. How does your business move to California points, and how has it moved for a number of years past?

A. Chiefly through Omaha and Ogden, through that territory.

Q. And some of it via the Santa Fe?

A. For instance, going to Los Angeles or San Francisco we would work by El Paso gateway.

Q. By El Paso?

A. Yes, sir.

Q. And you ship some by the Santa Fe route?

A. The Santa Fe and Rock Island road.

Q. Do you ship over the Union Pacific?

A. The Union Pacific.

Q. And over the Santa Fe, and over the Sunset Route of the Southern Pacific by way of El Paso?

A. Yes, sir.

Q. Have you ever shipped by New Orleans?

A. Excuse me; not the Sunset Route by El Paso.

Q. I thought you said El Paso.

A. Well, we make direct shipments into Los Angeles—we have made them that way—Santa Fe route.

Q. I call that the Sunset Route west of El Paso.

2645 A. I thought you meant through the New Orleans gateway.

Q. The Southern Pacific west of El Paso. Have you ever shipped any by New Orleans?

A. No, sir.

Q. How does your traffic to Portland move?

A. Over the Northern lines—Great Northern and Northern Pacific lines.

Q. Not by the Union Pacific?

A. No, not unless we have specific directions. Sometimes they will signify, for instance, that the freight is to go by the Oregon Railroad & Navigation Company, and we ship it that way. But it would have to be specified that way—not of our own billing.

Q. Do you route your shipments, as a general thing, or is that done by the consignee?

A. We route a good many of the shipments.

Q. Do you remember, years ago, before the agencies of the Southern Pacific and the Union Pacific were consolidated, when they had separate agencies here soliciting business?

A. I don't remember.

Q. You don't remember of separate agencies or solicitors for the two lines? I don't mean their names, but the fact.

A. Yes, there were solicitors of the different lines.

Q. At that time the Union Pacific had its own solicitors and the Southern Pacific had its own, hadn't they?

A. Yes, they had.

Q. You know Mr. Connor, don't you?

A. I know Mr. Connor, yes.

Q. You remember when he represented the Southern Pa-
2646 cific alone?

A. Mr. Connor I only remember as a Southern Pacific man.

Q. At that time, when these separate solicitors were at work here, which way was Mr. Connor trying to move his traffic?

A. I only knew him as a Southern Pacific official, a Southern Pacific man.

Q. Which way did he try to route the traffic?

A. To New Orleans, or something of that kind.

Q. In those days when he represented them alone, was he successful in routing business that way?

A. Yes, sir, he was.

Q. The Union Pacific people, I suppose, tried to send it over the only line they had—Missouri River?

A. The Union Pacific man, yes.

Q. Who is it that calls on you now, if anyone, in the interest of the Union Pacific and the Southern Pacific, soliciting business?

A. I know Mr. Hild as the Union Pacific man. The Southern Pacific business we have is so little I don't remember anyone, only in touch with Mr. Connor. If I have any business at all I would get in touch that way with Mr. Connor.

Q. Then, the only man that calls on you is Mr. Hild?

A. All I remember. I have not seen anyone else for some time in connection with that line. Mr. Connor used to call on me in connection with the Southern Pacific, years ago.

Q. Do you make any shipments partly by water, that is, using the lakes during the open season?

A. Yes, we do some.

Q. To what points?

A. To points in Montana, chiefly; work them by way of
2647 Duluth.

Q. Do you ship anything to the Pacific coast that way?

A. No.

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Q. Do you ever get any communications by letter from Mr. Connor?

A. In reference to freight rates, yes, sir.

Q. Have you got any of those with you?

A. I have one, yes.

Q. Please let me see it.

A. (Producing paper.) That is an old letter.

Mr. SEVERANCE. It may be admitted that this letter is written by Mr. Connor, although there is no signature except the words "General Agent" printed in. The letter reads as follows:

UNION PACIFIC RAILROAD COMPANY
Oregon Short Line Railroad
Oregon Railroad & Navigation Company
Southern Pacific Company
Mexican International Railroad.
Traffic Department.

W. H. CONNOR,
General Agent.
53 East Fourth Street,
Cincinnati, Ohio.

In your reply please refer
to No. 17502-S.

JULY 22, 1902.

Mr. WALTER RUSHFORTH,
Care of Tyler Wire Works,
Cleveland, Ohio.

DEAR SIR: Our Mr. Clover, T. F. A., requests that we quote you rate on brass trunks and enclosures from Cleveland to Los Angeles and San Francisco. If the above articles properly
2648 come under the head of iron and iron work or elevator enclosures, boxed or crated, beg to quote you through carload rate of $1.60 per 100 pounds, minimum weight 24,000 pounds. If your shipment does not properly come under above heading, kindly advise specifically names of articles, and I will take pleasure in quoting you through rates on same.

Yours truly,

*General Agent.*"

Mr. LOVETT. It is admitted that Mr. Connor wrote that letter.

Cross-examination by Mr. LOVETT:

Q. Did I understand you to say, Mr. Rushforth, that you had formerly shipped to California by way of New Orleans, or not?

A. We have shipped goods that way.

Q. You have?

A. Yes, sir.



CLOSE IN CENTER

Q. When?

A. I have no notice of any special date.

Q. Well, I mean approximate about the date. Was it long ago?

A. I haven't any possibility of knowing without reference.

Q. I believe you stated that you had also shipped by way of El Paso?

A. We have, yes, sir.

Q. Over the lines leading to the southwest?

A. Yes.

Q. You have also shipped some by way of the Atchison & Santa Fe?

A. By the Atchison, yes, sir.

Q. And some by the Union Pacific Ogden route?

A. Yes, sir.

2649 Q. Now, all of that which went by the Union Pacific, went over the Southern Pacific from Ogden, didn't it?

A. From Ogden; that is the way I understand it, yes, sir.

Q. You never shipped any to California by way of Portland, Oregon, did you?

A. No, sir.

Q. And you never shipped any to Portland by way of New Orleans, did you?

A. No, sir.

Q. What did I understand you to testify about your shipments by the lakes, westwardly? Did you say you shipped that way to the Pacific coast, or only to Montana?

A. Shipments going to Montana. When we can use the boat route, in connection, via Duluth, we do so. In Montana there is a good deal of mining business done and we have shipments there occasionally, and we take advantage of the Duluth boat route if we can.

Q. Why do you ship by the lakes?

A. We figure the time is better, and the rates are better by water connection. We get direct connection with the delivering road at Duluth.

Q. The rate is lower by the lakes, is it?

A. Yes, sir.

2650 W. G. NORVELL,

being duly sworn as a witness on behalf of the Complainant, testified as follows:

Direct examination, by Mr. SEVERANCE:

Q. Where do you live, Mr. Norvell?

A. Detroit, Michigan.

Q. What is your business?

A. I am manager of the shipping department for Park, Davis & Company, manufacturing pharmacists.

Q. That is the largest concern of the kind in the country, isn't it?

A. I believe so. I couldn't say positively.

COPY BOUND C

Q. And to what points do the products manufactured by that company move?

A. They are sold and delivered in nearly every village, town and city in the United States, and largely in various countries in the world.

Q. How long have you been traffic manager of that company or in charge of the shipping?

A. Well, I am not called traffic manager.

Q. Well, how long have you been in charge of their shipping?

A. Since January 31, 1899.

Q. Are you called upon by soliciting agents, soliciting traffic?

A. Yes, sir.

Q. Have you been during all that time, or not?

A. Not very much previous to January 1, 1902; since then regularly.

Q. Are your shipments carload or L. C. L.?

A. About 65 per cent of our output moves carload, and the balance L. C. L.

2651 Q. How do your shipments to the Pacific coast usually move?

A. L. C. L.

Q. What are the principal points to which you ship in California?

A. At the present time Los Angeles and possibly 'Frisco; from there they are of course distributed to all towns and cities.

Q. What lines does your traffic move over to California points?

A. Complete routing?

Q. No, transcontinental lines.

A. U. P. and S. P. to 'Frisco, and Santa Fe generally to Los Angeles.

Q. Does any of it move over the San Pedro-Salt Lake route?

A. No, sir. We sometimes have had, yes, sir, but I could not say that we ship there usually or in very large quantities, over that particular route.

Q. Have you at any time shipped via New Orleans?

A. Yes, sir.

Q. Any considerable quantities?

A. No, sir.

Q. How long ago did you stop shipping that way, if you have stopped?

A. We have not stopped.

Q. Oh, you have not stopped? In your first answer to my question, you meant that the bulk of your shipments went over the Union Pacific and Southern Pacific to San Francisco?

A. Yes, sir; about 90 per cent.

Q. And the Santa Fe to Los Angeles?

A. Yes, sir.

Q. Who, if anyone, calls on you soliciting business over the Southern Pacific and Union Pacific?

D CLOSE IN CENTER

A. F. B. Choate.

Q. In soliciting business did he discriminate as between the different parts of the system made up of those two lines?

A. No, sir.

2652 Q. Does the Santa Fe have a representative in Detroit?

A. Yes, sir.

Q. How does your traffic to North Pacific coast points move?

A. Northern Pacific and Great Northern.

Q. Does that include Portland?

A. Yes, sir.

Q. None of it to Portland over the Union Pacific?

A. Not of late years.

Q. Does any of it move to north Pacific coast points by the lakes, in open season?

A. Oh, yes, we use that route almost exclusively during the season of navigation.

Q. Who preceded Mr. Choate in representing these two lines at Detroit, if you remember?

A. I knew his name a minute ago, but it has just escaped me.

Q. Mr. Herring?

A. Mr. Herring, yes.

Q. Did he handle the business the same way Mr. Choate does, as far as the routing is concerned?

A. You mean as far as not specifically soliciting for one line or the other?

Q. Yes.

A. He did.

Q. I believe you stated that previous to 1902 you did not come in contact with the solicitors?

A. No, sir.

Cross-examination by Mr. LOVETT:

Q. The business that you ship by the lakes during the open season, goes to what points—the north Pacific?

A. It goes to all points along the Great Northern and the Northern Pacific as far as Seattle and Portland and the Pacific

2653 coast points, yes, sir.

Q. But not to California points?

A. No, sir.

Q. I believe you stated that such business as you shipped over the Union Pacific to California moved over the Southern Pacific west of Ogden, except some shipments by the San Pedro route?

A. Yes, sir. Well, very little by the San Pedro.

Q. Yes, that is what I say.

A. Except some, yes.

Q. Except some. You said it was a very small proportion?

A. Yes, sir.

Q. Did you ever ship any business to California points by way of Portland and by boat down from Portland?

COPY BOUND

A. Not that I have ever had any cognizance of.
Q. You never knew of any shipments to be made that way?
A. No, sir.
Q. Did you ever ship any to Portland by way of New Orleans?
A. No, sir.
Q. Or by way of El Paso to Portland?
A. No, sir.
Q. The rates by the lakes are lower than the rail rates, are they not?
A. Yes, sir.
Q. As a shipper you are not interested in the division of the through rate between the carriers participating in the haul, are you?
A. No, sir.
Q. You don't care how they are divided?
A. No, sir.

2654 WILLIAM J. GORDON,

being duly sworn as a witness on behalf of the Complainant, testified as follows:

Direct examination by Mr. SEVERANCE:

Q. Mr. Gordon, where do you live?
A. Detroit.
Q. What is your business?
A. I am traffic manager of the Anderson Carriage Company.
Q. How long have you been in that position?
A. About seven years.
Q. To what parts of the country does that concern ship its product?
A. All parts.
Q. Including the Pacific coast?
A. Yes, sir.
Q. Previous to the time that you became connected with the Anderson Company what was your business?
A. I was in the railroad business.
Q. With what company?
A. Michigan Central.
Q. And what department?
A. I was contracting freight agent.
Q. Whereabouts?
A. Detroit.
Q. For how long?
A. I was with the company about nine years, but not in that capacity. I was contracting agent about four and a half years.
Q. Do you remember when the Union Pacific and the Southern Pacific had separate representatives in this territory?
A. Yes.
Q. Who were the men that were working the business at Detroit?

ND CLOSE IN CENTER

A. At that time, before the merger, there was no resident representative in the territory.

Q. Who were the traveling men that came there?

2655 A. The Southern Pacific man was Mr. Nethercott—the traveling freight agent out of Chicago; the Union Pacific man was Mr. Houston, also out of Chicago.

Q. Which way was the Southern Pacific endeavoring to route traffic to the coast?

A. New Orleans.

Q. And the Union Pacific by Omaha, I suppose?

A. Yes.

Q. How was the competition between those gentlemen for business to the coast? Was it active or otherwise?

A. Well, I should say that the Union Pacific was a little more active than the Southern Pacific on account of our geographical position, being so far north.

Q. Do you mean that he was a more active man, or was in better position to get business?

A. No, I mean, for instance, Mr. Nethercott of the Southern Pacific had a larger territory to cover. Michigan was only a part of his territory. Whereas, I believe the Union Pacific man had Michigan as his territory exclusively. I am not sure as to that, though.

Q. Since the merger, as you call it, who has represented the combined lines in that territory?

A. Why, Mr. Herring, I think, was the first. He has been succeeded by Mr. Choate.

Q. Did these gentlemen call on you soliciting business to the coast?

A. Yes.

Q. And in soliciting business as representatives of the two lines, do they discriminate between the two routes?

A. No, they do not.

Q. Is there now, as far as the representatives of those lines are concerned, any competition for business out of Detroit?

A. No.

2656 Q. Over what lines does your business move to the coast?

A. We use all the lines, rather favoring the Union Pacific system.

Q. Do you use the Santa Fe also?

A. Yes.

Q. Does anything move by New Orleans?

A. No.

Q. Anything by El Paso?

A. No.

Q. How does your business to the North Pacific coast points move?

A. In order to make a division of the traffic between the roads, we usually favor the northern lines for the northern business.

Q. That is, the Northern Pacific and the Great Northern?

A. Yes.

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Q. How about business into Portland?
A. We use the Union Pacific system and the Oregon Short Line sometimes.
Q. And the Northern Pacific?
A. Sometimes the Northern Pacific.
Q. Do you ship anything over the Salt Lake route?
A. Yes, to Southern California.
Q. In connection with the Union Pacific?
A. Yes.

Cross-examination by Mr. LOVETT:

Q. When the Union Pacific and the Southern Pacific had their separate solicitors some years ago, Mr. Gordon, I believe you stated that the Union Pacific's solicitation was a little more active than the Southern Pacific. If the Southern Pacific could not get their business by way of New Orleans, did they seek to secure it by way of Ogden?

A. Yes.

2657 Q. They worked Ogden as well as New Orleans from that territory, didn't they?

A. Yes. If they could not get the long haul they were satisfied to get the short.
Q. Does the Chicago, Milwaukee & St. Paul solicit California business from your territory?
A. Yes.
Q. And the Union Pacific?
A. Yes.
Q. Before the Union Pacific and Southern Pacific agencies were merged, did they?
A. Yes.
Q. The North-Western formerly, as well as now, solicited that business, didn't it, for California?
A. Yes, sir.
Q. You would not regard the Union Pacific and the Chicago & North-Western as competitors for that business, would you, Mr. Gordon?
A. No, I would not.
Q. They are connecting lines?
A. Yes.
Q. You never shipped anything to California by way of Portland and boat-line, did you?
A. No. Our goods would not stand the transfer.
Q. You never tried to ship that way?
A. No.
Q. Such business as you shipped to California over the Union Pacific, prior to the opening of the San Pedro, or Salt Lake line, as it is sometimes called, went over the Southern Pacific from Ogden to final destination, didn't it?
A. All that was sent that way.

ND CLOSE IN CENTER

Q. All that was sent by the Union Pacific?
A. Yes.
Q. There was no other outlet for it?
A. No.
Q. As a shipper you are not interested in the divisions of the through rates between the different carriers participating, are you?
A. No, sir.

2658 By Mr. SEVERANCE:

Q. You do not use the lakes during the season of navigation?
A. No. Our goods would not stand the transfer.
Q. I assumed that you did not from your answer as to the Portland route.
A. Yes, sir.

2659 JOHN L. EVANS,

being duly sworn as a witness on behalf of the Complainant, testified as follows:

Direct examination by Mr. SEVERANCE:

Q. Mr. Evans, where do you live?
A. Cleveland.
Q. What is your business?
A. Manager of the traffic department of the Sherwin & Williams Company.
Q. What is their business?
A. Manufacturers of paints, varnishes and linseed oil.
Q. How long have you been in that position, Mr. Evans?
A. A little over five years.
Q. Previous to that what was your business?
A. With the Mutual Transit Company for one year.
Q. That is a boat line on the lakes, is it not?
A. Yes, sir.
Q. How long were you with them?
A. One year.
Q. Previous to that what was your business?
A. Previous to that I was with the Atlantic Refining Company.
Q. For how long?
A. Two years.
Q. And before that were you in the railroad service?
A. Railroad and steamboat service; yes, sir.
Q. With what line?
A. The Cleveland-Buffalo Transit Company, the Northern Steamship Company, and the Rutland Transit Company.
Q. And all together how long have you been in the transportation business in Cleveland?
A. About 27 years.

Q. Where are the plants of the Sherwin-Williams Company?

A. Cleveland, Kensington, Illinois, Newark, New Jersey,
2660 Montreal, Quebec, London, England, Coffeyville, Kansas City, and Joplin, Missouri, and Magdalena, New Mexico.

Q. Do you ship to the Pacific coast?

A. We do.

Q. Have you during all the time you have been with the company?

A. We have, yes.

Q. From what plants do you ordinarily ship to the coast?

A. From Cleveland, from Kensington, and from Newark.

Q. How does your traffic to the coast from the Newark plant usually move?

A. By the American-Hawaiian line.

Q. Previous to the establishment of that line how did it move from Cleveland?

A. Oh, we used to ship from Newark previous to that time. We have shipped some from Newark by the American-Hawaiian line. We ship principally from Cleveland; some from Kensington.

Q. But all you ship from Newark goes by the American-Hawaiian line?

A. Yes, sir.

Q. And how does your traffic from Cleveland move to the coast?

A. By Union Pacific, Southern Pacific, by Omaha, Ogden; some via New Orleans; some via El Paso.

Q. Any of it by the Santa Fe?

A. Some; yes, sir.

Q. And to the north Pacific coast points how does it move?

A. By Omaha and Ogden; some by St. Paul to Omaha and Ogden; and some by St. Paul by the Northern Pacific, Great Northern and Soo line—Canadian Pacific.

Q. Do you use the lakes during the season of navigation?

A. Very little.

Q. When you do use the lakes which way does the traffic move from Duluth?

A. We use the lakes via Chicago and Milwaukee, Gladstone, Duluth and West Superior.

2661 Q. And then it moves to the north coast by the Northern Pacific, the Great Northern and the Canadian Pacific?

A. Yes.

Q. Do you ship anything by the lakes which eventually goes to the coast over the southern lines—that is, through the Missouri River gateway to California?

A. By El Paso, you refer to?

Q. Yes. Well, in the season of navigation?

A. Not south of Omaha or Kansas City, no.

Q. Does any of that traffic that goes from here by the lakes to Chicago, Milwaukee, Duluth, or West Superior go to the California points by the Union Pacific or the Santa Fe?

A. No, sir; no.

Q. That is only on north Pacific coast business, is it?

A. North Pacific coast business.

Q. Do you remember when the Union Pacific and the Southern Pacific had separate agencies here in Cleveland?

A. I have a faint recollection of it.

Q. Or separate solicitors in this territory?

A. Yes, sir.

Q. Do you remember the names of the Union Pacific agents?

A. If I said that Mr. Johnson represented the Union Pacific and Mr. Connor represented the Southern Pacific I believe I would be right.

Q. Mr. Johnson the Union, and Mr. Connor the Southern?

A. Yes.

Q. In those days when their agents were separate, which way did Mr. Connor endeavor to route the traffic?

A. New Orleans.

Q. And Mr. Johnson, via the Missouri River?

A. Omaha, yes.

Q. Was the competition between those agencies active in those days?

2662 A. At that time I was connected with the Atlantic Refining Company and we did not have very extensive business into the California terminals. We did some business into Portland.

Q. And was your business into Portland competed for by these gentlemen?

A. By the Northern lines and by the Union and the Southern Pacific, yes.

Q. That is what I mean.

A. Representing the Oregon Short Line.

Q. Since the amalgamation of these agencies, who, if anyone, calls on you in soliciting business for the Union and the Southern Pacific?

A. Mr. Connor and Mr. Hild.

Q. Do these gentlemen in soliciting your business discriminate as between the two lines to the coast—the Southern Pacific line and the Union Pacific?

A. Invariably Mr. Connor wants the haul via New Orleans or El Paso. If he cannot get that he gets Union Pacific from Omaha, Southern Pacific from Ogden.

Q. He still endeavors to get it by the southern gateway, does he?

A. He rather insists on it.

Q. How does he get along with that "insistence"? Is he able to get it that way?

A. He is helped out occasionally.

Q. You give him some occasionally?

A. Yes, sir.

Q. But on all occasions when Mr. Connor approaches you for business, he endeavors to route it via New Orleans or El Paso?

A. By El Paso, yes.

Q. And how is it with Mr. Hild? Is he the same?

A. Yes, sir.

Q. Then, so far as that business is concerned, the Union Pacific is unrepresented, is it?

A. No, sir.

Q. So far as soliciting your business is concerned?

2663 A. No. We have business all through the west. They represent both lines. If we have business going out to the coast, they solicit by both the Ogden and the Southern gateways. They try to get the long haul by El Paso if they can.

Q. Well, I understood you to say that their effort was to move it by New Orleans or El Paso.

A. Their effort was to route it by New Orleans or El Paso, for the Southern Pacific. We have other lines in mind that do business through the southern gateway.

Mr. LOVETT. I was wondering whether you and the witness understood each other.

Q. Judge Lovett thinks that possibly I have not made myself clear in my question. I am not referring now to the times prior to the merger of the offices, but since Mr. Connor has represented both the Union Pacific and the Southern Pacific.

A. Yes.

Q. Do I understand you correctly; that as to the coast business he endeavors to send it all, as far as he can get you to send it that way, by the southern gateways?

A. No, no; that is not the way I tried to reply to it. In connection with the Southern Pacific, he tries to get it by New Orleans or El Paso. We work by other lines via St. Louis, south—via the L. & N., the Queen & Crescent, and overland by Omaha. They try to get the haul from the river, invariably.

Q. Well, I do not know as I understand you yet.

A. Well, if I have in mind routing business via El Paso or New Orleans, I have other lines in mind that I want to route the business over.

Q. What you mean is this: that where the initial line, or

2664 some line this side of the transcontinental lines, has secured the business from you, then Mr. Connor tries to get it from the point of connection with those lines?

A. Yes, sir.

Q. But in coming to you as an independent proposition on business that has not been already promised to some line this side of the point of connection with them, he does not make any discrimination between the northern and the southern route, does he?

A. I am inclined to think that Mr. Connor would like to see the business go through Omaha.

Cross-examination by Mr. LOVETT:

Q. I believe you stated that the shipments of the Atlantic Refining Company to Portland, at the time there was separate representation of the Union Pacific and the Southern Pacific, went ordinarily by the Union Pacific Ogden route or the Northern lines?

A. Yes, sir.
Q. None of that business went by way of New Orleans, did it?
A. None.
Q. Or El Paso to Portland?
A. None.
Q. You never shipped to California by way of Portland, did you?
A. We have, yes, sir.
Q. And the boat line down?
A. Yes, sir.
Q. When?
A. Immediately after the earthquake.
Q. Was that on account of the railroad blockade about California?
A. It was, yes, sir.
Q. And you could get the water front by using the boat line?
A. Yes, sir.
Q. Was that the only time you ever shipped that way?
A. That is the only time.
2665 Q. All such business as moved at any time to California by the Union Pacific, except this shipment during the earthquake, always went over the Southern Pacific west of Ogden, did it not?
A. Yes, sir.
Q. You are not interested, as a shipper, in the divisions of the through rate between the connecting lines, are you?
A. Not in any way, no sir.
Q. Did you testify that you used the lake route?
A. I did.
Q. That is, for the north coast points—that is, north of Puget Sound?
A. Yes, sir.
Q. Has the lake line a differential?
A. All lake lines have, yes, sir.

Redirect examination by Mr. SEVERANCE:

Q. That business into Portland which went by the Union Pacific which Judge Lovett was asking about a moment ago, did a part of it move from Ogden by the Oregon Short Line and the Oregon Railroad & Navigation Company, and part of it by the Southern Pacific to Sacramento?
A. You refer to the 'Frisco business?
Q. No; I am speaking of Portland business.
A. No.
Q. That went out over the Union Pacific? There were two routes to Portland from Ogden—the Southern Pacific having one to Sacramento, and the Oregon Short Line and the Oregon Railroad & Navigation having the other?
A. Yes.
Q. Did some of the business move one way and some the other?
A. No, sir; the Oregon Short Line.
Q. It all moved Oregon Short Line?
A. Yes, sir.

2666 JOHN HART,

being duly sworn as a witness on behalf of the Complainant, testified as follows:

Direct examination by Mr. SEVERANCE:

Q. Mr. Hart, where do you live?
A. Cleveland.
Q. What is your business?
A. Traffic manager of the Gresselli Chemical Company.
Q. And what is the character of the business transacted by that company?
A. Manufacturing chemists.
Q. Of all kinds or many kinds?
A. Commercial chemicals, yes.
Q. To what parts of the country does the traffic of that concern move?
A. All parts.
Q. Have you plants in Cleveland and other places?
A. Yes, sir.
Q. Where are they located?
A. Cleveland, Chicago, Cordaville, New York, Birmingham, Beaver Falls, Titusville, Park City; I guess that is about all of them.
Q. Do you have charge of the routing of their traffic from the plants?
A. Yes, sir.
Q. From what plants do you ship to the Pacific coast?
A. Mainly from Chicago.
Q. How long have you been traffic manager?
A. Eighteen years.
Q. How long have you had the Chicago plant?
A. I should say the Chicago plant is probably 13 years old. I imagine it is about that old.
Q. And during all that time have you made your coast shipments from Chicago?
2667 A. Yes, we have made some from there during all that time.
Q. Do you ship anything to the coast from Cleveland?
A. Occasionally.
Q. Do you remember when the Union Pacific and the Southern Pacific had separate agencies in this territory?
A. Yes, sir.
Q. What agent of the Southern Pacific were you acquainted with?
A. Mr. Connor.
Q. And of the Union Pacific?
A. Mr. Johnson.
Q. Did those gentlemen call on you and solicit business?
A. Yes, sir.
Q. Which way did Mr. Connor endeavor to route the business, if he could?

A. In those days through New Orleans, if he could.

Q. Which way did Mr. Johnson attempt to route it?

A. Through Omaha to Ogden.

Q. Do you remember when the agencies were consolidated?

A. Yes, sir.

Q. Since that time, who calls on you in reference to the business of the Southern Pacific and the Union Pacific?

A. Mr. Connor and Mr. Hild.

Q. And which way do they endeavor to route the traffic to the coast now?

A. They take it anyway they get it. I think they prefer Omaha.

Q. What makes you think they prefer Omaha?

A. Well, they are continually after the business, and as we do not route through New Orleans very much now, I think they prefer it that way.

2668 Q. How did it happen you quit routing through New Orleans?

A. Well, I don't know that there was any special reason, excepting at the time the Southern Pacific was represented separately Mr. Connor solicited for it, and of course his personality had something to do with getting the business that way.

Q. So that when Mr. Connor's personality was switched from the southern route, at least partially, to the Missouri River route, the traffic went with it?

A. So it appears.

Q. In those days did your traffic move both ways?

A. Yes, sir.

Q. How did you say you divided it then as between Mr. Connor's route and the Union Pacific?

A. Well, I guess there was a pretty fairly even division in those days.

Q. What would you say about the percentage that goes by New Orleans now?

A. There is none going by New Orleans to the coast.

Q. From your experience in connection with Mr. Connor, then, you regard the freight solicitor as of considerable importance to his road in getting business, don't you?

A. Yes, sir.

Q. And are they also of service to the shippers?

A. Yes, sir.

Q. In what way?

A. They can assist us in getting tariff quotations, getting the tariffs themselves, and assist us in helping the freight through when we are in a hurry for it.

Q. Do you ship to North Pacific coast points?

A. Some.

Q. Over what lines does that traffic move?

A. Great Northern or Northern Pacific.

Q. None of it by the Union Pacific?

A. No, sir.

2669 Q. The Portland business all goes Northern Pacific or Great Northern?

A. All through the St. Paul gateway and one of those two lines.

Q. Does any of your California business go by the Salt Lake road?

A. No, sir.

Q. None of it?

A. No, sir.

Cross-examination by Mr. LOVETT:

Q. Do Mr. Connor and his assistants efficiently and adequately serve the purpose of both lines now, as far as you are concerned?

A. I think they do.

Q. Mr. Connor looks after your freight as well by the Ogden route as he would by New Orleans, doesn't he?

A. Yes, sir.

Q. Interested in your freight no matter which way it goes?

A. He appears to be all the time.

Q. Now, with reference to the New Orleans route: the rates being equal and the personal element of the solicitor being eliminated, which is the better route for traffic to California—by way of New Orleans, or by way of Ogden?

A. I should say that the Omaha-Ogden route was the better, being the shorter.

Q. If you were to send it by way of New Orleans, on equal rates, on account of solicitation, it would be largely to help out a good fellow, wouldn't it?

A. Very largely so, yes.

Q. Did you ever send any freight to California by way of Portland and boat down?

A. No, sir.

Q. Did you ever send any to Portland by way of New

2670 Orleans or El Paso?

A. No, sir.

Q. And all such freight as you had for California prior to the opening of the San Pedro line, passed over the Union Pacific, I presume, and went over the Southern Pacific west of Ogden?

A. Yes, sir.

Q. Are there a great many lines soliciting your traffic to the Pacific coast?

A. Yes, sir.

Q. The North-Western, the St. Paul, and the Burlington?

A. All the intermediate lines do.

Q. All the intermediate lines. That has continued right along, has it?

A. Yes.

Q. You are not interested in the division of the through rate between them, are you?

A. No, sir.

By Mr. SEVERANCE:

Q. Is it an advantage, in getting shipments through rapidly, to have them go over as few lines of road as possible, that is, as few transfers from one line to another as possible?

A. Well, I should imagine that would be an advantage.

Q. Taking that into account, then, there are less transfers from one line to another by way of New Orleans than by way of Omaha, aren't there?

A. Yes, I expect there is one less transfer there at least.

Q. Only one. And you say that Mr. Connor efficiently served both lines. You mean that so far as attending to your part of the business is concerned, he is efficient?

A. I can speak from no other experience; we only have our own.

2671 Q. By that you do not mean that he is conducting a very active competition, one line against the other, do you, since he represents them both?

A. Well, no, I don't suppose there is any competition just now.

Q. No. So that from the standpoint of the stockholders of the Southern Pacific on the one hand, and the Union Pacific on the other, Mr. Connor's present activities are not especially efficient, are they?

Mr. LOVETT. I object to that.

Q. Each one endeavoring to get business—one line against the other?

Mr. LOVETT. I object to that question because this is not a stockholders' suit.

The EXAMINER. Answer the question.

Q. You can answer. I want to find out just what you mean by saying that he conducts the business of both lines efficiently.

A. By that I mean this: that he is soliciting for both lines continuously. Now, our coast business, being 'Frisco business, I send through Ogden, but I have any amount of business in the southwest which he is continually soliciting for his Southern Pacific.

Q. But in the old days, when he was soliciting for the Southern Pacific, he got your business, about half of it, you say, by New Orleans?

A. He got a nice percentage of it, yes.

Q. And therefore if at the present time he is not soliciting any longer for the Southern Pacific on that coast business, but is soliciting it for the Union Pacific, why, that is so much the worse for the Southern Pacific, isn't it?

A. Well, I don't know as it is.

Q. You don't know?

A. No.

2672 J. E. WILKISON,

being duly sworn as a witness on behalf of the Complainant, testified as follows:

Direct examination by Mr. SEVERANCE:

Q. Mr. Wilkison, where do you live?
A. East Cleveland.
Q. What is your business?
A. I am assistant to the treasurer of the Chandler & Price Company.
Q. What is the business of the Chandler & Price Company?
A. Manufacturing printing presses and printing machinery.
Q. To what part of the country is their product shipped?
A. All over the world.
Q. Is it a large concern—a large output?
A. Yes, sir. It is the largest of its kind in the world, I guess.
Q. How long have you been in charge of their traffic, if you are in charge of it?
A. I am not immediately in charge of it now. It is underneath me. I had charge of it for about seven years.
Q. Between what dates?
A. October, 1899, up to within about two years.
Q. Do you still have charge of it?
A. Yes, sir.
Q. Do you remember when the Southern Pacific and the Union Pacific had separate agencies in this territory?
A. Yes, sir.
Q. Were you called on by those agents for business?
A. Yes, sir, we were.

2673 Q. Which way was the Southern Pacific agency endeavoring to route the traffic to the coast?
A. Via New Orleans.
Q. And the Union Pacific by the Missouri River?
A. By Omaha, as I recollect.
Q. Are you acquainted with Mr. Connor?
A. I have met Mr. Connor, yes, sir.
Q. Does he come to see you and solicit business?
A. He has not been there for some time.
Q. Who calls on you in the interests of the two lines since the consolidation?
A. Mr. Hild.
Q. In soliciting business to the coast at the present time, which route, if either, does Mr. Hild endeavor to secure the traffic for?
A. I could not say that Mr. Hild makes any particular difference in his solicitation. Nearly all of our shipments are routed by the consignee, and if he comes to us it is simply to ascertain about the time the shipment is going forward and the lines out of Cleveland.

Q. That is, the consignee on the coast routes the business?
A. In nearly every instance.
Q. And Mr. Hild's interest is to see if it is routed their way, that the routing is respected, I suppose?
A. I didn't get the last part of that question.
Q. Mr. Hild's interest is to see that the routing is respected, if the consignee has routed it by one of their lines?
A. Yes, sir.
Q. Does he ever call on you and endeavor to get business that has been routed by some line other than the Union Pacific or the Southern Pacific?

A. Well, in this respect; he might ask if we had any ship-
2674 ments for the coast, and if we told him we did have, and they were not routed his way, he would probably make a memorandum of it and go after the business at the other end of the line, through their Pacific coast representatives.

Q. But if they were routed either Union Pacific or Southern Pacific via New Orleans he is satisfied?
A. He is satisfied.
Q. Do you think that traffic going out of Cleveland and not routed by the consignee, but is free traffic, in the hands of the consignor, can be influenced as to the direction it will move by a personal solicitation of traffic officials here?
A. Yes, sir, I do.
Q. Then, you believe in local representatives?
A. I do.
Q. And that they will secure business for their lines?
A. Yes, sir.

Cross-examination by Mr. LOVETT:

Q. Such shipments as you have to the Pacific coast, how do they move?
A. They go Union Pacific. Or Los Angeles business usually goes Union Pacific-Salt Lake route.
Q. Since that route was opened?
A. Yes, sir.
Q. And how to other points in California?
A. Our San Francisco business usually moves Illinois Central-Southern Pacific; some of it goes Santa Fe.
Q. Illinois Central-Southern Pacific by way of New Orleans?
A. Yes, sir.

Q. Suppose it goes to San Francisco?
2675 A. That is the way it goes—Illinois Central-Southern Pacific.

Q. Don't you send any over the Union Pacific and the Southern Pacific by the Ogden route?
A. We haven't for some time, no, sir, to the best of my recollection.
Q. Why?

A. Well, our standing instructions, up to within a short time, have been Illinois Central-Southern Pacific—I presume mainly through the efforts of Mr. Connor and Mr. Doul. Mr. Doul is the Illinois Central representative.

Q. In this territory?

A. Yes, sir. I don't know where his headquarters are.

Q. So you haven't been shipping much to San Francisco over the Union Pacific and the Southern Pacific by way of Ogden?

A. No, sir.

Q. You send some by way of El Paso, do you?

A. We haven't for some time.

Q. In the days when they had separate solicitation here—the Union Pacific and the Southern Pacific—how did the Union Pacific business for California go?

A. That went by Union Pacific or Council Bluffs, through Ogden, and Southern Pacific, I think.

Q. It was the only way for it to go, wasn't it?

A. It was about the only way it could go, I guess.

Q. You never sent any to California by way of Portland, and boat down?

A. No, sir, we never have.

Q. Now have you ever sent any to Portland by way of the Sunset Route?

A. No, sir.

Q. You are not interested in the division of the rate by the carriers, are you?

A. No, sir.

2676 Q. You have been solicited for your California shipments by all the intermediate lines, haven't you—the Rock Island, the Missouri Pacific, the Burlington, the Chicago & North-Western, and the St. Paul?

A. Yes, sir.

Q. They are all actively soliciting your business?

A. Yes, sir.

Q. The Chicago & North-Western has a solicitor in this territory?

A. Yes, sir; a good one.

Q. And the Union Pacific had its separate solicitor here, too?

A. I don't remember the Union Pacific solicitor who used to be here. I would possibly recognize him if I saw him.

Q. But there was one, I mean?

A. Yes, sir.

Q. It has been testified there was a Union Pacific solicitor here.

A. Yes, sir.

Q. And also a North-Western solicitor at that time?

A. Yes, sir, I think so.

Q. And for the various intermediate lines?

A. Yes, sir.

By Mr. SEVERANCE:

Q. Does Mr. Hild leave his card with you when he calls on you?
A. He is apt to, yes, sir.
Q. Have you got any of them with you?
A. No, I have not. I remember the card, however.
Mr. LOVETT. Haven't you got one you could give him.
Mr. Hild produces card, and the same is handed to Mr. Severance.

Mr. SEVERANCE. It is stipulated that these cards of Mr. Hild
2677 contain on the back a map identical with the one upon the back of the card of Mr. Liston, Complainant's Exhibit 116, and on the face of the card there is the following:

GEORGE B. HILD,
Traveling Freight Agent,
53 East Fourth Street,
Cincinnati, Ohio.

Union Pacific Railroad Company
Oregon Short-Line Railroad
Oregon Railroad & Navigation Co.
Southern Pacific Company.

This is stipulated, isn't it?

Mr. LOVETT. Yes, sir.

2678 O. J. STEWART,

being duly sworn as a witness on behalf of the Complainant, testified as follows:

Direct examination by Mr. SEVERANCE:

Q. Mr. Stewart, what is your business?
A. Manager of traffic, Standard Sewing Machine Company.
Q. Where is the plant of the Standard Sewing Machine Company?
A. Cleveland.
Q. Do they ship to the Pacific coast?
A. Yes, sir.
Q. How does it move? Over what transcontinental lines does your business chiefly move?
A. Over the Santa Fe, the Union and the Southern Pacific generally.
Q. How does your Portland business move?
A. What we have, Great Northern and Northern Pacific.
Q. Do you know Mr. Hild?
A. Yes, sir.
Q. Does he call on you soliciting traffic for the lines he represents?

A. He does.

Q. Does he solicit for either the Union Pacific or the Southern Pacific, one as against the other?

A. No, sir.

Q. Were you in the traffic department of your company when they had separate agencies here?

A. No, sir.

Q. Are you called on by a good many traffic solicitors?

A. Yes, sir

Q. What is your judgment as to whether the movement of traffic is affected by the solicitation of business? Do they succeed in getting the business—the solicitors?

A. I think they do.

2679 Q. That is, it is your opinion, from the standpoint of the railroad represented, that it is valuable to them to have traffic solicitors in the field?

A. Yes, sir.

Q. They secure traffic?

A. Yes, sir.

Q. In what way do they secure this traffic?

A. They call on us occasionally, and if we have anything that is going to any points that they represent, if it is routed their way, they take care of it after it has gone. They trace the shipment, and help to get the equipment ready for it.

Q. By performing these various services for the shipper, you think the traffic solicitors are able to secure business for their companies?

A. I think they are.

Q. How does your Oriental business, if you have any, move?

A. Via New York.

Q. None of it by the coast?

A. No, sir.

Q. Do you have shipments to Australia and New Zealand?

A. Yes, sir.

Q. How do they move?

A. Canadian Pacific, via Vancouver.

Q. Entirely Canadian Pacific?

A. Well, local line, Lake Shore.

Q. You mean all by Canadian Pacific steamship connections?

A. Yes, sir.

Q. None of them by San Francisco?

A. No.

Cross-examination, by Mr. LOVETT:

Q. You never shipped anything to San Francisco by way of

2680 Portland and boat line down?

A. No, sir.

Q. Nor anything to Portland by way of New Orleans or El Paso?

A. No, sir.

Q. When the Union Pacific and the Southern Pacific had separate solicitors here, how did your business for California move over the Union Pacific? Over the Southern Pacific west of Ogden?

A. I was not at the head of the traffic department at that time.

Q. Oh, I didn't understand it.

Mr. SEVERANCE. I asked him that, and he said he did not have charge of the traffic then.

Q. How far back does your control of the traffic extend?

A. About eight years, as nearly as I can remember.

Q. Such business as you send to California goes over the Union Pacific and over the Southern Pacific, does it not?

A. Yes, sir.

Q. With reference to the solicitors, Mr. Stewart, does the present force of the Union Pacific and the Southern Pacific here adequately serve your purpose?

A. Yes, sir; they do.

Q. In looking after your shipments and giving you such service as you expect from soliciting agents?

A. Yes, sir.

Q. Taking into account the location of the Union Pacific and the Southern Pacific, the Union Pacific being a line extending from Omaha to Ogden and there connecting with the Southern Pacific as the only outlet to the Pacific coast, prior to the opening of the San Pedro line, two joint men representing both the Union Pacific
2681 and the Southern Pacific could serve your purpose as well as two separate representatives, couldn't they?

A. They could; yes, sir.

By Mr. SEVERANCE:

Q. They could not, however, serve the purpose of the Southern Pacific road, having a line west from New Orleans, in competition with the Union Pacific, could they? The same men could not compete with themselves for the business, could they?

A. No.

Q. Now you say these gentlemen serve you efficiently. Do you ship very much over the Union and Southern Pacific?

A. Not a great deal, no, sir.

Q. Most of your shipments go Santa Fe, don't they?

A. Yes, sir.

Q. And have you had occasion to call on Union Pacific-Southern Pacific representatives for assistance in tracing cars, or anything of that sort?

A. Not in late years, no, sir.

Q. Well, if you have not had to call on them, of course their efficiency doesn't interest you very much?

A. Not a great deal, no.

By Mr. LOVETT:

Q. Mr. Severance asked you a question, assuming the Southern Pacific was the leading line. Wouldn't you understand, so far as the Southern Pacific was concerned, it was a question of a long haul and a short haul—that is, long haul by way of New Orleans and short haul from Ogden?

A. I have always considered it that way.

2682 Q. That the Union Pacific is a connecting line of the Ogden line of the Southern Pacific?

A. Yes, sir.

By Mr. SEVERANCE:

Q. But you can't see how the Union Pacific could get very much revenue out of business going by way of New Orleans, can you?

A. Well, the question of revenue I have not thought of.

Q. I say the Union Pacific could not get any revenue out of business going by New Orleans, could it?

A. No, the Union Pacific could not.

Q. That is what I mean—the Union Pacific.

A. No.

Q. So if they were competing with the Sunset Route of the Southern Pacific they could not get any revenue at all unless the business went over the Union Pacific line?

A. No.

By Mr. LOVETT:

Q. You are not concerned as to what roads get the revenue that you have to pay, are you, Mr. Stewart?

A. No sir.

Q. As to how they divide it?

A. No, sir.

2683 GEORGE KRAUSE,

being duly sworn as a witness on behalf of the Complainant, testified as follows:

Direct examination by Mr. SEVERANCE:

Q. Mr. Krause, where do you live?

A. I live in Cleveland.

Q. What is your business?

A. Commercial freight agent of the Big Four Railroad.

Q. How long have you been with the Big Four?

A. About 32 years.

Q. In the traffic department all the time?

A. Yes, sir.

Q. 32 years?

A. 32 years, yes, sir.

Q. You don't look it?

A. It is a fact, sir; since the first of September, 1877.

Q. Do you remember when the Union Pacific and the Southern Pacific were separately represented in this territory, Mr. Krause?

A. I do, yes, sir.

Q. As far as you recall, who represented the Union Pacific at different times here?

A. The first representative of the Union Pacific that I recall was Mr. J. D. Welsh. Then they had a number of changes at that time. I could not be specific as to the date, but they had an office here for awhile, and then they closed it up, and then I think Mr. Shearman traveled out of Cincinnati. And then, if I remember rightly, they opened it again, with Mr. Johnson. But I could not be specific as to the dates that the different representatives represented the road; I could not give the years.

2684 Q. Yes, I understand. Who represented the Southern Pacific as far back as you can remember?

A. Why, as far back as I can remember, the original commercial agent was Asa Kellogg, and Mr. Connor traveled for him. That was only for a short time. Shortly after Mr. Kellogg's death Mr. Connor was made commercial agent, and he has been coming up ever since.

Q. You remember when the two agencies were consolidated, don't you? I don't mean the year, but the fact.

A. Yes, sir.

Q. Previous to that time had these two representatives been competing for California business?

A. Yes, sir.

Q. Which way did Mr. Connor and his subordinates and the other Southern Pacific men endeavor to route the traffic?

A. Through New Orleans. I say through New Orleans, but I want to modify that by saying that they tried to get it through New Orleans, through El Paso, or through Ogden gateways.

Q. Now, which way did they try to get it? Which way did he endeavor to route it when he could control it?

A. The preference was through New Orleans.

Q. And if he could not get it by New Orleans and could get it by El Paso, he did so?

A. Yes, sir, or through Ogden.

Q. And if he could not get it through New Orleans or El Paso he was glad to get the haul from Ogden to the coast?

A. Yes, sir.

Q. Now, that is about it, isn't it?

A. Yes, sir.

Q. The Union Pacific endeavored to route it which way?

A. Through Missouri River gateway.

Q. They had no other route?

A. No, sir.

2685 Q. Was the Big Four interested in this traffic—some of it?

A. We had an initial line's interest in it.

Q. You had an initial line both ways, hadn't you?

A. Yes, sir.

Q. Whether it went by Cincinnati and then south, or went west to Chicago?

A. Yes, sir.

Q. And so you were in position to observe the way that these gentlemen were working business, weren't you?

A. Yes, sir.

Q. Now, since the agencies have been consolidated, Mr. Connor has represented both lines. So far as you know have they shown any preference for one route over the other?

A. They aim to get the business any way they can get it—anything so that it does not go over the Santa Fe.

Q. That is what I mean. But as between the Union Pacific route and the Sunset Route they are not working one against the other?

A. It depends on the circumstances, perhaps. I should say that there are times, if the L. & N. representative, for example, discovers a carload somewhere, he brings it to the attention of the joint representative, Mr. Connor or Mr. Hild, and they tried to get their support to secure the car through New Orleans.

Q. Certainly; but they do not, as representatives of the Union Pacific, try to get that car away from the L. & N., do they?

A. Well, it is considered a question of honor, that if a man puts you onto the car first, you will work it that way.

Q. In that instance the Union Pacific element is eliminated, isn't it? They represent only the Southern Pacific in trying to help the L. & N. route the car?

A. Well, to a certain extent; but in the meantime while per-

2686 haps they are trying to get this, the Milwaukee and the St. Paul men, or the North-Western, or the Burlington, or the Rock Island and all the other lines that work through the northern gateway are trying to get that car over their line.

Q. That is just what I was getting at. The L. & N. are trying to get the car, and they try to get the support of Mr. Connor to route that car by New Orleans, don't they?

A. Yes, sir.

Q. Then the North-Western and the other lines that are running to Omaha try to get that car over their lines, as you said?

A. Yes.

Q. Who represents the Union Pacific? How does the Union Pacific come in to help them get that car if Mr. Connor, who represents both lines, is working to get it by the southern gateway?

A. Well, he aims to be neutral; that is, he——

Q. No, but you said a moment ago he was supporting the Louisville & Nashville.

A. Yes, I understand.

Q. Well, how can he be neutral, then?

A. Well, it is pretty hard to describe those things, just how they come up.

Q. Well, I should think it is. Now, don't you know that Mr. Connor cannot represent two lines that are competing with each other, at the same time?

A. Well, that is their general policy—to be neutral so far as possible.

Q. I say, don't you know that he can't represent two lines that are competing with each other at the same time, as to the same business?

A. Well, I presume that would depend on circumstances.

Q. You think he could do it, do you? Now you explain a
2687 circumstance under which he could represent both lines when the one line was competing against the other for the business?

A. Well, I will tell you. Mr. Connor, as he is situated, he is so that he can work with all lines.

Q. Can he work with the lines to Omaha at the same time he is working with the lines to New Orleans, on the same car, at the same time?

A. No, I presume that is right.

Q. Of course he couldn't. Now, if they had separate agencies, when the Louisville & Nashville was after a car and had the support of Mr. Connor, representing the Southern Pacific, and the Union Pacific had an agent, and the lines leading to Omaha were working for that car, they could be supported by the Union Pacific agent, couldn't they?

A. Yes, sir.

Q. And would be?

A. Yes, sir.

Q. And, having a common agent, that element of competition is eliminated, isn't it?

A. I presume it is, sir.

Q. How do you think the business to the coast, moving by the Union Pacific and the Southern Pacific, taking the two together, I mean by the New Orleans route and by the Union Pacific, is divided now as compared with the way it was divided when they had separate agencies?

A. I think the situation has changed very materially in the last ten years, say.

Q. You can give me an answer. I am just asking you as to what your view is as to percentage of division, which way it has changed, and how much.

A. More of it goes through the Missouri gateway—for good reasons, of course.

Q. Now, one reason is that Mr. Connor is working for both lines, isn't he?

2688 A. I presume that might be one reason, yes, sir, but the——

Q. Mr. Connor is a very efficient solicitor of traffic?

Mr. LOVETT. Let him finish his answer.

Mr. SEVERANCE. I thought he had answered.

WITNESS. The situation has changed entirely, Mr. Severance, in this way: that in the last ten years the Santa Fe have got a good deal stronger by reason of their entrance into San Francisco; the Rock Island have strengthened the El Paso gateway very greatly, and in Cleveland all of the Missouri River lines have offices now—I think there are eight or nine offices, and they all fight for the Missouri River gateway; and by reason of the Sunset route being from Cleveland to 'Frisco about a thousand miles farther around, they have lost their standing; they do not get as much business as they used to, because during that time the situation has changed, and it has been brought about largely, I think, by the appointment of traffic managers by industrials. They are always fighting to get improved service, and by sort of pitting one line against the others they have gradually been after the railroads to improve the service, and each man presents the matter to his people, and the improvements, to my mind, seem to have been more through the northern gateways.

Q. You mean that since the Union Pacific got control of the Southern Pacific they have not done anything to improve the Southern route, do you—let that go?

A. No, sir; I wouldn't say that. The distance from here to 'Frisco is about a thousand miles farther around by New Orleans.

Q. How much longer is the distance now than it was be-
2689 fore the consolidation of these two lines?

A. It is no longer, sir.

Q. No. Well, that hasn't anything to do with it, has it?

A. I think it has, sir.

Q. There has been a change in the situation?

A. The service given by the roads ten years ago would not be satisfactory at this time, sir.

Q. Isn't the service over the Sunset Route of the Southern Pacific better than it was ten years ago?

A. Our time that we gave away to the Sunset Route then would not be satisfactory to the shippers of to-day.

Q. That is the point. There has been an improvement both ways, has there?

A. Yes: but the New Orleans gateway is too far around to be satisfactory.

Q. But the New Orleans gateway is no farther around than it was ten years ago, and they have improved both lines, haven't they?

A. I know, but they have been able to shorten the time more through the northern gateway than they have the Southern by reason of the shorter route.

Q. How much more have they shortened it?

A. Well, I had a case the other day where a shipper wanted to obligate me to put a car into 'Frisco in ten days. He claimed he could get it. He allowed one day to Chicago and nine days from Chicago to 'Frisco. Ten years ago if we got in there in twenty days we thought we were doing pretty well.

Q. Well, did you get it in there in ten days?

A. We didn't handle the car.

Q. Do you know whether he could get it in in ten days over any road?

2690 A. I did not obligate myself. They had what they supposed was a pretty good promise that the car would go through in about that time.

Q. From whom did they have it?

A. The shipper told me it was the Lake Shore and Santa Fe.

Q. In times such as we had a year and a half or two years ago, when traffic was very heavy, wasn't there a great deal of time lost in getting traffic through Chicago?

A. Yes, sir.

Q. And wasn't it a fact that in times of congestion like that, in spite of the difference in distance, it can be moved to California points, particularly we will say to Los Angeles, Southern California points, quicker from Cleveland by the New Orleans or the El Paso gateway than it could by Chicago?

A. I wouldn't say it could be quicker.

Q. Well, as quickly?

A. No, I don't think as quick, sir. I think perhaps by the El Paso gateway to Los Angeles—through the El Paso gateway?

Q. Yes. Because the same condition does not exist as to congestion in transfers south of Chicago, does it?

A. Well, you can't state that general, Mr. Severance, because at times some distribution may exist through the St. Louis gateway, and they have some congestion there, and another time the congestion might be through New Orleans and Chicago gateway.

Q. More apt to be at Chicago because the traffic is much larger?

A. Yes; but of course they are supported by their belt lines, the E. J. & E., and——

Q. Just answer my question. Isn't it more apt to be con-

2691 gested at Chicago than at these other gateways farther south?

A. Yes, sir.

Q. Well, I thought so. The Big Four is a part of the New York Central system?

A. Yes, sir.

Q. And you are aware, I suppose, that the Union Pacific is a stockholder of the New York Central and that its president is a director of the New York Central, aren't you?

A. Well, I have no means of knowing that positively, sir.

Q. Well, you have heard of it?

A. Yes, sir, by reading the paper; I don't know it to be a positive fact.

Q. Did you tell Mr. Husted the other day, when he was talking with you, that in the old days, when there were separate agencies, the Southern Pacific people were working for business via New Orleans or El Paso and not via Ogden?

A. The Southern Pacific?

Q. Yes, sir, when they had separate agencies. Didn't you tell Mr. Husted that when he talked with you the other day?

A. Well—I may have——

Q. Didn't you tell him that?

A. Well—I—Let me refresh my memory on that. I may have put it in that way, but he——

Q. Why didn't you say it here today, then? What has changed you?

A. Well, I had overlooked—may have overlooked for the moment the routing through Ogden by Union Pacific.

Q. Have you had any talk with any of the Union Pacific and Southern Pacific representatives since you talked with Mr. Husted the other day about your testimony here?

A. No, sir. Well, I beg your pardon, sir; I have, too, but
2692 nothing that would change that answer in any way, sir.

Q. You have talked over your testimony with them, though?

A. Yes, sir.

Cross-examination by Mr. LOVETT:

Q. You have had several visits from representatives of the Government, haven't you, Mr. Krause?

A. Yes, sir.

Q. How many times have you been called upon by Mr. McKenzie?

A. Twice.

Q. How many times by Mr. Husted?

A. Once.

Q. It never occurred to you that there was any impropriety in talking to a representative of the Union Pacific or the Southern Pacific, did it?

A. No, sir. I didn't understand that I was obligated not to talk to them.

Q. You have been under the impression you could talk to anybody you pleased, haven't you?

A. I so understood it; I didn't know to the contrary.

Q. In the days when they had separate solicitors for the Union Pacific and the Southern Pacific, Mr. Krause, which way did the traffic secured by the Union Pacific representatives for California move?

A. I beg pardon? Did you say by the Southern Pacific or the Union Pacific?

Q. I said during the days when the Union Pacific and the Southern Pacific had separate solicitors, which way did the traffic that was secured by the representative of the Union Pacific, for California, move?

A. It went through the Missouri River gateway.

Q. And thence over the Southern Pacific from Ogden to
2693 destination.

A. Yes, sir.

Q. There was no other outlet for it, was there?

A. There was no other outlet for it.

Q. Mr. Severance's questions to you about Mr. Connor's representation of both the Union Pacific and the Southern Pacific seem to have been based upon the assumption that they were competing lines. Now, isn't it true that the Union Pacific, so far as the Ogden line of the Southern Pacific is concerned, is a connecting line?

A. Connecting line as between the Union Pacific and the Southern Pacific?

Q. Yes. That is to say, isn't it true that the Southern Pacific in addition to its Sunset Route by way of New Orleans and Galveston and the Morgan line of steamers from New York, commonly called the Sunset Route, also operates the line from San Francisco and other California points to Ogden?

A. Yes, sir.

Q. And in that way is interested in two lines between the Atlantic and the Pacific—one, which it controls exclusively, from New York to New Orleans and Galveston by steamer and thence by rail to the Pacific Ocean, and the other an interest of about 800 or 850 miles in the all-rail route? That is true, isn't it?

A. I so understand it, yes, sir.

Q. And as to the latter route, that is, the all-rail route, the Union Pacific is a connecting and not a competing line; isn't that true?

A. A connecting link with the Southern Pacific, yes.

Q. But the all-rail lines do compete with or did compete with and do now compete with the Sunset route of the Southern Pacific?

2694 That is, I mean the lines operated by the various railroads lying between the Atlantic Ocean and the Pacific Ocean?

A. Yes, sir, they do compete with each other.

Q. But that the Southern Pacific owns a link of about 850 miles in one of those transcontinental lines, and the Union Pacific a link of about 1,000 miles extending between Omaha and Ogden?

A. Yes, sir.

Q. You so understand that, don't you?

A. Yes, sir.

Q. So far as the Southern Pacific's interest in the traffic from this territory to California is concerned, as you say it is largely a question of division, isn't it, or, rather, the short haul as against the long haul?

A. It is, yes, sir.

Q. Except as against the Atchison. It is a competitor of the Atchison?

A. As against the Atchison, yes, sir.

Q. Does the Atchison solicit actively in this territory for California business?

A. Yes, sir.

Q. And the Rock Island?

A. And the Rock Island.

Q. And the Missouri Pacific?

A. And the Missouri Pacific.

Q. And all of those lines extending westerly?

A. All of the lines through the El Paso gateway and through the Missouri River—Colorado.

Q. Do you have anything to do with California business moving from this territory to the Pacific Ocean?

A. We have an initial line's interest. We try to get it over our line out of Cleveland.

Q. You try to get it over your line out of Cleveland?

A. Yes, sir.

Q. Which way do you try to have it move?

A. We try to get a haul on it, any sort of a haul, through
2695 no particular gateway.

Q. You don't work for one gateway as against another?

A. No, sir; we simply want to get a haul, whether it is long or short. Of course we try to get a long haul if we can.

Q. Now, if a car originates on your line, or if there is a car that might be handled by your line, and that is brought to your attention, for instance, by the St. Paul, you would try to work with the St. Paul to carry that car by way of Chicago, wouldn't you?

A. We would win or lose.

Q. If, however, such a car was brought to your attention by some line, say out of St. Louis, some St. Louis connection, you would try to work it with that line?

A. Try to work it with that line, yes, sir.

Q. The situation which Mr. Severance assumed, that Mr. Connor might find himself in with reference to this Louisville & Nashville car, is not a very unusual one in freight soliciting, is it?

A. No, sir, it is not unusual.

Q. Whenever an agent's attention is called to a car by a connecting line he tries to work it with that line?

A. He tries to work it with that line, yes.

Q. That is the rule among them, isn't it?

A. Yes, that is the rule.

Q. Did you ever know of or attempt to move any freight to California over the Union Pacific and by the boat line from Portland down to California?

A. No, sir.

Q. Do you remember ever having attempted to move any to
2696 Portland by way of New Orleans?

A. I don't recall any, sir.

Q. You were asked about the Union Pacific being interested as a stockholder in the New York Central, Mr. Harriman being a director. Have you any knowledge of that beyond what you see in the newspaper?

A. No, none whatever.

Q. Has that ever had any effect on you in soliciting freight?

A. Not in any way.

Mr. LOVETT. I am sorry to say it has not, but I just wanted to know.

Br. Mr. SEVERANCE:

Q. You say you only know that from reading it in the newspaper?
A. Yes, sir.
Q. You read of his election to that position, as a director of the New York Central, since the time you gave your original statement to the representative of the Government with reference to the testimony here, didn't you?
A. I think it has taken place since then.

2697 J. C. WICKS,

being duly sworn as a witness on behalf of the Complainant, testified as follows:

Direct-examination by Mr. SEVERANCE:

Q. Mr. Wicks, what is your business?
A. I am with the Erie Iron & Steel Companies. I am sales agent and incidentally handle the traffic.
Q. How long have you been in that position?
A. Six years.
Q. Do you ship to the Pacific coast?
A. Some, yes, sir.
Q. To California?
A. Yes.
Q. What route does your traffic take to California?
A. Santa Fe.
Q. How do you happen to give your business to that route?
A. Well, largely because they have always given good time and because they have called upon us to get the business.
Q. Has your business been solicited by the Union Pacific and the Southern Pacific representatives?
A. No, sir, not to my knowledge.
Q. Not during the last six years?
A. No, sir.
Q. Do you know Mr. Hild?
A. Not to say that I know him; I met him once.
Q. Did he come in to solicit business?
A. He did not.
Q. When did you first meet him?
A. After I received a subpœna from the court to appear here.
Q. What did he do—come in to talk to you about your testimony?
A. I don't know what he came in for. That is what he talked about.
2698 Q. But he has never been in to solicit your business?
A. Not to my knowledge, no, sir. He has never talked to me, to my knowledge.
Q. You were not in that position at the time the Union Pacific and the Southern Pacific each had a soliciting agency here?

A. I guess not, because I know nothing about it. I have only been six years constantly here.

Q. From your experience during that period, what is your opinion as to the value to railroads of soliciting agents?

A. Well, they are a great help to me because of the fact that my attention is largely directed to sales and other matters not pertaining to transportation. Consequently I rely a good bit upon the representatives of the different roads for information, such as rates and tracing cars, and also in obtaining settlement of claims.

Q. From your experience would you say that the presence in Cleveland of an active soliciting agent of a line of railroad would have a tendency today to get the business for that road from the shippers?

A. Yes, I should say so, because we try to be fair and distribute the business; and I presume if some representative called upon us, even though we had not much to give him, we might give him their share, providing it was not objectionable to the consignee.

Q. You appreciate the services that they render for you?

A. Yes.

Q. And in consideration of that give them business?

A. Yes, sir.

Q. Do you ship to the north Pacific coast?

A. Yes—Portland and Seattle.

2699 Q. Over what lines does that traffic move?

A. Union Pacific and the northern roads, the northern railways.

Cross-examination by Mr. LOVETT:

Q. Suppose Mr. Hild were to resign his connection with the Southern Pacific and work exclusively for the Union Pacific and the Ogden line, and Mr. Connor resigned from the Union Pacific and worked exclusively for the Southern Pacific line: do you think you could give us any more of your business?

A. Well, I presume if they called upon me and I had the routing, that I could give them more than I have, because we have never given them anything.

Q. Oh, you haven't given them anything?

A. No.

Q. So you haven't suffered by the solicitation?

A. No, we do not consider it so. We get good service from the Santa Fe, and have never inquired as to better service or quicker time.

Q. Oh, I see. Did Mr. Hild never call on your company before?

A. Not to my knowledge he has not; I don't know.

Q. I am sorry.

A. So am I.

Q. Your house routes its own freight to the Pacific coast, does it, or is that done by the consignees?

A. We usually route unless there is some preference given by the consignee, and then we always follow their suggestions.

Q. How is it with reference to the coast?

A. The coast business is generally routed beyond the initial line. They usually express a preference. That has been changed on one or two occasions, however.

Q. That is, the consignees usually route it?

A. Yes.

2700 FRANK A. PECK,

being duly sworn as a witness on behalf of the Complainant, testified as follows:

Direct-examination by Mr. SEVERANCE:

Q. Mr. Peck, what is your business?

A. The traffic manager of the Brown Hoisting Machinery Company.

Q. What kind of product does your company manufacture?

A. Ore and coal-handling machinery and fire-proof construction material.

Q. Do you ship to the Pacific coast?

A. We do.

Q. How long have you been in that position?

A. About seven years.

Q. How does your California traffic chiefly move?

A. Mostly through the Omaha gateway.

Q. By the Omaha?

A. By the Omaha route, yes.

Q. Any of it by the Santa Fe?

A. Not very much.

Q. How does your business to the north coast move?

A. Mostly by Northern Pacific and Great Northern.

Q. Have you any particular reason for sending your business to the north coast by the Northern Pacific and the Great Northern?

A. No particular reason, no, sir, only that it seems more direct.

Q. Is your business solicited that way?

A. Yes, it is solicited that way.

Q. Do those lines have representatives here?

A. Yes. That is, I don't know that they have offices here, but I know they have their representatives soliciting here.

Q. Is your business solicited by the Union Pacific and the
2701 Southern Pacific—the joint agency?

A. Yes.

Q. By whom?

A. By Mr. Connor and Mr. Hild.

Q. In soliciting that business do they discriminate between the Southern line and the Union Pacific line?

A. Not that I have ever known of.

Q. Do you, in your experience, regard soliciting agents as useful to the railroads in securing traffic?

A. Yes, sir.

Q. What do they do for the shippers that commends them to the shippers?

A. They endeavor to facilitate the movement of freight, make it quicker; we can keep in touch with it by calling them up on the phone quicker than we can by outside offices; also on the rates and tariffs, and in getting general information that we might want of them through the offices here.

Q. And in consideration of their performing those services for you, you feel like giving them business?

A. Yes, sir.

Cross-examination by Mr. LOVETT:

Q. Are Mr. Hild and Mr. Connor active in serving you, as soliciting agents?

A. Yes, sir.

Q. They will look up shipments, whether they move by way of El Paso or New Orleans or Ogden, will they not?

A. Yes, sir.

Q. And all of your shipments to California that go over the Union Pacific go over the Southern Pacific west of Ogden, do they not?

A. Yes, sir.

Q. Have you ever shipped anything to California by way of Portland and the boat line?

A. No, sir.

Q. Or anything to Portland by way of New Orleans or El Paso?

A. No, sir.

2702 Q. You have no interest in the division of the through rate?

A. No, sir.

2703 B. C. KRIDLER,

being duly sworn as a witness on behalf of the Complainant, testified as follows:

Direct examination by Mr. SEVERANCE:

Q. Mr. Kridler, what is your business?

A. I am traffic manager of the Cleveland Hardware Company.

Q. How long have you been in that business?

A. I have been with that firm pretty near two years.

Q. And as traffic manager of that company what are your duties?

A. Checking rates, routing freight, handling the freight business in general.

Q. Does that company do a large business in different parts of the country?

A. It is mostly east of Kansas City. We have very little western business.

Q. You do some Pacific coast business?

A. Very little.

Q. Do the agents or representatives of the transcontinental lines call on you and solicit Pacific coast business?

A. I think there has been quite a few of them, but not in general. Our business is so small that they do not bother with it.

Q. Does Mr. Hild ever call on you and solicit your business?

A. He has never called on me to solicit freight.

Q. He never has?

A. No, sir.

Q. I misunderstood you. Do you ship anything to Portland?

A. We have shipped business to Portland.

Q. How does that move?

A. St. Paul, through Omaha route.

Q. Do you ship anything to Los Angeles.

2704 A. Small, less than carload business.

Q. How does that move, ordinarily?

A. Through New Orleans—Illinois Central and Southern Pacific.

Q. And that moves without solicitation?

A. Yes, sir. It is routed from the other end, routed by the consignee.

Mr. SEVERANCE. Your Honor, we have only two or three other witnesses subpœnaed and their testimony is of the same character as that which has been taken. Owing to the necessity of arranging some record evidence which we have, that must be arranged today, we will not call any other witnesses, and the other witnesses may be excused.

The EXAMINER. Any other witnesses who have been subpœnaed will be excused. Their testimony will not be required.

2705 Mr. SEVERANCE. I now offer in evidence, pursuant to our stipulation, the testimony given by R. P. Schwerin, a witness before the Interstate Commerce Commission, who testified on the 29th day of January, 1907, at the City of San Francisco. I understand it is agreed by all parties that this testimony may be written into the record and have the same force and effect as though Mr. Schwerin were upon the witness-stand giving the same testimony?

Mr. LOVETT. Yes.

R. P. SCHWERIN

testified:

Examined by Mr. SEVERANCE:

Q. Mr. Schwerin, where do you live?

A. San Mateo.

Q. And what is your business?

A. Steamship operator.
Q. How long have you been in the steamship business?
A. Since 1893.
Q. Where did you commence your work in the steamship business?
A. In San Francisco.
Q. With what company were you first connected?
A. With the Pacific Mail Steamship Company.
Q. Was that in 1893?
A. Yes, sir.
Q. In what capacity?
A. Vice-president and general manager.
Q. And you still occupy that position?
A. I do.
Q. So that, so far as that corporation is concerned, there has been no change in your title, at least since 1893?
A. None.

2706 Q. Will you please state the names of the steamships that are owned by the Pacific Mail Steamship Company—that is, if you can from memory—or give me the number of steamboats owned by the Pacific Mail Steamship Company, when you came here in 1893, say, first?

A. "The City of Peking," the "Peru," the "Rio Janeiro," the "Colima," the "Colon," the "San Juan," the "San Jose," the "San Blas," the "Acapulco," the "Barracouta," the "Starbuck," and the "City of New York"—I think that is about all.

Q. Now, which of those ships were engaged in the Oriental trade, if any?
A. The "Rio Janeiro," "City of Peking" and "Peru."
Q. And they sailed out of San Francisco?
A. Yes, sir.
Q. And at what ports did they call in the Orient?
A. They touched at Yokohama, Kobe, Nagasaki, Shanghai, and Hong Kong; and sometimes at the port of Amoy.
Q. Sometimes at what?
A. At the port of Amoy.
Q. What connection, if any, did you have with the port of Tientsin?
A. None, except the transfer of freight, from either Shanghai or Nagasaki.
Q. That is, the freight would be brought to your boats at one or the other of those places by coast steamers?
A. Yes, sir.
Q. Now, how long did those three boats continue in that service, Mr. Schwerin?
A. Two of them were withdrawn after we placed the "Korea" and "Siberia" on the run.
Q. You put the "Korea" and "Siberia" on that same run, and which boats did you withdraw?
A. The "Peru" and——

Q. (Int'g.) The "Peking" or "Rio Janeiro?"

A. No, sir, the "Rio Janeiro" was lost.

2707 Q. Oh, yes. Then you had left the "Peking," the "Korea" and the "Siberia"?

A. We had left the "Peking," the "Siberia," and the "Korea" on the run. There was an interval when we had only two vessels, after we lost the "Rio Janeiro."

Q. How long did those boats make up your Oriental fleet?

A. Until we got the "Mongolia" and "Manchuria," when we withdrew the "City of Peking."

Q. The "Mongolia" and the "Manchuria" were added?

A. Yes, and we withdrew the "City of Peking."

Q. So after you had withdrawn the "City of Peking"——

A. We had the "China" too; I should have said the "China" was put on the run. I should have mentioned her. She was on the run all the time.

Q. All the time?

A. Yes, sir.

Q. So you had four ships?

A. After the "Rio Janeiro" was lost, we put the "Peru" on the run.

Q. You had four all the time, did you?

A. We had three on all the time, and we took one off the Panama line and put it on the transpacific line. The "China" was there all the time. She was there when I went into the company.

Q. Then you had the "China," the "Siberia," the "Korea," and the "Peking," and then you got the "Mongolia" and the "Manchuria"?

A. We added the "Mongolia" and the "Manchuria" and that made five.

Q. Then the line consisted of what?

A. Of the "Korea," "Siberia," "Manchuria," "Mongolia," and the "China," five ships.

2708 Q. What year was that?

A. The "Korea" and "Siberia" went on the line in 1902, and the "Mongolia" and "Manchuria" went on the line in 1904.

Q. Prior to 1902 the fleet was made up of the "Korea," "Siberia," "Peking"——

A. No, prior to 1902 the fleet was made up of the "China," "Peru," and "Peking."

Q. Of the "China," "Peru," and "Peking?"

A. And "Peking," yes.

Q. And that ran back for how many years?

A. It ran back to the time the "Rio" was lost.

Q. What year was that?

A. She was lost four years ago, and we substituted the "Peru" for the "Rio."

Q. You did not understand my question. I asked you what ships made up the line prior to 1902.

A. The "Rio," the "China," and the "Peking."
Q. The "Rio," "China," and "Peking?"
Q. And for how many years back prior to that time did those ships make up the line?
A. The time I was in the company.
Q. Then from the time that you came here in 1893, down to the loss of the "Rio," the ships that made up the line were the three you have just mentioned?
A. Yes, sir.
Q. And then when you lost the "Rio," you substituted the "Peru" for her?
A. Yes, sir.
Q. And afterwards added these other ships that you have mentioned?
2709 A. Yes, sir; and part of that time the "City of New York" was on the line, when we had extra freight—we put her on for extra freight when we had extra freight. She was also lost.
Q. Now, Mr. Schwerin, did you have agents or representatives at the different Oriental cities?
A. Yes, sir.
Q. Will you kindly name the representatives of your company there from 1893, if you have them in mind—from 1893 down to 1902, when the change was made in the ships that made up the line?
A. Mr. Howard, the agent at Yokohama——
Q. (Int'g.) Howard, did you say?
A. Howard, yes.
Q. Wait a minute. We may as well dispose of him now. Is he still the agent there?
A. Yes, sir.
Q. He was the agent of the Pacific Mail Steamship Company from the time you came here?
A. Yes.
Q. At Yokohama?
A. Yes, sir.
Q. Go on, please.
A. Mr. Tilden, at Kobe.
Q. Tilden?
A. Yes, sir.
Q. At what place?
A. Kobe.
Q. Is he still the agent there?
A. He is out of the company.
Q. Out of the company?
A. Yes, sir.
Q. And how long ago did he retire?
A. About a year and a half.
Q. Up to that time, he was your representative, was he?
A. Not at that point. He was promoted to Hong Kong and afterwards to Shanghai, and then finally left the service.

Q. Mr. Tilden was your representative originally at Kobe? About when did he leave Kobe?

A. About three years ago.

Q. He was there up to three years ago?

A. Yes, sir.

2710 Q. From the time you came here?

A. Yes, sir.

Q. Who was at Nagasaki?

A. Holmes, Ringer & Company, commercial agents.

Q. Who?

A. Holmes, Ringer & Company.

Q. Are they still your agents there?

A. They are.

Q. Who is at Shanghai?

A. At the present time Mr. Thebau.

Q. When you came here——

A. (Int'g.) We had no agency at Shanghai, regular agency, but we afterwards established an agency there with the firm of—what is that name—connected with the International Bank—Fearin, Daniel & Company.

Q. What year did you establish that agency?

A. 1894.

Q. And how long did they continue to represent you there?

A. Until 1904.

Q. Until 1904?

A. Yes, sir.

Q. Who was your agent at Hong Kong?

A. Mr. Van Buren was the agent when I came into the company.

Q. Van Buren?

A. Van Buren, yes.

Q. And how long did he remain there?

A. He remained there till three years ago.

Q. Who succeeded Fearin, Daniel & Co., at Shanghai, in 1904?

A. Mr. Thebau.

Q. You say Mr. Van Buren was at Hong Kong until four years ago?

A. Three years ago.

Q. Three years ago. And who succeeded him?

A. Mr. Tilden.

Q. The same gentleman that was originally at——

A. At Kobe.

Q. Who succeeded Mr. Tilden at Kobe?

A. Mr. Campbell.

Q. Campbell?

A. Yes, sir.

2711 Q. Now, have all these agents—I will read them over to you, and see if I have them correct. Howard at Yokohama all the time. Is that right?

A. Yes, sir.

Q. Tilden at Kobe until three years ago, and afterwards Mr. Campbell there?

A. Yes, sir.

Q. He is still your agent there?

A. Yes, sir.

Q. And Holmes, Ringen & Company——

A. Ringer—R-i-n-g-e-r.

Q. At Nagasaki. Still your agents there?

A. Yes, sir.

Q. Fearin & Daniel Company at Shanghai from 1894 until 1904, and since 1904 Mr. Thebau?

A. Yes, sir.

Q. And Mr. Van Buren at Hong Kong until three years ago, and since then Mr. Tilden?

A. Yes, sir—no, Mr. Tilden was afterwards relieved by Mr. Silverstone.

Q. When?

A. About 18 months ago.

Q. And Mr. Silverstone is still your agent at Hong Kong?

A. Yes, sir.

Q. Where does the freight come from that is brought this way by your line?

A. It originates as far west as Calcutta, and as far north as North China.

Q. Is it assembled by these various agents at these ports?

A. Yes, sir.

Q. What means do these gentlemen take to secure traffic?

A. Well, they are in communication with shippers—the usual methods.

Q. It is by the ordinary methods that would be employed anywhere?

A. Yes, sir.

Q. By personal solicitation, and solicitation by correspond-
2712 ence?

A. Not so much solicitation by correspondence as solicitation personally, or the shipping men coming into the office and asking if they can get space on the steamers.

Q. Are these shipments, Mr. Schwerin, largely made by exporters at these ports you have named? That is, do they buy the stuff in the interior, or bring it in, or handle it on commission, or something of that sort, and ship it?

A. Yes, sir; the freight is not only handled by the houses there, but very largely controlled by the parent houses in this country.

Q. And the freight, where is the freight usually routed? Is it routed by the houses in China or Japan, or is it routed in this country?

A. Both.

Q. Now, at all the time that you have represented the Pacific Mail Steamship Company—I am speaking of the Pacific Mail

Steamship Company now when I say "you"—and that the Pacific Mail Steamship Company has been represented in the Orient by these gentlemen at these various places, they have had practically the same functions, have they not, that is, to look after passenger and freight traffic and procuring it to be sent to this country by your ships?

A. Yes, sir.

Q. Did those ships and do they still make through billings of commodities that are destined to points in the eastern parts of the United States?

A. Yes, sir.

Q. They issue the bills of lading over there, do they?

A. Yes, sir.

Q. Who is the official of the Pacific Mail Steamship Company that has charge of the through freights?

2713 A. Mr. Garland is the present manager.

Q. Have you anything to do with that part of the business?

A. As the general manager of the company I have the right to approve or disapprove.

Q. What is your function? Do you personally take a hand in the making of rates, or do you leave that to Mr. Garland?

A. No, sir, I take a hand in it.

Q. How are steamship rates affected? By what things on the Pacific are steamship rates affected?

A. By competition.

Q. Chiefly by competition, are they not?

A. Yes, sir.

Q. When you started out here in 1893, the Pacific Mail was competing for business with all the other lines that were crossing the Pacific, was it not?

A. All the other lines, yes, sir, with the exception of the Occidental & Oriental line, with which it worked in unison.

Q. With the exception of the Occidental & Oriental. Well, did the Occidental and Oriental Steamship line have a separate organization at that time?

A. It had a separate organization, and the Pacific Mail were its agents for freight and passenger business.

Q. The Pacific Mail was its agent?

A. Its agent, yes, sir.

Q. As it was or has continued to be during all the time you have been with them?

A. Yes, sir.

Q. How many ships had the Occidental & Oriental?

A. Three.

Q. How many did they have when you came here?

A. Three.

Q. What were their names?

A. The "Doric," "Coptic," and "Gaelic."

Q. What is the third?

A. The "Gaelic."

Q. I understood the first two, but not the last.
2714 A. "Doric," "Coptic," and "Gaelic."
Q. What became of the "Gaelic?"
A. She was given up. I believe the owners sold her.
Q. For several years you have only had the "Doric" and the "Coptic," have you?
A. Yes, sir.
Q. When you came here, you found that line being operated under the auspices of the Pacific Mail, although in different ownership?
A. Different management, altogether.
Q. What is that?
A. And different management, I say.
Q. It had a different management?
A. Yes, sir.
Q. I thought you said the Pacific Mail Steamship Company acted as its agent?
A. It did. It didn't manage the line though.
Q. It didn't manage the line. What part of the management was——
A. (Int'g.) We simply acted as its agents for freight and passenger business.
Q. That is, the Pacific Mail Steamship Company used its organization to procure freight and passengers for this company?
A. Yes, sir, for which they were paid.
Q. Do you happen to know, Mr. Schwerin, how long the Pacific Mail has been in the Oriental trade?
A. Since 1868.
Q. That was one of the pioneer lines, was it not?
A. The only line.
Q. It was the only line?
A. Took the first cargo of flour in 1868 to the Orient.
Q. When was the Occidental & Oriental line established?
A. 1874.
Q. You found that in operation when you came here?
2715 A. Yes, sir.
Q. Who was its manager?
A. Mr. D. V. Stubbs.
Q. Mr. D. V. Stubbs?
A Yes, sir
Q. Is he related to Mr J. C. Stubbs?
A. Very closely.
Q. How closely?
A. Brother.
Q. Well, that is close enough. And how long did he continue to be the manager of the Occidental and Oriental?
A. He is still the manager.
Q. He is still the manager, is he?
A. Yes, sir.

Q. You say the Pacific Mail acts as the agent, but aside from acting as the traffic agent to procure passengers and freight through its organization, the Pacific Mail has not assumed the management of the ships of the Occidental & Oriental?

A. Nothing to do with the management of the ships.

Q. Nothing to do with the management of the ships?

A. No, sir.

Q. Do you happen to know who—well, I think we brought that out before, the ownership of the stock. Now, Mr. Schwerin, in so far as the procuring of traffic is concerned, these two lines are now and always have been since you have been here, acting in harmony?

A. Yes, sir.

Q. Through the same instrumentalities?

A. Yes, sir.

Q Did the Pacific Mail Company, at the time you came here, have any agencies in the United States for its business?

A. Not that I know of.

Q. You have none in New York?

A. None except the agency here in San Francisco.

Q. Have you ever established an agency in New York?

A. Yes, sir.

2716 Q. When was that done?

A. Some time between 1895 and 1897—as near as I can recollect.

Q. And who was appointed as agent?

A. Mr. Hawley.

Q. What is his name?

A. Hawley—H-a-w-l-e-y.

Q. How long did he continue to be the agent?

A. Until he left the employ of the Southern Pacific Company.

Q. Do you remember when that was?

A. About 1902 I should think.

Q. Who succeeded him?

A. Mr. Nutting, his chief clerk—or Mr. Spence, his chief clerk, in charge of the freight business, and as our general eastern freight agent. Mr. Nutting is our eastern general passenger agent.

Q. Did you establish agencies at any other place in the east?

A. Yes, sir; in Chicago.

Q. And who was your agent there?

A. Mr. Neimyer.

Q. In what year did you appoint Mr. Neimyer?

A. The same period.

Q. Did Mr. Hawley, and after him, Mr. Spence and Mr. Nutting, as well as Mr. Neimyer, sustain any relation to the Southern Pacific Railroad Company?

A. Not so far as I was concerned. They reported directly to us.

Q. Possibly you do not understand my question. I asked whether these gentlemen sustained any relation to the Southern Pacific Railroad Company?

A. Yes, sir, they retained their original titles with the Southern Pacific.

Q. That does not answer it. What was their original title?

A. I think Mr. Hawley was the general eastern traffic
2717 manager, and Mr. Neimyer was the general eastern agent—western agent, I should say; general western agent.

Q. Mr. Schwerin, have you had any other agency in the east outside of New York and Chicago?

A. No. Those were the only ones who were appointed agents.

Q. You had no agency in Boston?

A. No, sir. We had no regular appointed agent in Boston.

Q. Did you have any representative in Boston?

A. Yes, sir, I believe the representative of the Southern Pacific acted for us there.

Q. He acted for you?

A. Yes, sir.

Q. How about Baltimore?

A. The same way.

Q. And how about Philadelphia?

A. The same way. We gave commissions to any—I should say this was principally on passenger business. The agent at Boston never acted for us in freight matters. Mr. Hawley is the only one that acted for us on freight in New York City, and Mr. Neimyer in Chicago, and every ticket agent in the United States of every connecting carrier, trunk line, was appointed as our agent. We asked them to act as our ticket agents, and we pay commissions for all the business they secure.

Q. But nobody had your freight matters in charge other than these general officers in New York and Chicago?

A. Yes, sir.

Q. That is correct, is it?

A. Yes, sir.

Q. Now, Mr. Schwerin——

A. (Cont'g.) That is, they were the only two officers who were appointed by us under a regular form of appointment.

2718 Q. Let me ask this: Were there any other agents who had authority to make contracts for you for traffic?

A. If they did, they would have had to do it for those two gentlemen.

Q. They would have had to act as sub-agents under them?

A. Yes, sir.

Q. But they were contracting agents?

A. Yes, sir.

Q. Of the company?

A. Yes, sir.

Q. And were also, as you have stated, the agents of the Southern Pacific in a certain capacity?

A. Yes, sir.

Q. Now, did you solicit shipments in connection with the Southern Pacific from the Orient?

A. We solicited shipments to every point in the United States, by any line by which we could move it.

Q. By any line by which you could move it?

A. Yes, sir.

Q. You were possibly aware, were you not, Mr. Schwerin, that the majority of the capital stock was owned by the Southern Pacific?

A. I was not.

Q. Had it not been brought to your attention?

A. I don't think they owned a share of it.

Q. Pacific Mail stock?

A. Yes, sir.

Q. When did they sell it?

A. They did not buy it until after Mr. Huntington died. I am talking about 1893, 1895, 1896 and 1897, when these gentlemen were appointed. I supposed that was the time you were referring to.

Q. But have you not been informed recently that they own it?

A. I knew when they bought it.

2719 Q. I didn't know but perhaps they had sold it since we were in New York the other day. When did they buy that stock, if you know about it?

A. I think it was in the winter of 1901.

Mr. LOVETT. 1900, was it not?

WITNESS. 1900? Mr. Huntington has been dead now—he died in 1900, I think.

Mr. LOVETT. He died in August, 1900.

WITNESS. Then they bought it in the fall of 1900.

Q. Now, Mr. Schwerin, was the Pacific Mail Steamship Company stock now owned by the Southern Pacific formerly owned by Mr. Huntington?

A. No, sir.

Q. It was not?

A. No, sir.

Q. By whom was it owned?

A. It was owned by about, I think they had something like 5,600 stockholders on the book.

Q. Do you know from whom the stock was bought or acquired by the Southern Pacific?

A. In the street.

Q. It was bought in the street?

A. Yes, sir.

Q. By the Southern Pacific Company?

A. Yes, sir. I think Mr. Hawley and Mr. Harriman sold quite a block of it.

Q. They did what?

A. I think they sold quite a block of it.

Q. That is, Mr. Harriman sold quite a block of it to his railroad company?

A. Mr. Harriman had nothing to do with the Southern Pacific at that time.

Q. That was before he acquired the Southern Pacific?

A. Yes, sir.

Q. He sold it to the Southern Pacific in the fall of 1900?

A. Yes, sir; Mr. Hawley and he, I think, sold quite a block
2720 short to Mr. Tweed and Mr. Speyer.

Q. Sold quite a block of it short, and then afterwards went into the street and picked up the stock and made deliveries?

A. I suppose so.

Q. And that was in the fall of 1900?

A. Yes, sir.

Q. So that at that time, or from that time, the fall of 1900, the Southern Pacific Company did own the majority of the capital stock of the Pacific Mail?

A. Yes, sir.

Q. And still own it?

A. To the best of my knowledge.

Q. That was prior to the purchase of the Southern Pacific stock by the Union Pacific?

A. Yes, sir.

Q. A few months prior—it was in the spring of 1901, according to the testimony, that the stock of the Southern Pacific was purchased by the Union Pacific. Who owned the stock of the Occidental & Oriental Company?

A. 50 per cent was owned by the Union Pacific Company, and 50 per cent by the Pacific Improvement Company.

Q. The Pacific Improvement Company?

A. Yes, sir.

Q. And who owned the stock of the Pacific Improvement Company?

A. That was owned in equal proportions—you mean at the time I came into the company?

Q. Yes.

A. Owned in equal proportions by the estate of Governor Stanford, by the Crocker Estate, by Mr. Huntington individually, and the Searles—Mr. Searles, in New York.

Q. That was the Hopkins stock—the Searles stock was the Hopkins stock?

A. Yes, sir.

Q. So that one-half that stock belonged to the Union Pacific?

A. Yes, sir.

2721 Q. And the other half belonged directly to these gentlemen?

A. Yes, sir.

Q. What became of the half of the Oriental & Occidental stock that was owned by Governor Stanford and Mr. Crocker and Mr. Huntington and Mr. Hopkins?

A. It was afterwards purchased by the Union Pacific interests, with the exception of the Huntington stock, which is still owned by the Huntingtons—that is, a one-eighth interest.

Q. Still owned by the Huntingtons?

A. Yes, sir; the Huntingtons.

Q. And the balance of it was purchased by the Union Pacific interests?

A. Yes, sir.

Q. You mean by the Union Pacific Railroad Company?

A. Yes, sir.

Q. Can you tell when that purchase was made, sir?

A. Well, I should say between the year 1903 and the year 1905.

Q. Between those years, the Stanford stock and the Crocker stock, and the Searles stock, was bought by the Union Pacific?

A. Yes, sir.

Q. So that at the present time, seven-eighths of the Occidental & Oriental belongs to the Union Pacific?

A. Yes, sir.

Q. And one-eighth still belongs to the Huntingtons?

A. Yes, sir.

Q. The Southern Pacific Company as a corporation never owned any of the stock of the Occidental & Oriental?

A. No, sir.

Comr. LANE. Did you give the year in which the Pacific Mail became the agent of the Occidental & Oriental?

2722 WITNESS. No, sir; I did not.

Comr. LANE. What year was it?

WITNESS. I believe they became the agent for the Occidental & Oriental—not speaking of my own knowledge now, but I have heard in 1884. In the Orient, when they first started in, they had a joint agency, and then they split in 1876, and they continued separate agents until 1884, and then the Pacific Mail again took the agency for that company.

Comr. LANE. What year did the Occidental & Oriental begin?

WITNESS. In 1874.

Comr. LANE. They were six years under the Pacific Mail?

WITNESS. The Pacific Mail had been in operation—that was six years after the Pacific Mail had started its transpacific line. But they were in operation on the Panama line afterwards——

Mr. SEVERANCE. I am going to take that up separately, the Panama end of it. I haven't got to that yet. Is that all, Mr. Commissioner?

Comr. LANE. Yes. I understand that it was 1884 that the Pacific Mail became the agent of the Occidental & Oriental?

WITNESS. Yes, sir.

Q. I think you stated, did you not, Mr. Schwerin, that the agency for the Occidental & Oriental has continued ever since its inception?

A. I stated that it had been continuous ever since I have been with the company in 1893.

Q. I say, it has continued ever since its inception, as you

2723 understand it?

A. I understand it has continued from 1884.

Q. But I say, it still continues now?

A. And has continued until the present time.

Q. Yes. Now, what other steamship lines, regular lines, I am not speaking of tramp ships, but what other lines of steamships were going out of San Francisco and to the Orient, at the time you came here in 1893?

A. Those were the only two lines.

Q. Those were the only two lines, the Pacific Mail and the Occidental & Oriental?

A. Yes, sir.

Q. Were there any lines of steamers going out of any other ports on the Pacific coast at that time?

A. Yes, sir. The Canadian Pacific were operating a line of steamers.

Q. And that was in operation at that time to Vancouver?

A. Vancouver.

Mr. DUNNE. What line is that, Mr. Severance?

Mr. SEVERANCE. The Canadian Pacific.

Q. And that line was competitive with yours?

A. Yes, sir.

Q. With separate agents in the Orient?

A. Yes, sir.

Q. Was there any other line?

A. The Northern Pacific Steamship Company.

Q. The Northern Pacific?

A. Yes, sir.

Q. From Tacoma and Seattle?

A. Tacoma.

Q. From Tacoma. And that line was in competition with yours?

A. Yes, sir.

Q. What other line, if any?

A. That is all.

Q. Were any other lines put on between 1893 and 1900, going out of or sailing out of any of the ports along the Pacific

2724 here?

A. The Toyo Kaisha came on to San Francisco.

Q. That is the Japanese line?

A. To San Francisco, yes, sir.

Q. And when did that start?

A. In 1899. And the Nippon Nushen Kaisha——

Q. Just a moment, before we reach that. Was the line competitive with you, the Toyo Kaisha?

A. We took the agency of that line—the Pacific Mail did.

Q. Did you have it from the inception of the line?

A. Yes, sir.

Q. That is, from the time it first came here?

A. Yes, sir.

Q. That is, by "we" you mean the Pacific Mail?

A. The Pacific Mail took the agency of that line.

Q. And have since kept that agency?
A. Yes, sir.
Q. And just in passing, before we go to the other lines established up the coast or down the coast, is there any other line from San Francisco to the Orient now, with the exception of the three you have named, the Pacific Mail Steamship Company, the Occidental & Oriental, and this Japanese line?
A. At the present time?
Q. Yes.
A. The Standard Oil Company run a line of steamers, yes.
Q. Do they run that line for commercial business?
A. Oh, yes. They run oil out and commercial freight home.
Q. Oil out and commercial freight home?
A. Yes, sir. And then there is the Dollar Steamship Company.
Q. What company?
A. The Dollar.
Q. Dollar?
A. D-o-l-l-a-r, yes.

Comr. LANE. What is the name of the Standard Oil line?

2725 WITNESS. It has no name. They are just called the Standard Oil steamers.

Q. How many boats have they? The Standard Oil line.
A. They run about a monthly service.
Q. How many boats?
A. It must take four boats to run a monthly service.
Q. Do they take any freight west-bound?
A. Do you mean west-bound from the Orient?
Q. From here.
A. We always speak of the freight as inward freight and outward freight.
Q. Inward freight and outward freight?
A. Inward from the Orient, and outward to the Orient.
Q. Then we will call it outward freight. Then do they take any outward freight, any cargo except their own oil?
A. Nothing but oil.
Q. And they bring back anything they can get?
A. Anything they can get hold of.
Q. Are they represented by you in any way over there in the Orient?
A. No, sir.
Q. You have never been agents for them?
A. No, sir.
Q. Therefore the Standard Oil Company, on business originating in the Orient and coming to this country, is a competitor of yours?
A. Yes, sir.
Q. What was the other company you spoke of, the Dollar Steamship Company?
A. Yes, sir.
Q. When was that company established?
A. It has been running the last three or four years.

Q. Who are the officers of that company?

2726 A. Mr. Dollar is the president. I don't know the others.

Q. Mr. Dollar is the president?

A. Yes, sir.

Q. How many ships have they?

A. I don't know.

Q. How frequent a service have they?

A. Their service is irregular. They load lumber, and come back with general merchandise, anything they can get in the Orient.

Q. They load lumber in San Francisco?

A. They load lumber from the Sound.

Q. And take it to the Orient?

A. And take it to the Orient. They are competitors homeward, and not outward.

Q. They are competitors homeward?

A. Yes, sir. Then we have the French line, the——

Q. (Int'g.) Just a moment. As to this Dollar line. Do they have separate agencies in the Orient, to procure traffic?

A. Yes, sir.

Q. Now, what was the next one?

A. The French line.

Q. Is that the same French line that has ships on the Atlantic?

A. No, sir, it is another organization.

Q. Another company?

A Yes, sir.

Q. How many ships does the French line have?

A. They have an arrival here every month.

Q. Monthly. Do they compete with you both ways, or only one way?

A. Only homeward, inward.

Q. What do they take over?

A. They just keep going around to the eastward all the time, keep a line of ships going around the world.

2727 Q. Then they go from San Francisco around the Horn?

A. Yes, sir, and they touch all along the coast of Central America, Mexico, South America, and so on.

Q. And they have separate agencies in the Orient from yours?

A. Yes, sir.

Q. And they compete with you for business from the Orient here?

A. Yes, sir.

Q. Is there any other line coming inward?

A. None that I know of.

Q. Well, now we will go up to the Sound again. You have spoken of the Northern Pacific line. What other line is there?

A. There is the Nippon Nushen Kaisha, run in connection with the Great Northern.

Q. That was established about 11 years ago?

A. Oh, no; established about 1898 or 1899.

Q. Was it not established in 1896?

A. Well, it may have been, I am not sure about it; I would not be sure of the date of that first operation, but I think it was later than that.

Q. Was that company represented in any way by you in the Orient?

A. No, sir.

Q. Has it been competitive with you?

A. Yes, sir.

Q. What other line is there up there?

A. There is a line called the Ocean Steamship Company.

Q. Where does that sail from?

A. Tacoma or Seattle.

Q. Did they have separate agencies from yours?

A. Yes, sir.

Q. And are they competing with you?

A. Yes, sir.

Q. Both ways?

2728 A. Yes, sir. Then there is the China Mutual Steamship Company.

Q. The what?

A. The China Mutual Steamship Company.

Q. The China Mutual?

A. Yes, sir.

Q. Where do they sail from?

A. Tacoma or Seattle.

Q. They have separate agencies from yours?

A. Yes, sir.

Q. And are competitive with you?

A. Yes, sir.

Q. Both ways?

A. Yes, sir.

Q. Any other lines?

A. Then there was the Dodwell line, of Portland.

Q. You have omitted the Great Northern line, have you?

A. That is the Nippon Nushen Kaisha. I am now along there.

Q. I see; you are taking the order in which they were established.

A. Yes, sir.

Q. Now, the line to Portland. In what year was that established?

A. That was along in 1896 or 1897.

Q. And it lasted three years, did it not?

A. Yes, sir.

Q. They had separate agencies from yours?

A. Yes, sir.

Q. Competing with you?

A. Yes, sir.

Q. Who succeeded them?

A. They were succeeded by Samuels & Samuels.

Q. How long did they continue in that trade?

A. They were there two or three years—or it may have been the other way, by the way; it may have been Samuels & Samuels first. Samuels & Samuels were on at the time the O. R. & N. was in the hands of a receiver.

Q. I thought you had that turned around.

A. Yes, sir. It was first Samuels & Samuels, and then the other company.

2729 Q. They were both of them competitors of yours?

A. Yes, sir.

Q. Who succeeded Dodwell?

A. The O. R. & N.

Q. For about three months intervening, there was a man named Graham had some ships running in connection with the O. R. & N., was there not?

A. I never considered that a line.

Q. He had some ships there, chartered some ships?

A. I think he did; yes, sir.

Q. And that was run in connection with the O. R. & N.?

A. I don't know what the connection was. I had nothing to do with it.

Q. Run from Portland?

A. Yes, sir.

Q. And was it competing with you, so long as it lasted?

A. We didn't consider it competition.

Q. Too small?

A. Yes, sir; irregular.

Q. In so far as it did any business, it was competitive business?

A. Well, it took it away from some transpacific line; if it got any business it was business that all the lines would have shared. But we didn't consider it a competing line at all, from our standpoint.

Q. You did not represent Graham over there at all, did you?

A. No, sir.

Q. So if Graham succeeded in getting any business he got it in opposition to you and the other lines?

A. Yes, sir; that is right.

Q. Did you regard the Dodwell line as a competing line?

A. Yes, sir.

Q. And the Samuels' line?

A. Yes, sir.

2730 Q. And the Portland and Asiatic?

A. Yes, sir.

Q. That Portland and Asiatic Company was organized by the O. R. & N. Company, you have stated—or was it?

A. Yes, sir.

Q. What became of the Portland and Asiatic?

A. Still running.

Q. At the present time are you representing them?

A. Yes, sir.

Q. How long since?

A. 1904.

Q. 1904. Prior to that time had it been run independently of you?

A. I had nothing to do with it.

Q. Well, independently of your agency, the Pacific Mail.

A. Yes, sir. It is today independent of the Pacific Mail.

Q. Yes. I understand—we will get at that later. But up to 1904 they had agents of their own, had they not?

A. Yes, sir.

Q. In the Orient?

A. Yes, sir.

Q. Soliciting traffic?

A. Yes, sir.

Q. Performing the usual duties of agents?

A. Yes, sir.

Q. Today they have the same agents as the Pacific Mail, have they not?

A. The Pacific Mail are its agents.

Q. The Pacific Mail are its agents?

A. Yes, sir.

Q. I notice on the literature put out by the Southern Pacific road or by these steamship companies that the same agents appear as the representatives of the Portland and Asiatic in the Orient that also appear as agents of the Pacific Mail. That is the case, is it not?

A. Yes, sir.

Q. And this Portland and Asiatic line was put in——

A. (Int'g.) I would like to correct the thing here, Mr. Severance, and that is to say that in the port of Nagasaki,
2731 which is a large coaling port, practically, Holmes Ringer & Company represent all steamship lines that enter that one port, and when you asked me in regard to that one, I neglected to say that that is principally a commercial port attending to the provisioning and coaling of ships.

Q. That only applies to Nagasaki?

A. Yes, sir.

Q. You have been personally in the Orient, Mr. Schwerin?

A. Yes, sir.

Q. And are familiar with the way business is done?

A. Yes, sir.

Q. You still have the Great Northern to enumerate?

A. Yes, sir, then the Great Northern came on. Before them came on the Boston Towboat Company, with the Tremont, the Fremont, the Lyra, the Hyades, and the Pleiades.

Q. Lots of stars. Then, in addition to that, were there two ships of the Great Northern?

A. The "Minnesota" and the "Dakota," yes.

Q. That constitutes the whole list, does it not, of the ships that are plying between those ports, that is, the ports of the Pacific coast and the Orient, as a regular thing, outside of the tramp boats?

A. At the present time?
Q. Yes.
A. Yes, sir.
Q. Was there at one time, Mr. Schwerin, a line of boats proceeding from San Diego?
A. Yes, sir.
Q. What was that line?
A. A line put out by a shipping firm.
Q. Do you remember who they were, and about when the line was established, and how long it lasted?
A. I don't remember the name of the firm—Downing something—no, the name of the firm was——
2732 Q. (Int'g.) Well, that is perhaps not material.
A. Well, it was an English shipping firm put the line on, and they were on, I think, about two years.
Q. And between what dates, about?
A. 1901 and '2 or '3—around there.
Q. And was that line a competing line?
A. Yes, sir.
Q. You did not represent them?
A. No, sir.
Q. That line was procured to be run by the Santa Fe road, was it not?
A. They ran in connection with the Santa Fe.
Q. Yes. Was it not your understanding that it was through the influence of the Santa Fe that the line was established?
A. I know nothing about their arrangements.
Q. All you know about it was that they ran in connection with the Santa Fe?
A. Yes, sir.
Q. And that is necessarily so, because the Santa Fe is the only line reaching San Diego?
A. I presume so.
Q. There are no other railroad lines reaching there?
A. No, sir.
Q. And there were not at that time?
A. No, sir.
Q. Do you recall any conferences between the officials of the Santa Fe and the Southern Pacific or yourself about the time this line to San Diego was given up?
A. I had none.
Q. You had none?
A. No, sir.
Q. You were not present at any conference between Mr. Stubbs and Mr. Ripley, or any other representative of the Santa Fe, with reference to the movement by rail of Oriental traffic, or at which there was discussed the movement by rail of Oriental traffic brought
2733 to this country by the San Francisco lines under your jurisdiction?

A. I have no recollection of such a meeting.

Q. You don't remember any such meeting?

A. No, sir.

Q. Do you remember, Mr. Schwerin, about the time that the San Diego line was given up, that there was some conversation or talk as to how the freight coming here from the Orient should go forward to the east, if that line was abandoned and the Santa Fe people brought their Oriental shipments by the way of San Francisco?

A. I had always tried to get the Santa Fe into business relations with us; I had always told them I could do it better than they could get it done by anybody else.

Q. I have no doubt you believed it. About that time, Mr. Schwerin, did you represent these modest suggestions regarding your ability to handle it?

A. I have been soliciting this Santa Fe business all the time, and trying to get it.

Q. Do you recall any assurances that were given to the Santa Fe people that if they would give up trying to support this line out of San Diego, they would be treated fairly in the division of east-bound business outside of San Francisco?

A. No, sir. I know of no meeting where that question was discussed with the Santa Fe officers.

Q. With whom did you have your conferences at which you made those assurances? With what individual?

A. Every time I saw Paul Morton, I told him he ought to give up his business, that we could do it better than anybody else. He was very much dissatisfied with the service he was getting at San Diego.

2734 Q. I thought I could lay my hands on some testimony given by Mr. Stubbs, but I guess I have missed it. You were frequently—well, as the result either of the poor service out of San Diego, or of your solicitation, or that of some of your people, the line was abandoned, was it not?

A. I understood the line was abandoned because they lost so much money.

Q. Because they lost so much money? What arrangements do your agents in the Orient make on business coming to San Francisco as to the route that it shall take by rail when it is consigned to the east, or what do they attempt to make? Do you attempt to distribute it fairly between the Santa Fe and the Southern Pacific?

A. They do not make any arrangement.

Q. You say that your agents have the right to make through billings?

A. Yes, sir.

Q. And that they solicit business?

A. Yes, sir.

Q. In the soliciting of that business, do they solicit or ask the shippers to route it in any particular way after it gets to this country?

A. No, sir.

Q. Does the Southern Pacific maintain any separate agencies in the Orient?

A. No, sir.

Q. Does the Santa Fe maintain any?

A. No, sir.

Q. Then will you explain, if you can, how the business is divided over there, as to removal to the east after it reaches this country?

A. A ship comes in here and we just turn the whole cargo over to the Southern Pacific; and another ship comes in and we turn the whole cargo over to the Santa Fe.

2735 Q. That is what I want to get at?

A. Yes, sir.

Q. That is the way you divide it?

A. Yes, sir.

Q. Do you divide it equally? By that I mean, do you first give a shipload of merchandise to one road, and then a shipload to the other?

A. That is the way it is done, yes, sir.

Q. How long have you been doing that, Mr. Schwerin?

A. Well, I think the past six months.

Q. For the past six months. Prior to six months ago what method did you take to secure a distribution of the east-bound traffic as between the Southern Pacific and the Santa Fe?

A. We just loaded the cars put on the dock, and the railroad did the routing.

Comr. LANE. The last six months, the Santa Fe has had the boats from the Orient?

Mr. SEVERANCE. It has had the same amount, I think he means.

Comr. LANE. An equal amount?

WITNESS. No, sir, I would not say that.

Comr. LANE. Approximately so?

WITNESS. No, sir, I would not be able to tell how much one road got or the other, without going to the statistics.

Mr. SEVERANCE. The question whether they got an equal amount would depend upon the amount carried by the respective ships, I presume.

Comr. LANE. Is it the agreement that each alternative ship shall go to the Santa Fe?

WITNESS. No, sir.

Q. What is the nature of the agreement?

2736 A. We have no agreement. We simply have an arrangement for the exchange of traffic. The Southern Pacific now gives a much larger proportion of traffic than the Santa Fe does, and we try to give the Southern Pacific as nearly equal percentages as we can offer them, and the same way with the Santa Fe.

Q. That is, if the Southern Pacific gives you 75 per cent. of the inward-bound freight?

A. Yes, sir, we would be in duty bound to give the Southern Pacific 75 per cent. of inward-bound freight. If the reverse of that were to take place, and if the Santa Fe should give us 75 per cent. of the outward-bound business, I would naturally be inclined to give the Santa Fe 75 per cent. of the inward-bound business.

Q. How long do you think that inclination of yours would be indulged, so long as the Southern Pacific owns the control of the Pacific Mail?

A. The Southern Pacific has never interfered in any shape, form or description, with my operation of the steamship company.

Q. They probably have not had reason to.

A. Yes, sir, they have many times. I think Mr. Stubbs looks upon me in the question of traffic as if I had nothing whatever to do with any incorporation whose stock is owned in the other company which he is employed by.

Q. You think Mr. Stubbs looks on you as a rank outsider?

A. Absolutely, over and over again—to my sorrow.

Q. Now, Mr. Schwerin, to proceed a little further, with this division of business between the Santa Fe and the Southern Pacific. You say at the present time you give one shipload to one line
2737 and another shipload to the other line, and you have done that for six months?

A. Yes, sir, about six months.

Q. Prior to six months ago, how did you make the division?

A. Turned the freight over to the Southern Pacific Company.

Q. All of it?

A. Yes, sir.

Q. And then the Southern Pacific Company did what with it? What they pleased?

A. I suppose that they routed it—they had an arrangement by which they routed a certain portion by the Santa Fe, and a certain portion by the Southern Pacific, but that was done under our, under the steamship company's understanding.

Q. Now, let us see, Mr. Schwerin. Prior to six months ago all the freight was turned over by you to the Southern Pacific. Then the Southern Pacific, of course, had absolute control of that freight, could have sent it forward by its own lines, either by Ogden, the Central & Union Pacific route, or the Sunset Route, or deliver it to the Santa Fe. That is true, is it not?

A. Yes, sir.

Q. And for how many years had you been delivering all your freight to the Southern Pacific?

A. Since the—I think shortly after the California and Asiatic line went out of business—the California and Oriental line, I should say, went out of business.

Q. What was the California and Oriental line?

A. That was the line to San Diego.

Q. While that line was in existence, what did you do with your freight when it was got in here to San Francisco?

A. Sent it over to the Southern Pacific.

2738 Q. Always?

A. Yes, sir.

Q. And did the Southern Pacific send all of it east over their lines?

A. I don't know.

Q. Aren't your relations with Mr. Stubbs' organization sufficiently intimate so that you know what becomes of the freight that leaves here?

A. No, sir.

Q. So that you don't know as to whether they gave any of it to the Santa Fe at any time?

A. They may have given it to the Santa Fe at that time, without my knowledge.

Q. Yes, without your knowledge. But they did not do it with your knowledge?

A. Not to my knowledge.

Q. Did they a year ago give any of it to the Santa Fe?

A. Yes, sir.

Q. Did they not give a certain amount of that traffic to the Santa Fe at all times after the San Diego line was abandoned?

A. That is my impression.

Q. And was it not because of the assurance given to the Santa Fe road that it should have a certain amount of this business coming over the Pacific Mail and its allied lines, that the San Diego line was abandoned?

A. As I stated before, Mr. Severance, I personally solicited that business myself; I urged the Santa Fe people to give us that business, and I told them, and I talked with Mr. Paul Morton, who was the only Santa Fe man that I had any connection with, and told him that we could transact his business and do it better for him than he could get it done by anybody else.

Q. Now, Mr. Schwerin, that does not quite touch the point,

2739 it seems to me. You say you could transact their business. Now, you have already testified that cargoes coming in from the Orient are discharged from your ships and turned over to the Southern Pacific—they were until those last six months?

A. Yes, sir.

Q. Now, it was not the transaction then, of the business of the Santa Fe, in any way, was it, unless you could hold out to them some assurance of traffic. Did you hold out to Mr. Morton an assurance that his line would receive traffic from your ships if he would abandon the San Diego line?

A. That stood to reason, that we had to, in making a traffic arrangement of that kind—it stood to reason that we had to give him traffic in exchange for the traffic that he gave us.

Q. That is what I am trying to get at. You spoke of handling his business——

A. (Int'g.) I made a report to the Santa Fe, and showed them the amount of tonnage which we would give them.

Q. That is, the amount you would give them if they would abandon the San Diego line?

A. No, sir; after we were in operation with the Santa Fe.

Q. The amount of tonnage they had been given?

A. The amount that they had been given; I kept them posted as to the amount of tonnage that passed over their lines.

Q. Do you mean tonnage west-bound or east-bound?

A. Tonnage east-bound, that is, bound from San Francisco to interior points of the United States.

Q. How did you get that information?

A. We kept track of it on the dock. The Santa Fe cars
2740 would be switched in to be loaded with Santa Fe freight. We did not load Southern Pacific cars with Santa Fe freight.

Q. I understood you turned all your cars over to the Southern Pacific?

A. So we did, but we kept track of the cars.

Q. You kept track of the amount of the business that was given to the Santa Fe by the Southern Pacific?

A. Yes, sir.

Q. That is right, is it?

A. Yes, sir.

Q. And you did assure Mr. Morton, in order to procure them to abandon the San Diego line, that they should have a fair amount, or a certain amount, I don't know how you put it——

A. I never made any stipulation with Mr. Morton as to any amount.

Q. Not as to any amount, but what was your proposition to him, then, outside of the general statement that you would handle his business better? Did you not give him some assurance?

A. No, sir, I gave him no assurance of a definite amount of freight.

Q. I understand, but did you tell him he would get some freight from you?

A. Oh, yes, undoubtedly.

Q. Was that as near as you got at the actual result?

A. I told you, Mr. Severance, that I have no idea of ever having discussed with Mr. Paul Morton anything in regard to a definite amount of freight to be turned over to the Santa Fe.

Comr. LANE. Have you a copy of that circular, or report that you made to the Santa Fe of the business that you have then?

WITNESS. It was not a circular, but in the shape of a report.
2741 Comr. LANE. Have you got a copy of that?

WITNESS. No, sir. Everything was burned up in the fire.

Comr. LANE. Perhaps the Santa Fe people have one.

WITNESS. They may have.

Q. When did you make out that report?

A. Each month, after the month's business passed over the dock.

Q. Up to what time?

A. I don't think there has been any made since the fire. In fact, I am sure there have been none made since the fire.

Q. That was delivered to whom representing the Santa Fe?

A. Sent to Mr. Bissell.

Q. Then he would probably know. Were his offices burned up, too?

A. I don't know exactly as to that. I can tell you, Mr. Severance, that sometimes that freight would run for a month 20 per cent., sometimes it would run 30 per cent., sometimes 17 per cent., sometimes 28 per cent.—it varied from month to month.

Q. It depended upon the amount of freight that the Southern Pacific gave to the Santa Fe. That is all there was of it. There was not any way that the Santa Fe could get in there and get that except by sufferance of the Southern Pacific, was there?

A. I think if the Santa Fe people had had cause to complain in regard to the amount of freight they were receiving in exchange for the amount of outward freight they were giving us, that we would have heard from them: they would have found fault with us.

Q. They were quite content, were they?

A. Well, we were giving them more freight than they were
2742 giving us. They were not giving us the same amount——

Q. I say, they were content, were they?

A. As far as I know.

Q. They did not make any fuss about the amount of business they were getting?

A. No, sir.

Q. You say in those times, you gave them from 17 to 20 per cent. How did you happen to increase that to what might possibly be 50 per cent., assuming that the boats were all equally burdened, six months ago?

A. Well, a ship may come in here—for instance, the "Mongolia" may come in here with only 1700 tons overland cargo, and the next voyage she might come in here with 8000 tons of overland cargo.

Q. I appreciate that.

A. There is not a ship comes in with any definite amount of overland cargo.

Q. I appreciate that thoroughly, but if you are without discrimination, turning the ships over to the Santa Fe and the Southern Pacific, turning them over indiscriminately as they come, one of them is just as likely to get a big cargo as the other?

A. Yes; but if the Santa Fe is not giving us outward tonnage, we would not turn every second ship over to the Santa Fe; we would regulate that so as to have a fair exchange for the amount of tonnage over to us.

Q. I understood you to say, Mr. Schwerin (perhaps I misunderstood you), that about six months ago you adopted the plan of sending alternate ships to the Santa Fe?

A. That is because it just happened that way at the present time. The through tonnage has been very light.

Q. Where do you discharge your cargo?

A. At San Francisco, Pier 42 and Pier 44.

2743 Q. At some point that is reached by the Santa Fe as well as by the Southern Pacific?

A. It is switched from the Southern Pacific.

Q. It is switched from the Southern Pacific to the Santa Fe?

A. Yes, sir.

Q. And you caused that to be done with every alternate cargo?

Mr. LOVETT. He said alternate cargoes from——

Q. I mean you have been lately, for six months past?

A. Yes, sir.

Q. What you mean is that you do not know that you will continue to do that?

A. No, sir.

Q. But you have continued that for six months. At whose suggestion, if anyone's, did you make that change in the method of handling the amount of traffic for each?

A. I think the question came up in relation to the steamship company routing the overland freight.

Q. Came up between whom, sir?

A. Come up between Mr. Luce and Mr. Chambers and myself.

Q. Who is Mr. Luce?

A. He is the general freight agent of the Southern Pacific Company in San Francisco.

Q. And who is Mr. Chambers?

A. He is the general freight agent of the Santa Fe.

Q. And this was a conversation between you three gentlemen?

A. Yes, sir.

Q. What was said at that conversation, in substance, by each of you?

A. Well, I believe that I raised the point that if we turned the freight—if we turned the freight over to the Southern Pacific

2744 Company the question immediately arose in regard to the Santa Fe handling the freight. We had had considerable trouble on the dock in regard to getting Southern Pacific cars, and I think I threatened that unless I had less trouble in getting cars from the Southern Pacific, I would shove all the freight over the Santa Fe; if the Southern Pacific didn't give me any cars, I would send the freight over the Santa Fe, because the freight was congested on the docks there.

Q. Did that meet with any remonstrance on the part of the majority owners of stock in the Pacific Mail?

A. No, sir. The owners have never remonstrated or said anything upon the question. We discussed the question and concluded the best way to do, instead of apportioning out of the ship any special cargo, for instance, a cargo that might be served best by the Santa Fe lines, to try to aggregate that cargo out of the ship, that we would turn over the whole cargo to the Santa Fe, and let them bill

it out as they saw fit, and then turn over the whole net cargo to the Southern Pacific, and let them bill it out as they saw fit.

Q. Mr. Schwerin, did you three gentlemen agree on that.

A. We did.

Q. And you have since carried out that agreement?

A. As far as I know.

Q. Up to this date?

A. As far as I know, it has been carried out.

Q. So that you give those instructions to your subordinates?

A. Yes, sir.

Q. And that was satisfactory to the two roads with whom
2745 you made the trade?

A. As far as I know, yes, sir.

Comr. LANE. What was the month in which that arrangement was made?

WITNESS. Sir?

Comr. LANE. What was the month in last year in which that arrangement was made?

WITNESS. I don't just recollect what month it was.

Comr. LANE. Was it about the middle of the year?

WITNESS. No, sir. I think it was between September and November. It may have been later than that, when I finally met those people, and we had that conversation about the delivery of the cars of the Southern Pacific and the Atchison there—it may have been November, and it may have been December. I don't remember, Mr. Lane, just when the meeting took place.

Comr. LANE. Did you adopt any new policy as to the publishing of rates, either on the other side or on this side, for Oriental business?

WITNESS. No, sir.

Comr. LANE. During last year?

WITNESS. No, sir.

Comr. LANE. Did you publish your new rates over on the other side?

WITNESS. They were published by the rail connections in their joint Oriental traffic.

Comr. LANE. Published by the rail connections on this side?

WITNESS. Yes, sir.

2746 Comr. LANE. For business moving from this side outward?

WITNESS. I think there is a joint tariff published by them for inward rates also.

Comr. LANE. For inward rates?

WITNESS. Yes, sir, transcontinental; transpacific and transcontinental.

Comr. LANE. Where could that rate be found over in the Orient?

WITNESS. That tariff, do you mean?

Comr. LANE. That tariff, yes.

WITNESS. Our agents have it over there.

Comr. LANE. Your agents have it over there?

WITNESS. Yes, sir.

Comr. LANE. That is, the tariff for business moving to the United States and inland?

WITNESS. Yes, sir.

Comr. LANE. Is that tariff the same today that it was a year ago?

WITNESS. I think there have been some corrections made in the tariff, in relation to certain freights, and also in relation to what they call the outboard freights. You see there is an arbitrary freight originating in Tientsin—they take an arbitrary to Shanghai or Kobe or Newchang or Nagasaki, and these outboard rates were modified, and I think the new rate sheet has got the new, modified rates in it.

Comr. LANE. Were the rates from San Francisco to eastern points in the United States over the Santa Fe the same as rates to the same points over the Southern Pacific?

2747 WITNESS. To the best of my knowledge, yes. All the transcontinental lines and all the transpacific lines are billing at the same rates. The principal commodities we bring from the Orient are tea and matting.

Comr. LANE. Do you import much rice?

WITNESS. Not overland, no; locally.

Comr. LANE. And silk?

WITNESS. Yes, sir.

Comr. LANE. Are curios of much importance?

WITNESS. Yes, sir. But the great bulk of the commodities are tea and matting.

Comr. LANE. When you route business over on the other side for the east, say Chicago or New York, do you give a through bill of lading which names the American railroad that carries it to the east?

WITNESS. No, sir.

Comr. LANE. You do not?

WITNESS. No, sir. We give our own bill of lading.

Comr. LANE. You give your own bill of lading, showing the business as going over the Occidental & Oriental, or the Pacific Mail?

WITNESS. Yes, sir—whichever line it moves on.

Comr. LANE. And that bill of lading runs from the point in China, Hong Kong we will say, or Nagasaki in Japan, to Chicago, say?

WITNESS. Yes, sir, via the port of San Francisco.

Comr. LANE. Via the port of San Francisco?

WITNESS. Yes, sir.

2748 Comr. LANE. And it is reserved to you to determine there, or at any time you please, just how the freight shall move, once it reaches the port of San Francisco?

WITNESS. Yes, sir.

Q. At the time the line was running to San Diego, you routed all the business to the east over the Southern Pacific, did you not?

A. It was routed that way.

Q. Well, you caused it to be done, or permitted it to be done?

A. That was the route that——

Q. (Int'g.) Who routed it? You seem to make a distinction between causing it to be routed, and routing it. Who did it?

A. I suppose it was routed by the Southern Pacific officials.

Q. Prior to the abandonment of the San Diego line, prior to their abandoning their line to San Diego, and coming up here, the Southern Pacific had all the business?

A. Yes, sir.

Q. And immediately the line from San Diego was abandoned, and the Santa Fe freight began to go through this port, the Santa Fe began to get a percentage of the inward business, which you say varied from 17 to 20 per cent?

A. It went higher than that sometimes.

Q. Sometimes higher than that?

A. That is right.

Q. Since then, the Santa Fe has had no line of ships in competition with you, and going out of San Diego?

A. No, sir.

Q. What lines does that division of traffic embrace? Does it embrace the Japanase line, or only the Occidental & Oriental and the Pacific Mail?

A. All three.

Q. All three?

A. Yes, sir.

2749 Q. And that covers the distribution of all the traffic coming in here by those three lines from all ports of the Orient?

A. Yes, sir.

Q. When you turn over to the Southern Pacific its share of this business, do you have anything to do with routing it to the east; that is, as to deciding what particular route it shall take to the east?

A. No, sir.

Q. As it leaves the lines of the Southern Pacific?

A. No, sir.

Q. That is left to the Southern Pacific?

A. Yes, sir.

Q. Do you happen to know, sir, whether the Atlantic seaboard business, New York business, Boston business, and so on, moves by the Sunset Route, in case the Southern Pacific has the routing?

A. It could move that way, but if it did we would object.

Q. You would object to the Sunset Route?

A. Yes, sir.

Q. Why?

A. We are all competing for the rapidity with which we deliver tonnage from the Orient destined for the Atlantic seaboard, and we believe that the Central & Union Pacific, and Chicago & Northwestern can make better time than the Sunset—we want that all-rail route.

Q. You prefer the all-rail route?

A. Yes, sir. The people in New York will telegraph to the Orient asking when the goods will arrive, and all the lines are competing to

make the best showing with reference to the time occupied in transit upon the question of who can give the best service.

Q. You find, do you, that it is best for you to have the stuff moved by the Southern Pacific, the Union Pacific, and
2750 the Northwestern?

A. Yes, sir. That has been the route since I can remember.

Q. That has been the route that you have preferred since you have been there. Do you happen to know whether that is the way——

A. (Int'g.) The Rio Grande, I believe some of the teas used to go over the Rio Grande.

Q. What is that?

A. Some of the teas used to go by the Rio Grande.

Q. They don't any more, do they?

A. I don't know; I think so.

Q. They do?

A. I think so.

Q. Who routes them that way?

A. I suppose the railroads.

Q. You don't mean to say, do you, Mr. Schwerin, that the Southern Pacific Railroad agents here at San Francisco, if they have the routing of the traffic, route it over the Rio Grande?

A. I have understood that teas are still going over the Rio Grande.

Q. But it is not routed that way by the Southern Pacific, where it is left in their hands to route, is it?

A. There is nobody else could route it except the Southern Pacific.

Q. Nobody else could route it?

A. No, sir.

Q. Then the Southern Pacific absolutely controls the routing of the traffic after you turn it over to them?

A. It is for their account, yes, sir.

Q. Neither the shippers nor the consignee have any voice in that?

A. If they have, they never exercise it.

Q. They never exercise it?

A. No, sir.

2751 Q. So that if the Rio Grande gets any of that traffic, it gets it through the kindness of the Southern Pacific?

A. Yes, sir.

Q. Now, what line to the east does the traffic that goes over the Portland and Asiatic take?

A. It takes the O. R. & N., the Oregon Short Line, and U. P.

Q. And the Northwestern?

A. I suppose so.

A. Can you tell any reason why the traffic goes Northwestern instead of by the Milwaukee & St. Paul, or any other line east of Omaha?

A. No, sir.

Q. You know nothing about that?

A. No, sir.

Q. You merely know the fact, without knowing the reasons?

A. I merely know the fact. I don't know that it all goes by the Northwestern. I know that it goes up on the Oregon Short Line, and the Oregon Railway & Navigation Company, up to the junction of the Union Pacific. After that I don't know where it goes.

Q. After it gets to——

Mr. DUNNE. He has not said it always goes Northwestern.

Mr. SEVERANCE. I understood him to say that that is the way it moved east of Omaha, by the Northwestern.

Mr. DUNNE. No, that was the implication of your question, but that was not his testimony.

Mr. SEVERANCE. I certainly do not want to misquote Mr. Schwerin, or put him in a hole, or anything of that kind.

WITNESS. I want to correct myself.

Mr. SEVERANCE. If I mistook you, correct me.

WITNESS. I made the remark that the Oregon Short Line,
2752 the Oregon Railway and Navigation Company, the U. P., and the Northwestern, because it is the habit to take it on that line. But I meant that after striking the U. P., I don't know how it went. I know that up to that point it went over the O. R. & N., and the Short Line. I would suppose it would go the shortest route under the same conditions, if we wanted it to go from San Francisco.

Q. That is, if you were sending it from San Francisco, that is the route you would have to take?

A. That is the route I would like to have it go.

Q. And that is the route, as you understand it, that the bulk of the traffic takes?

A. Yes, sir, because we have a fast freight, are supposed to have an Asiatic fast freight on that line.

Q. Is there any difference, Mr. Schwerin, any substantial difference in the character of the commodities that are imported through the Portland gateway and those that are imported through the San Francisco gateway, or are they about the same?

A. As far as the Portland tonnage is concerned, with the exception of silk, silk piece goods, the rougher or common class of goods that go by tramp steamers rather than by mail and dispatch steamers, and excluding this local Oriental business which we have largely here in San Francisco, the general tonnage is about the same.

Q. The same class of goods?

A. Matting, tea, and curios.

Q. Do you remember whether at the time that the O. R. & N. was running boats to the Orient, or rather had boats running in connection with it, and at the time that the O. R. & N. was
2753 independent of the Southern Pacific, whether it was customary for the O. R. & N. boats from Portland to San Francisco to bring down any Oriental traffic that came in by Portland and deliver it here in San Francisco?

A. Yes, sir.

Q. And that was done, was it not, without any extra charge to the shipper?

A. Yes, sir, but it was a very small amount.

Q. Yes, a small amount, but whatever it was, that is the fact?

A. We have the same thing for Portland now.

Q. That is, you bring goods down from Portland?

A. Yes, sir.

Q. If they come in that way?

A. Yes, sir.

Q. Destined to San Francisco?

A. Yes, sir.

Q. And who pays the freight?

A. The same rates apply to San Francisco via Portland as apply to San Francisco direct.

Q. I understand that. But who absorbs that charge between San Francisco and Portland?

A. It is divided between the Portland and Asiatic line, and the San Francisco and Portland line—prorated.

Q. Is the San Francisco and Portland line a connection, legally, I mean, has it any legal connection with the Portland and Asiatic? Does it belong to the corporation?

A. No, sir. It is an independent organization.

Q. But you expect—and I say "you," speaking of you as representing the Portland and San Francisco line—you expect from the Portland and Asiatic a less carriage charge, do you, for bringing these goods from the Orient that come into Portland down to San Francisco that you would expect on a local shipment?

A. Yes, sir.

2754 Q. And that is what you mean when you say that the charge from Portland to San Francisco is divided between the two companies?

A. Prorated.

Q. Will you explain that a little more in detail, what you mean by "prorated"?

A. Well, we might prorate on our locals—for instance, there is a certain rate, say a six dollar rate, from Hong Kong to Portland, and there may be a two-dollar-eighty rate from Portland to San Francisco. If the Asiatic line took the whole of it, the San Francisco line would not get anything. So we prorate that on the basis of our locals, divide the six dollars on the basis of the relation which the two locals bear to each other.

Q. So that in that case, the Portland and Asiatic instead of getting the $6 for itself that it would have had if the cargo had gone from there to the east——

A. (Interrupting.) Gone direct to Portland; it is local cargo that I am comparing there.

Q. I want to be sure that we understand each other.

A. I am talking about local cargo there.

Q. Let us take the case of an importation from the Orient.

A. Locally, or overland?

Q. To San Francisco, we will say, and it comes to San Francisco by way of the Portland & Asiatic.

A. Yes, sir, that is a local shipment. We call all shipments to the coast local shipments.

Q. Very well. We understand each other upon that term. I am speaking now of shipments from say China or Japan to San Francisco, and instead of moving directly to San Francisco, it comes via Portland,

A. Yes, sir.

2755 Q. The rate, you say, to San Francisco is just the same?

A. Yes, sir.

Q. (Continuing.) Whether it comes direct by ship to San Francisco, or by ship to Portland, then trans-shipped to San Francisco?

A. Yes, sir.

Q. Now, take your case that you spoke of; suppose the rate on that commodity is $6 from the Orient to any of these Pacific coast points, such as, for instance, San Francisco. How would you divide that revenue between the Portland & Asiatic and San Francisco & Portland?

A. Well, if the local rate from Portland was $3, then we would prorate on the basis of 3 to 6.

Q. That would give them half as much for bringing it from Portland down here as the Portland & Asiatic would get for bringing it over?

A. One would get three-ninths, and the other would get six-ninths.

Q. That is what I say. The San Francisco & Portland would get half as much. That is the basis on which you make the division, is it?

A. Yes, sir.

Q. In making that division, you act for both parties, do you not?

A. Yes, sir.

Q. And that is your best judgment as to what is a fair division?

A. Yes, sir.

Q. Prior to the time that you established that division, do you happen to know what the charge was that was paid to the San Francisco & Portland line—in the old days when there were O. R. & N. boats?

A. No, sir.

Q. You don't know about that?

A. No, sir.

Q. This division you established as soon as you came into charge of the lines, did you?

2756 A. I don't want you to understand that they always prorated on the basis of the locals. There might be times when we would not prorate on the basis of the locals.

Q. Why, Mr. Schwerin? Why so?

A. Because the local Portland-San Francisco rate on the commodity might be so much higher in proportion to the transpacific rate that it would be entirely unfair to the transpacific to prorate on the locals.

Q. In that case, how do you divide it—on some terms——

A. (Interrupting.) Somewhat like Solomon—cut a fair division to each.

Q. Use a knife?

A. Yes, sir.

Q. Now, to leave the transpacific business for a moment, Mr. Schwerin. The Pacific Mail runs ships in other directions, does it not?

A. Yes, sir: we have the Panama line.

Q. To what ports do you run on that line?

A. To the port of Manzanilla and Mazatlin, San Blas, Acapulco, Coos, Champerico, San Jose, Acajutla, La Libertad, La Union, Corinta, and Ancon.

Q. And what?

A. Ancon—that is the new American port.

Q. That is a port of Panama?

A. Yes, sir.

Q. Before that port was established, you ran to Panama?

A. It is the same thing; they just changed the name of the terminal to Ancon.

Q. That is, Ancon is on the American zone?

A. Yes, sir; in the American zone.

Q. The canal zone?

A. Yes, sir.

Q. Do you bring out commodities from the east by way of Panama?

A. Yes, sir.

2757 Q. Have you any boats on the other side of the Isthmus?

A. No, sir.

Q. With what line of ships do you operate in connection with the trade that comes around by Panama?

A. With the United Fruit Company from Gulf points and with the Panama Railroad line—from New York—the Panama Railroad Company's steamships—and with the Hamburg-American Packet Company from New York to points other than American, and with all the trans-Atlantic lines out of Colon.

Q. Out of Colon?

A. Yes, sir.

Q. And you accept their shipments from Europe, do you not, that way?

A. Yes, sir.

Q. Brought from Trans-Atlantic points and then on down from New York and across the Isthmus?

A. Yes, sir, and to all points I have named, the points along the Central American and Mexican coast.

Q. How many ships had you in that trade when you first came here in 1893? You need not bother to give the names, but give the number.

A. There were six running on the through line.

Q. That is, from Panama to San Francisco?

A. Yes, sir.

Q. Has that fleet been enlarged or diminished?

A. Enlarged. We are running nine there now.

Q. You are running nine there now?

A. Yes, sir.

Q. And how long have you been running nine?

A. About five years.

Q. Now, as to that business, Mr. Schwerin, your line is competitive with the rail lines, is it not, from New York to San Francisco?

A. Yes, sir.

Q. And always has been?

A. Yes, sir.

2758 Q. Since 1893, when you went into the Pacific Mail?

A. Yes, sir.

Q. And the business, you say, has increased; you have three more ships than you had then?

A. Yes, sir.

Q. What is their tonnage as compared with the average tonnage of ships that were running on the line in 1893?

A. Well, the "Peking" is on that run, and the "Peru" is on that run, and they were transatlantic steamers before.

Q. Are they larger than the old boats?

A. The "Peking" took the place of three boats that went off, practically, and the "Peru" of at least two.

Q. Would you be able to without any trouble figure in your head the aggregate tonnage of that fleet in 1893, and the aggregate tonnage of that fleet at the present time?

A. I could figure it on a piece of paper better than I could in my head.

Q. All right. I will loan you a piece of paper, and a pencil too, if you like.

A. Would it not be better if I gave you that accurately afterwards.

Q. No, just give it as near as you can now. I don't care whether it is absolutely accurate, but just approximately.

Commissioner LANE. Mr. Severance, how soon will you be through with this witness?

Mr. SEVERANCE. I don't know, your Honor. I should think I would be half an hour longer. That is my impression. I have some other matters that I want to examine him upon.

Commissioner LANE. We will adjourn at 4 o'clock.

Mr. SEVERANCE. Your Honor wants to adjourn at 4?

2759 Commissioner LANE. Yes, promptly.

Mr. SEVERANCE. Then I will not be able to finish with Mr. Schwerin tonight because it is 10 minutes to 4 now. All of the witnesses I have caused to be subpoenaed may depart now, and they need not return until to-morrow morning, as I shall not be able to take them up tonight.

WITNESS. (After making the calculation requested.) Roughly, about an increase of one-seventh.

Q. What was the tonnage originally and what is it now, about?

A. About 15,000 tons originally, and it has increased to about 20,000.

Q. Increased by one-seventh, did you say?

A. A seventh, yes, sir.

Q. That would be more than that, an increase from 15,000 to 20,000.

A. 15,000 and 20,000 makes 35,000. 15,000 tons and 20,000 tons makes it twenty thirty-fifths, which is four-sevenths, and fifteen thirty-fifths, which is three-sevenths, and that is an increase of one-seventh.

Q. It was originally 15,000 and now it is 20,000, so that it must have increased 5,000 tons?

A. And that would be one-seventh of the total tonnage of the two.

Q. I know, but the increase is 5,000 tons, and that increase is from 15,000 to 20,000 tons.

A. Yes, sir.

Q. And that increase of tons would be a 33⅓ per cent increase on what it was in 1893. That is right, is it not?

A. Yes, sir.

Commissioner LANE. You may proceed now until 4 o'clock.

Mr. SEVERANCE. I think this will be a good point to take the adjournment, if your Honor please.

2760 Commissioner LANE. Very well. Then we will take an adjournment until 10 o'clock to-morrow morning.

(An adjournment was then taken until January 30, 1907, at 10 o'clock A. M., at which time the hearing was resumed.)

By Mr. SEVERANCE:

Q. Mr. Schwerin, does the Portland & Asiatic Company own its own ships?

A. No, sir.

Q. From whom are they chartered?

A. Chartered from the Hamburg-American Packet Company.

Q. Does the Occidental & Oriental own its own ships?

A. No, sir.

Q. From whom are they chartered?

A. Chartered from the White Star Company.

Q. You are acquainted with Mr. William Mahl, are you not?

A. Yes, sir.

Q. He is the controller of the Pacific Mail, is he not?

A. Yes, sir.

Q. Mr. Mahl testified at the hearing of this matter in New York that the Oriental & Occidental Steamship Company has gone into liquidation. Is that so?

A. Not at present.

Q. Has there been any change in the matter of the management of the Occidental & Oriental Steamship Company?

A. No, sir.

Mr. LOVETT. He did not testify it had gone into liquidation. He said he did not know absolutely, but that was his understanding.

Mr. SEVERANCE. He said "which I believe has gone into liquidation," and when I asked him "When?" he said, "Possibly within the last six, seven or eight months."

Mr. DUNNE. I don't think that is so.

2761 Mr. SEVERANCE. Well, I want to find out. Does the Pacific Mail own its own ships, Mr. Schwerin?

A. Yes, sir.

Q. All of them?

A. Yes, sir. Do you mean own its own ships that belong to the Pacific Mail, or all the ships it operates?

Q. You gave a list yesterday of the fleet.

A. Yes, sir.

Q. The fleet of the Pacific Mail.

A. All that I enumerated as a fleet belong to the Pacific Mail.

Commissioner LANE. Are there additional ships that it operates that it does not own?

WITNESS. Yes, sir; the "Mongolia" and the "Manchuria."

Q. I was just coming to that. That is what I want to ask you about. There was introduced in evidence at New York an excerpt from the minutes of the meeting of the Executive Committee of the Oregon Short Line of the 26th of March, 1903. At that meeting, Mr. Harriman reported that, pursuant to the authority conferred upon him at the meeting of the Executive Committee on February 19th, 1903, he had purchased from the Atlantic Transport Company two ocean steamers, known in the contract as Nos. 5 and 6, now under construction at the New York Shipbuilding Yard at Camden, New Jersey, at the approximate sum of $2,200,000 each, the delivery of which was expected about the end of the present year, and his action was ratified and confirmed. Are those two ships the "Mongolia" and "Manchuria"?

A. Yes, sir.

Q. Then, those ships belong to the Oregon Short Line, do they?

A. As far as I know they belong to E. H. Harriman.

Q. Oh, they belong to E. H. Harriman personally?

A. As far as I know, yes, sir.

2762 Q. Would it not appear from those minutes from which I have just read that they were bought for the Oregon Short Line?

A. I never saw the minutes before you read them, or heard of them.

Q. Mr. Harriman is president of the Pacific Mail, is he not?

A. Yes, sir.

Q. And you act under his instructions?

A. Yes, sir.

Q. Do you have a charter party covering these ships?

A. Yes, sir.

Q. From whom does it run?

A. Runs between the Pacific Mail and E. H. Harriman.

Commissioner LANE. At what time was it made?

WITNESS. I dont remember when it was made. The charter parties are in New York now.

Commissioner LANE. What is the date of that minute order?

Mr. SEVERANCE. March, 1903.

Commissioner LANE. It is subsequent to that date, is it?

Mr. LOVETT. Although I have no information on the subject, my understanding is that they were registered in the name of E. H. Harriman.

Q. In the Ninth Annual Report of the Union Pacific, which embraces the Oregon Short Line and the Oregon Railroad & Navigation Company, that is, the report to the stockholders, not to the Interstate Commerce Commission—in the report to the stockholders for the year ending June 30, 1906, there appears on page 12 the following: "The total expenditures. In addition to the above capital expenditures, there was passed during the year, on account of construction and acquisition of new lines, and for equipment and other
2763 property, the sum of $17,541,755.88." And then after referring to and enumerating some of this property, it concludes, "And in the steamers 'Mongolia' and 'Manchuria.' Those steamers are chartered to the Pacific Mail." Now it appears from that entry in the Annual Report that those ships belong to either the Union Pacific, the Oregon Short Line, or the Oregon Railroad & Navigation Company. Those companies are making a common report to their stockholders. You never heard of that report before?

A. I never heard of that report before, until it was brought up in the hearing on Monday.

Q. What hearing was that?

A. On the salvage case, of the "Manchuria" in Honolulu.

Q. That matter——

A. (Interrupting.) The matter of the price was brought up, and reported in that report—in regard to the value of the ships.

Q. I don't know what that inquiry is.

Mr. LOVETT. It is a suit pending here——

A. (Interrupting.) It is a suit in reference to the salvage of the "Manchuria."

Q. Oh, yes. Then on page 26, also in this report, there are entered a number of items under the head of "Deferred Assets," and among the rest "Ocean steamers 'Manchuria' and 'Mongolia' $5,126,796.58, as against a similar charge opposite these steamships in the previous annual report of $4,964,986.07."

Q. How long has the Pacific Mail been operating those boats?

A. Since 1904.

Q. Since 1904?

A. Yes, sir.

Q. With whom was the arrangement made for the leasing or chartering of those boats?

A. With Mr. E. H. Harriman.

2764 Q. Who represented the Pacific Mail in the negotiations?
A. Yes, sir.
Q. I say who represented the Pacific Mail in the negotiations?
A. I did.
Q. You represented the Pacific Mail?
A. Yes, sir.
Q. You are the Vice-president of the Pacific Mail?
A. Yes, sir.
Q. And your arrangements were made with the president of the same company, Mr. Harriman?
A. I recognized Mr. Harriman as acting personally.
Q. You make a distinction between Mr. Harriman as President of the Pacific Mail and Mr. Harriman individually?
A. Yes, sir.
Q. What rental did Mr. Harriman exact for those ships?
A. I don't think I could tell you the exact figures.
Q. Practically?
A. It varied. The first year it was somewhere in the neighborhood of $20,000 a month, and it was gradually increased until it was $30,000 a month.
Commissioner LANE. For both?
WITNESS. For each ship.
Commissioner LANE. For each ship?
WITNESS. Yes, sir.
Q. Does it depend on the freight carried?
A. No, sir, it is a dead straight charter.
Q. You have a regular contract by which the rental increases?
A. No, sir. In the operation of a new ship, the expenses are always heavier than after you get the ship running, and also the expenses are heavier to introduce a new ship. So I contended that the first—the first six or nine months of the charter, the charter should be less than what it would be afterwards. So the final
2765 charter—we are paying, the last rate that we are paying, is $30,000 a month. But I don't just remember how the terms varied from $20,000 to $30,000, and exactly what period that covered.
Q. That is what you are paying now, is it?
A. Yes, sir.
Q. $30,000 a month for each ship?
A. Yes, sir.
Q. And that is paid to Mr. E. H. Harriman, is it?
A. Yes, sir. As far as I know, it is.
Q. Where is the payment made?
A. In New York City.
Q. By whom?
A. We remit the money to the controller, Mr. Mahl.
Q. Mr. Mahl is also the controller of the Union Pacific and the Southern Pacific and the Oregon Short Line, is he not?
A. So I understand, yes.
Q. Who is the auditor of the Pacific Mail?

A. Mr. Railton.

Q. He lives here in San Francisco?

A. Yes, sir.

Q. Who is the auditor of the Portland Asiatic Company?

A. Mr. Railton.

Q. And is Mr. Mahl also the controller of that company?

A. I don't know.

Q. You are the vice-president and general manager?

A. Yes, sir.

Q. Is Mr. Harriman the president?

A. No, sir.

Q. Who is the president?

A. There is none.

Q. They have no president?

A. They have no president.

Q. What is your position with the Occidental & Oriental Steamship Company? Are you vice-president and general manager of that company?

A. President.

Q. President?

A. Yes, sir.

2766 Q. Then if one of those railroad companies, as appears by the minutes, owns those ships, you don't know it?

A. I don't know it, no, sir.

Q. Your only dealing was with your president, Mr. Harriman?

A. Well, I am dealing with Mr. Harriman as the individual owner and registered owner of those ships.

Q. Happening at the same time to be the president of your company?

A. Yes, sir.

Q. Now, about the Panama business. I started to interrogate you about that yesterday. Are those ships all the property of the Pacific Mail Steamship Company?

A. Yes, sir, except from time to time we charter ships on that line.

Q. For extra service?

A. Extra service, yes, sir.

Q. Then, as I understand you, the Portland & Asiatic ships are chartered?

A. Yes, sir.

Q. The Occidental & Oriental ships are chartered?

A. Yes, sir.

Q. And those two ships, the "Mongolia" and "Manchuria" of the Pacific Mail line to the Orient, are chartered from Mr. Harriman?

A. Yes, sir.

Q. And the balance of your ships are owned by the Pacific Mail?

A. Yes, sir.

Q. The ships comprising what is known as the San Francisco & Portland Steamship Company were formerly the property of the Oregon Railroad & Navigation Company, were they not?

A. There is one ship on that line.

Q. One ship?

A. Yes, sir.

2767 Q. You mean you have only one ship on that line?

A. Yes, sir.

Q. How long ago was the San Francisco & Portland Steamship Company organized, Mr. Schwerin?

A. In 1904, I think.

Q. Prior to that time had you anything to do with the running of those ships?

A. No, sir.

Q. By whom were they run up to that time?

A. As far as I know they were known as the water division of the O. R. & N.—as the ocean division of the O. R. & N.

Q. Those ships made the connection of the O. R. & N. with San Francisco?

A. Yes, sir; I presume so.

Q. You know that, do you not?

A. I say I presume so.

Q. In 1904, was this company organized as a separate corporation?

A. Yes, sir.

Q. And who are the stockholders?

A. The O. R. & N.

Q. The O. R. & N.?

A. Yes, sir.

Q. So that the only change of ownership was the fact that they own it by virtue of stock ownership now, while originally they owned the ships direct?

A. The proposition was to put the ships into the hands of steamship men rather than a railroad company, and so they put it into the hands of this operating company.

Q. This operating company?

A. Yes, sir.

Q. Were the ships transferred by the O. R. & N., to the operating company?

A. Yes, sir, chartered.

Q. Are the ships still owned, then, by the O. R. & N. Company?

A. Yes, sir.

Q. So the ships are still owned by the O. R. & N. Company and chartered to the operating company?

A. Yes, sir.

2768 Q. And you are the head of the operating company?

A. Yes, sir.

Q. Now, you say there is only one ship on that line; what is her name?

A. The "Columbia."

Q. What is her tonnage capacity?

A. About 1800 tons.

Q. How many ships were there when you took charge of that line?

A. Two, the "Elder" and "Columbia."

Q. Do you know whether, prior to 1904 there had been more than two ships?

A. I don't know anything about the history of the company prior to the time I took hold of it.

Q. You know nothing about that?

A. No, sir.

Q. What became of the "Elder?" Was she wrecked?

A. Lost—she was lost at the Columbia River.

Q. How long ago?

A. About three years ago. No, it could not have been that long; two years ago.

Q. What efforts have you made since then to replace the "Elder"?

A. Immediately bought the "St. Paul" and fitted her out and put her on the line, a much better ship than the "Elder." She was lost a year ago last summer, on the coast.

Q. What efforts have you made to replace the "St. Paul"?

A. Then we chartered the "Barracouta" and "Costa Rica," and the "Aztec" and the "Spokane."

Q. Did the "Barracouta" belong to the Pacific Mail?

A. Yes, sir.

Q. To what companies did the others belong?

A. The "Aztec" and the "Costa Rica" belonged to the Pacific Mail Steamship Company.

Q. That is, you put those into service there from the Pacific Mail?

A. Regular official charter. You understand, Mr. Sever-
2769 ance, that those ships are insured, and in order to protect the interest of the individual company the charter has got to be made exactly the same as though chartered to Paul Jones, or any other man who is operating the company, entirely distinct and separate company from my own. In other words, the Pacific Mail Steamship Company would charter from the Portland & Asiatic, say, in exactly the way that they would charter from Barneson Hibbard Company.

Q. Except, I suppose, in the charter of the Pacific Mail Steamship Company of steamers to run from San Francisco to Portland, the whole matter would be in your hands as the managing officer of both companies?

A. Yes, sir; and the rate of charter would be governed by the ordinary rate of charter for that character of ships.

Q. And that was fixed by you?

A. Yes, sir.

Q. How many boats have you in service there now?

A. The "Columbia," "Costa Rica," and "Aztec" have been running there.

Q. How frequent is that service?

A. Well, we have had this summer a very serious time with that line. If you want me to enumerate all the difficulties we have had, I will be pleased to do so. It takes its beginning from the time of the earthquake.

Q. Go ahead.

A. At the time of the disaster in April, the "Columbia" was on the Union Iron Works drydock. She was shaken off the blocks, and carried the drydock away, and sunk there. She was there from April till September before they were able to salve her, and repair and restore her to the line. Then about the 1st of May we had a
2770 strike on the water front, which tied up all the steamers, and we were finally able to get the line opened without the passenger service—we didn't believe it advisable, with the class of men we were getting, to take the chances of sending the ship to sea with an untrained crew. So we had to abolish the passenger service.

Q. Has that been resumed?

A. That has been resumed, yes, sir.

Q. How long ago?

A. I think the strike was over in September, and we resumed immediately after the strike ceased. We had the "Costa Rica" and "Barracouta" on the line, and as the business developed, we put the "Aztec" on the line. When we got the "Columbia" back, we took the "Aztec" (she carries freight only) off, then the "Costa Rica" smashed her high pressure cylinder, and the inspector would not let us go out and made us put in a new cylinder, and that took six weeks, and she was taken off the line. So it has been one continual interruption on that line since the disaster.

Q. Assuming that the three boats are all in condition—they are now, are they not?

A. Yes, sir.

Q. Assuming that, how frequent is the service?

A. Five days; that is, five days for the two passenger ships, and the "Aztec" runs as fast as they can load and discharge. She would take 21 days to make the round trip.

Q. About 10 days each way, between loading and unloading?

A. No, sir; that takes in the time in port. It takes about 5 days to go up and down, that is, 5 days up and 5 days down, and the balance of the time is taken in the difficulties of discharging the ships in port.

2771 Q. How long does it take the passenger ships to make the trip?

A. To Astoria, about 48 hours. They are about 4 or 5 hours going up the Columbia.

Q. And the return?

A. About the same; we run on a schedule.

Q. And so you have a five-day passenger service?

A. Yes, sir.

Q. Passenger and freight?

A. Yes, sir.

Q. And an extra boat which makes the round trip every 21 days?

A. And also we have been trying very hard to purchase two five thousand ton ships for that line, but we haven't been able to get a satisfactory price yet.

Q. Has there been within the last year any change in the rates on that line?

A. Yes, sir.

Q. When?

A. I think the change of rates was made effective this month.

Q. Was it an increase or a decrease?

A. An increase.

Q. Could you produce a copy of the tariff, of the former tariff, and of the new tariff?

A. Yes, sir.

Q. And let us have it in evidence?

A. Yes, sir.

Q. Could you state, without reference to the tariff, about the percentage of increase?

A. No, sir, I could not.

Q. Does the increase cover all classes of freight?

A. No, sir.

Q. What does it cover?

A. Roughly speaking, it covers south-bound flour and feed-stuffs, and north-bound canned goods, heavy wagons, automobiles, sugar—that is about all that I can remember.

Q. General merchandise moving north?

A. Well, we have general merchandise in different classi-
2772 fications, that is to say, "general merchandise" is not generally a classification. In our tariffs each article is given a rate.

Q. These articles that you have mentioned go under a commodity tariff?

A. No, sir. They just go, for instance, bran, feed-stuffs, flour.

Q. A specific amount?

A. A specific amount as to the rate.

Q. Do you happen to know, Mr. Schwerin, whether at about the same time that you raised the steamship rates, the Southern Pacific raised its rail rates to Portland and from Portland?

A. No, sir, I haven't heard that they have raised rates.

Q. You haven't heard that?

A. No, sir.

Q. This is the first time you ever heard of their raising rates?

A. Yes, sir—I supposed they would.

Q. You supposed they would raise the rates?

A. Yes, sir.

Q. You did not know that a notice had been given that the rates would be increased, by rail?

A. No, sir.

Q. What made you suppose that the railroad would raise the rates?

A. Well, they always have raised rates when we raised our rates.

Q. Ever since 1904?

A. Yes, sir.

Comr. LANE. Was there a consultation between yourself and any of the railroad men respecting the raising of rates before it was done?

A. We had a differential against the railroad, and I have discussed it with the Pacific Coast Steamship Company, and our rates are governed very largely by their water rate; and I have dis-
2773 cussed it with the railroad company. And there has been general discussion as to whether the rates were too low, and whether they ought to be advanced or not.

Comr. LANE. When was it decided upon to advance the rates?

WITNESS. I think it was in November or December.

Comr. LANE. With what official of the railroad did you deal in matters of that kind—Mr. Stubbs?

WITNESS. No, sir.

Comr. LANE. Who is the man you talked it over with?

WITNESS. Sometimes discussed it with the traffic manager, or one of his assistants.

Comr. LANE. In this particular case, who was it you discussed it with?

WITNESS. In this particular I think I spoke to Mr. Luce about it.

Comr. LANE. He is the freight and traffic manager here?

WITNESS. He is the——

Mr. LOVETT. (Int'g.) General freight agent, is he not?

WITNESS. General freight agent.

Comr. LANE. It was after that conversation, subsequent to that conversation with Mr. Luce, that you made your advance?

WITNESS. Well, it would not have made any difference whether they made an advance or not, we would have advanced our rates, because the rates were unremunerative. The cost of labor had advanced so, our stevedoring charges had advanced over one-third, and it was costing us as high as 76 cents a ton to take freight out of the ship, and we were getting $2.50 a ton for it.

2774 Comr. LANE. What is the differential between yourself and the railroad?

WITNESS. I think it is about 60 cents a ton.

Comr. LANE. 60 cents a ton.

WITNESS. Yes, sir. Yes, sir. It was absolutely immaterial to me whether the railroad advanced the rate or not. I said we would advance our rates, and the Pacific Coast Steamship Company said they would advance their rates. They were in the same position we were. There had been an advance in the price of fuel and supplies, and an advance in the pay of the officers, and in the crews' wages; and, all together, we were in a very bad shape.

Q. That advance in wages of the stevedores and of the longshoremen would have no effect on the expense of handling railroad traffic, would it? Their traffic expenses were not increased because you had to pay more on the dock?

A. I suppose not. I suppose our arrangement had nothing to do with them.

Q. Then their rate was not increased for the same reason that yours was, but was merely increased because you had increased yours?

A. Well, I suppose that is for them to answer.

Q. Is that not your understanding, Mr. Schwerin, that it was done so as to maintain this differential?

A. I told the railroad company we were going to advance rates.

Q. They didn't protest vigorously at all, did they, against that?

A. No, sir.

Q. And after you advanced the rates on the different occasions that you have done so, it has been their custom to ad-

2775 vance the rail rates at the same time.

A. We have advanced rates in cases where they have not advanced rates.

Q. Where sometimes they have not advanced the rates, you say?

A. Yes, sir.

Q. I understood you to testify a few moments ago, Mr. Schwerin, that they customarily advanced the rates when you did?

A. I did, but I think there are cases where they have not done so.

Q. The general rule is that they do advance the rates when you do?

A. If they advance their rates we will advance ours, and I suppose if we advance our rates, they will advance theirs, though there is no understanding between us upon that point.

Q. No agreement that they shall do it?

A. No, sir.

Q. But the coincidence exists. When one rate goes up, the other goes up?

A. As a matter of fact, in my study of the traffic between here and Portland, which is largely a traffic that moves from San Francisco to Portland, the Southern Pacific Company is not a competitor.

Q. Why?

A. We can give so much better service than they can that we get their business.

Q. The railroad men who have testified are under the impression that they are.

A. That is the difference between the steamship men and the railroad men.

Mr. DUNNE. What is that, Mr. Severance?

Mr. SEVERANCE. I say the railroad men who have testified are under the impression that they are.

2776 Mr. DUNNE. You say "the railroad men?"

Mr. SEVERANCE. Yes, sir.

Mr. DUNNE. You do not mean all railroad men?

Mr. SEVERANCE. Several.

Mr. DUNNE. Several, but not all.

Mr. SEVERANCE. Several of them have so testified.

Mr. LOVETT. Some have testified to the contrary.

Q. Let us examine into this for a moment. Does not the Southern Pacific Railroad Company carry from here to Portland goods of the same character that you transport by ship?

A. I suppose they do. I am not at all familiar with what they carry, Mr. Severance.

Q. If you are not familiar with what they carry, how would you hazard this opinion that they are not competitive with you?

A. Because we get the freight very largely unsolicited, and we are not able to handle all the freight that is offered to us.

Q. You would be if you had enough ships?

A. And if they were competitors, they would take the freight away from us. We make better time to Portland than they make, for instance. A man can order his groceries in San Francisco, and barring those accidents that we have had, he will know just when he will get his goods in Portland.

Q. And as you understand it, the Southern Pacific service is not as good as yours, so that if the order is given here to send it by rail, he does not know when he will get it in Portland?

A. Well, transportation by rail has been very much disturbed lately.

2777 Comr. LANE. One of the reasons the railroad is not competitive is that it cannot give as good service. Is that it?

WITNESS. That is the way I look at it, yes, sir.

Q. Mr. Schwerin, do I understand you now to testify that you don't know what kind of traffic is carried by rail from here to Portland?

A. My testimony is that I have never interested myself to see what the railroad takes from here to Portland, yes, sir. I suppose they are in the carrying business, and they are out for all the freight they can get. I know that we compete with them, our solicitors will compete against the Southern Pacific Company for every pound of freight we can get.

Q. How is that?

A. Our freight solicitors will compete against other freight solicitors in the port of San Francisco for any freight we can get.

Q. If your solicitors are competing with the Southern Pacific for freight, why do you testify that you are not a competitor of the Southern Pacific?

A. Did I testify to that?

Q. I thought you did a moment ago.

A. I haven't that impression. I testified I did not consider the Southern Pacific were competitors of ours—just at the present time, on account of the congested amount of freight. But if the market was lean of freight, I would consider that they were competitors.

Q. Then, as I understand it, you do not wish to be understood as testifying that the Southern Pacific and the boats from here to Portland are not competitors of one another, under ordinary conditions?

A. No, sir; I don't mean that.

Q. No. But it is your opinion that their service by rail is so poor at present that they are not, and that they should

2778 not be dignified by the title of competitor?

A. I could not say that.

Q. What do you mean by your answer?

A. I mean to say that our service at the present time has been better than the rail service, and for that reason we haven't had such a strenuous time to get freight as we have had at previous times.

Q. There is a great deal of traffic moving out of here?

A. Yes, sir; south-bound; not so much north-bound. The north-bound movement has been light.

Q. And you need more ships to handle the traffic that is offered, and you are trying to get more?

A. Well, trying to get a better class of ships that will handle the business better than we have been able to handle it. For instance, the north-bound ships have been going out with light tonnage. For instance, the "Aztec" on her last trip had 500 tons, and the "Columbia" on her last trip only had 700 tons—the last voyages up there. But the demand for tonnage is south-bound.

Q. Who is your agent in Portland?

A. Mr. Dewson.

Q. And prior to his employment with your steamship company, what was his position?

A. He was in the employ of a shipping firm of New York City.

Q. You brought him out from the east?

A. Yes, sir.

Q. Do you have an agent here in San Francisco for this steamship line?

A. Yes, sir.

Q. Is that separate and apart from the agency of the Pacific Mail?

A. Entirely.

Q. A separate organization?

A. Yes, sir, entirely.

2779 Q. Under your charge?

A. Yes, sir.

Q. Does the Pacific Mail run any boats to Alaska?

A. No, sir.

Q. Or to Puget Sound points?

A. No, sir.

Q. Have you ever run any boats up there?

A. No, sir. We chartered boats that run to Alaska, but we never operated them.

Q. I think that is all.

By Mr. LOVETT:

Q. Mr. Schwerin, you say that you have been endeavoring to get two additional boats for the Portland and San Francisco line?

A. Yes, sir.

Q. And you have not been able to secure them?

A. No, sir.

Q. Why?

A. It has been a question of difference of price between the owner and ourselves.

Q. Are you restricted in your purchase to American boats?

A. Yes, sir.

Q. Why?

A. It is the coastwise traffic—United States coastwise traffic.

Q. You can't buy a foreign made ship and put it in this business because of the tariff that you would have to pay on the foreign built ships?

A. No, sir, that is not it. They do not permit a foreign bottom to operate in the coastwise traffic.

Q. I didn't know whether that was it, or whether it was the tariff. I knew there was some restriction.

A. It is against the United States law to operate a foreign bottom in the coastwise traffic.

Q. And the supply of American made ships is very small?

2780 A. We have been in great difficulty to try to get even a charter for that line. We have not been able even to do that.

Q. I believe you testified that the principal amount of traffic on that line was south-bound; that is, from Portland?

A. It has been lately; yes, sir.

Q. What is the character of the traffic? That is as a rule; I am not speaking of any exceptional conditions, but as a rule?

A. South-bound has been mostly mill products.

Q. Mill products?

A. Flour, feed, bran, and oats, and shakes and shingles and laths.

Q. Where does it originate?

A. Most of it originates in Portland, and I suppose along the line of the O. R. & N.

Q. Those boats do not handle any traffic coming from the east, do they?

A. No, sir.

Q. Now, as to the north-bound cargo. What is that ordinarily?

A. Canned goods, sugar, salt, cement.

Q. Products of California?

A. Yes, sir; almost entirely.

Q. I believe you testified that on account of conditions existing at this time, at least, on account of the better time that your boats make, the Southern Pacific has not been able to compete with you. That is under present conditions?

A. Yes, sir.

Q. Is it not true, Mr. Schwerin, that as a rule, generally speaking, railroads are not equal to competing with ocean carriers; that is, coastwise carriers? Is that not true on the Atlantic? That is, I mean from seaport to seaport; I am not speaking of the ordinary river steamers, but of coastwise steamers.

A. I think they get the first call on the traffic.

2781 Comr. LANE. Is that true as to the rates, or as to time and facilities?

WITNESS. Time and facilities.

Mr. LOVETT. Time and facilities, my question was addressed to.

Mr. DUNNE. From seaport to seaport?

Comr. LANE. From seaport to seaport.

WITNESS. For instance, the Old Dominion Line has the bulk of the traffic between Norfolk and New York City.

Q. And the Morgan & Mallory Steamship lines have the bulk of the traffic between New York and New Orleans and Galveston?

A. So I understand.

Comr. LANE. What is the basis for the differential between the railroad and the steamship?

WITNESS. I suppose it is based upon the fact that the rail lines give a security which the steamer does not. The bill of lading in the case of the rail line covers the risk to freight, whereas on the steamer the owner has to insure his own risk.

Comr. LANE. That differential, 60 cents in your case, is far more than would cover the insurance?

WITNESS. That 60 cents a ton?

Comr. LANE. Yes.

WITNESS. Yes, I should think the insurance would cover about 30 cents a ton.

Comr. LANE. So that there must be considered that there is some preference to be given a railroad?

WITNESS. But the railroad has always had the higher
2782 rate, on account of the fact that it costs more to operate than it does a steamship line. The railroads have always insisted, in a division with the steamship line, for a larger share of the through haul and through traffic—everywhere in the world, the world over, that is true.

Comr. LANE. That the railroad has insisted upon its larger proportion?

WITNESS. Yes, sir, on the ground of its increased expenses. It costs more to operate a railroad than it does a steamship line.

Comr. LANE. As between yourself running a coast line of steamers, and the Shasta route from here to Portland, you could put the Shasta route out of business, so far as the direct freight going from Portland to San Francisco is concerned, in the matter of rates, and in the matter of time, at present?

WITNESS. Well, I could not say that, because I could not control the shippers. But if I found our rates were diverting business from us, I would be forced to lower our rates again.

Comr. LANE. Do you know how much cheaper you can haul a ton of freight from Portland to San Francisco than the railroad can haul it?

WITNESS. I do not.

Comr. LANE. You do not know the comparative cost by railroad and steamboat in competition?

WITNESS. No, sir.

Comr. LANE. That is all, Judge.

2783 Q. I believe you testified that you also operate steamers between New York and various South American and Central American ports?

A. No, sir.

Q. Between San Francisco, I should say, and various South American and Central American ports?

A. Yes, sir.

Q. The Pacific Mail Steamship Company has no steamers on the Atlantic?

A. No, sir.

Q. And never has had?

A. Yes, sir.

Q. When?

A. It used to operate a line from New York to Panama, and the Panama Railroad Company would not allow us to continue there, in connection with the Panama Railroad.

Q. When was that discontinued?

A. I think it was late in '90's.

Q. Late in the '90's?

A. Yes, sir.

Q. Are there any other lines besides yours operating between San Francisco and Panama, and South American and Central American ports?

A. Yes, sir, the Cosmos Line and the French Line.

Q. How long have they been operating?

A. The Ocean Line has been operating there about 10 years.

Q. Has the Pacific Mail Steamship Company had competition between San Francisco and the southern ports ever since you have known it?

A. Yes, sir, very severe competition.

Q. Does not the Hamburg American Packet Company operate ships on this coast?

Comr. LANE. That is the Cosmos Line, is it not?

WITNESS. No, sir. I believe the Hamburg American Packet Company—there are common stockholders in the Hamburg American Packet Company and in the Cosmos Line, but I do not understand that the Cosmos Line is really owned by the Hamburg American Packet Company.

2784

Q. But the Hamburg American Packet Company, as such, does not operate steamers on the Pacific between the ports mentioned?

A. No, sir.

Q. I believe you stated that there has been competition on the Pacific between San Francisco and these southern ports ever since your connection with the Pacific Mail Steamship Company?

A. Yes, sir.

Q. And there is competition now?

A. Yes, sir.

Q. What was the name of the line that was promoted by the Santa Fe system from San Diego to Asiatic ports?

A. The California & Oriental.

Q. The California & Oriental?

A. Yes, sir.

Q. When did that line go out of business? Do you know, Mr. Schwerin?

A. Sometime along in 1902, 1902 or 1903, as near as I can remember.

Q. About 1902 or '3?

A. Yes, sir.

Q. How often did that line sail?

A. They were supposed to have a steamer first every month, and later they, I believe they contemplated having two steamers a month, or a steamer every three weeks, I don't remember which.

Q. And what was your service from here?

A. We had a steamer then about every nine days.

Q. You had a steamer then about every nine days. And you had been for some time soliciting business from the Atchison for Asiatic ports?

A. Yes, sir.

2785 Q. You believe that you could give them better service than the line from San Diego gave them, did you not?

A. We thought so.

Q. When did the Atchison get its line into San Francisco? About when, Mr. Schwerin, do you know?

A. No, sir, I don't believe I remember that date.

Q. This line from San Diego was opened by the Atchison before the time it got its rails in San Francisco, was it not?

A. Well, this line was in operation—I know that when the line started, there were no Santa Fe rails into San Francisco, because the steamship line came here and delivered its local cargo and then went south and delivered its overland in San Diego.

Q. How long had you been making your efforts with Mr. Morton, I believe you said yesterday—how long had you been making your efforts with Mr. Morton to get the business of the Atchison, the business from Asiatic ports?

A. Well, I don't know; it is so long ago I can't remember. Almost from the very beginning of my connection with the line, I tried to persuade the Santa Fe to give me the business, and every time I saw Mr. Morton I would joke him about it, or talk earnestly to him, or any way to try to persuade him to give me the business.

Q. Did you finally arrange with him to get some of the business?

A. The last talk that I had with Mr. Morton was in the Waldorf in New York, and I told him if he would give us a share of his business, that we would agree to give him equal rates and divisions with any other connecting carrier from the port of San Francisco.

2786 Q. The point I was trying to develop, Mr. Schwerin, is when the arrangement with the Atchison, or when the arrangement by which you succeeded in getting their business, was made with reference to the discontinuance of the Oriental line?

A. This conversation I had with Mr. Morton was long after the California and Oriental line had gone out of business.

Q. You had no arrangement with him until after that line went out of business?

A. Some time after that line went out of business.

Comr. LANE. Did they go out of business in view of any conversation that you had with Mr. Morton or the Santa Fe people?

WITNESS. Absolutely not.

Comr. LANE. Absolutely not?

WITNESS. No.

Comr. LANE. It was not in pursuance of any agreement or understanding that they should get a share of the business that they put that steamship line out of business?

WITNESS. No, sir.

Mr. DUNNE. Do you understand why the steamship line went out of business?

WITNESS. I understood, both from Mr. Morton and from the agent of the line here, that they were losing considerable money—the line was very unprofitable.

Q. Your information was that the line had been unprofitable?

A. And I understood from the steamship end of it that the Santa Fe declined to hold the sack any more for the steamship company.

2787 Comr. LANE. I didn't hear that.

WITNESS. I understood that the Santa Fe declined to hold the sack for the steamship company.

Mr. DUNNE. I think Mr. Ripley gave some testimony before your Honor in Chicago upon that subject.

Comr. LANE. There was a lot of statements made in Chicago about the Steamship company, but not as to the reason why it went out of business.

Mr. DUNNE. He said it was disastrous, he used that term.

Q. Then after that line was discontinued, you arranged with the Santa Fe to get some of their business, and to reserve space for them on your ships out-bound, so as to use their freight?

A. We had to do that. We had to agree to let them have a certain amount of space on the outward bound ships, otherwise they would not have been able to contract it, and we would not have known what they would want to carry, how much.

Q. And in return for that, you would agree to give them some portion, and you did agree to give them some portion, I think you said 25 per cent?

A. It varied above and below 25 per cent., but we tried to give them about 25 per cent.

Comr. LANE. It depended entirely on the amount of freight you got from them, the amount you would give to them?

WITNESS. No, sir, I can't say that, Mr. Lane, for the simple reason that the Santa Fe—it is one of the things we complained about, that the Santa Fe has not given us as much freight as we have given them, and we have continually kept after the Santa Fe to get after their agents to get more freight for us.

2788 Comr. LANE. And you at the present time give them more than they give to you?

WITNESS. Yes, sir.

Comr. LANE. Then why don't you cut them off?

Witness. Because I want to have an argument on my side for them to get after freight, because we have all the Santa Fe men working for us to get freight to the port of San Francisco—we are getting freight from the northern lines who are working against us to get freight from the south.

Comr. Lane. Do they pull freight that would naturally go to the south?

Witness. Oh, yes. All the freight originates in common, competitive territory.

Comr. Lane. So you are trying your best to keep on the good side of the Santa Fe people.

Witness. Yes, sir. Every pound of freight that is taken out of this port can be moved to the Orient without coming here at all. In other words, our business can be absolutely taken away from this port, our transcontinental business, and go out from the north and be served just as well as through this port as far as the rail service is concerned, and getting it to tidewater.

Comr. Lane. That is not a matter of rates, then, but it is a matter of competition between the solicitors?

Witness. I don't think you understand. I mean physically that can be done. Therefore we want to get all the solicitors we can to work for tonnage from the port of San Francisco to feed our
2789 line, in competition against the railroad lines that are working for freight for the steamers that go to the north.

Comr. Lane. Now then, when you make a rate from the Orient for business to Chicago, or some point that is served by the Santa Fe, there is no competition between the Santa Fe and Southern Pacific, or between the Santa Fe or Southern Pacific and Union Pacific, upon a rate for that import business, is there?

Witness. Well, there was a time when we could make a rate from the Orient to any point in the United States without consultation with the rail lines at all; the initial carrier has the right to make that rate, but now, under the Interstate Commerce ruling, we have to give 30 days' notice. We are out of competition with the Orient, you may say, with the Orient entirely because the Suez line, with whom we compete there, can change their rates every day, and we have got to give 30 days' notice. They can come in within 30 days and contract, and then we come in with another 30 days' notice under which we will contract, and they can come and contract again, in that way divert all the tonnage.

Comr. Lane. Do you think the through rate from Hong Kong to Chicago comes under that?

Witness. Yes, sir.

Comr. Lane. You publish those rates?

Witness. Yes, sir. They are published and filed with the Interstate Commerce Commission.

Comr. Lane. And you are enabled, by the ownership of the boats by the railroad, to absorb a portion of the inland
2790 freight rate?

Witness. No, sir. How do you mean, absorb it?

Comr. LANE. I mean this, that you can make a through rate from Hong Kong to Chicago upon business and not publish the proportion from Chicago to San Francisco, and from San Francisco to Hong Kong. You simply make one through rate, and that through rate may be divided up between yourselves and the railroad people as you see fit?

WITNESS. As I understand it, yes, sir. We can arrange the division as we may desire.

Comr. LANE. Yes.

WITNESS. It is a matter of traffic arrangement.

Comr. LANE. Traffic arrangement between you two?

WITNESS. Yes, sir.

Comr. LANE. Is that rate open at San Francisco to the Santa Fe?

WITNESS. Yes, sir.

Comr. LANE. You have the same rate, then, with the Santa Fe inland which you have with the Southern Pacific?

WITNESS. Yes, sir, the same division.

Comr. LANE. The same division of through rate?

WITNESS. Yes, sir.

Mr. DUNNE. Just exactly, your Honor, like the orange rate from Southern California. The initial line makes the connection with a number of companies and the rate is the same through all these connections.

Comr. LANE. So it is practically the same as if you published
2791 a rate to San Francisco, and a rate upon import business from San Francisco to Chicago. Is that so, Mr. Schwerin?

WITNESS. Well, I suppose that could be done, but that never has been done.

Q. The Suez competition that you referred to is principally to the Atlantic seaports?

A. Yes, sir.

Q. You are at a disadvantage with respect to that?

A. We are entirely at a disadvantage with respect to that. They are all foreign steamships, operated very cheaply, and as tramps.

Q. The route of this traffic that originates in the Orient and that comes to your possession for the east is in the hands of the Pacific Mail, is it?

A. So far as turning it over to the initial carrier is concerned.

Q. That is what I mean.

Mr. DUNNE. Your Honor asked a question about publication. The through rate from the Orient is published as a through rate.

Comr. LANE. That is what I understand.

Q. The routing of it, so far as the initial carrier is concerned, that is, the carrier taking it out of San Francisco, is in the hands of the Pacific Mail?

A. Yes, sir.

Q. And where the carrier has to deliver it beyond its own lines, it turns it over—that is, it has the control of the railroad carriers?

A. Yes, sir.

Q. So far as the carriers beyond the initial carrier are concerned, then, the initial carrier has control of the routing?

A. Yes, sir.

Q. Coming back to the point where we were considering the arrangements for this business that you get with the Atchison.

2792 You testified yesterday something about there being no agreement. What do you mean by that? Do you mean no written agreement?

A. Yes, sir.

Q. Or contract. You do mean to convey the impression that there was not an arrangement?

A. I said there was an understanding.

Q. You testified yesterday that there was an understanding?

A. An understanding, yes, sir.

Q. By which you intended to give them about 25 per cent of the business, as near as you could apportion it, in that way?

A. Yes, sir.

Comr. LANE. May I ask you this question: What was the reason that you named that, if there was any reason, aside from your desire to get the Santa Fe solicitors at work for your steamship company?

WITNESS. I don't know that I understand your question.

Comr. LANE. Why was it that you gave that agreement to give them 25 per cent of the business?

WITNESS. Well, the reason was that we contemplated trying to build up the San Francisco line, and to put on large carriers across the Pacific—we contemplated putting on the "Korea" and "Siberia," which were nearing completion, and then I was trying to get a larger shipment, which finally culminated in our getting the "Manchuria," and I wanted to work it up and have all the solicitation I could get. It was absolutely impossible for me to consider that the Santa Fe, from my discussion with Mr. Morton, would work to give us outward tonnage unless I would agree to give

2793 him inward tonnage. And in our discussion, he used to laugh, and he said "If I do that, I will swamp you," and I said "Try it on." And finally it started with 25 per cent and they never gave us a full 25 per cent of our outward tonnage. They are working more actively lately than they did previously.

Comr. LANE. These conversations with Mr. Morton were held prior to 1904?

WITNESS. These conversations were held, well, probably running back six or eight months prior to the time that he finally said that he would give us some of his business.

Comr. LANE. And these conversations were held subsequent to the going out of business of the San Diego line?

WITNESS. Absolutely so. There was no line out of San Diego at the time we talked this over. Prior to that time it was merely a question of solicitation, to give us the business, because we joshed them about losing so much money, and that they didn't know how to run a steamship line. There was a good deal of talk in that way,

and every time I got a chance at him I tried to persuade him to come over to our line. This talk about a division occurred after the Santa Fe actually got its trackage into San Francisco, where they could make connection with us, direct rail with us, over their own lines.

Q. You were trying to get business for the steamship company, Mr. Schwerin?

A. That is what I was out for, first, last and all the time.

Q. You tried to operate the Pacific Mail in the interest of the Pacific Mail?

A. Entirely so.

Q. And not for the Southern Pacific line?

2794 A. I didn't consider the Southern Pacific at all in the matter.

Q. And if you could make an arrangement with the Atchison to increase your business, you desired to make such an arrangement, did you?

A. I certainly did.

Comr. LANE. But you can't very well eliminate Mr. Harriman as a consideration, Mr. Schwerin?

WITNESS. Mr. Harriman has never suggested even a single instruction to me upon that question.

Comr. LANE. When you come to a division of the through freight between yourselves and the Central and Union Pacific line, does not Mr. Harriman have anything to say about that?

WITNESS. No, sir. That matter is fought out between Mr. Stubbs and myself, and he treats me just as though I were a foreign connection.

Comr. LANE. You don't suppose Mr. Stubbs has any communication with Mr. Harriman to see what proposition shall be made?

WITNESS. I know he has not. We settle those things, and we settle them ourselves.

Comr. LANE. Those things are left to you entirely?

WITNESS. As to Mr. Stubbs, when I first started in with negotiations with Mr. Stubbs, the Southern Pacific hadn't a dollar of interest in the Pacific Mail Steamship Company. That was way back in 1893 and '4.

Comr. LANE. Yes, of course, but conditions have changed since then.

WITNESS. I understand, but our divisions have not changed.

2795 Comr. LANE. Your divisions have not changed?

WITNESS. No, sir, we have the same divisions.

Comr. LANE. Your divisions are just the same now as they were then?

WITNESS. They are just the same now as they were then, exactly.

Q. You don't know of any reason why Mr. Harriman should have the Pacific Mail worked in the interest of the Southern Pacific against the interest of the Pacific Mail, do you?

A. I can't imagine such a thing.

Q. You don't know of any reason why the Southern Pacific should object to your handling business for the Atchison, do you, or any other line?

A. No, sir. The Pacific Mail is simply a connecting carrier with the Southern Pacific and the Atchison.

Q. The Pacific Mail Steamship Company is simply a connecting carrier with the Southern Pacific and the Atchison for this Asiatic traffic, is it not?

A. That is the way I look at it; yes, sir.

Q. You spoke yesterday, testified yesterday about the routing of the Asiatic traffic, and the intention to give 20 or 25 per cent to the Atchison, and I don't know that I understood exactly your testimony upon that point. You testified, as I understand, that about six months ago it was turned over to the Southern Pacific here; what do you mean by that? I am not clear as to your meaning there.

A. Well, we have the only rail connection, our docks rather have the only rail connection there is in San Francisco.

2796 Q. That is the rails on your dock are Southern Pacific rails?

A. The tracks belong to the Southern Pacific, yes.

Q. The Atchison has no tracks there?

A. Actually the Atchison has no rail connection to our docks, and any freight to or from our docks must be passed over the trackage of the Southern Pacific to reach the tracks of the Santa Fe.

Q. Is that what you meant by your testimony that all the traffic was turned over to the Southern Pacific?

A. I meant that the Atchison Company would turn their cars over to the Southern Pacific Company, to be again distributed over to the Santa Fe, to their own line.

Q. And did the Southern Pacific settle with you for your charges, or did the Atchison settle with you for your charges on freight to go via its lines, and the Southern Pacific for freight that was routed by its lines?

A. On the inward bound freight, we would bill direct to the Santa Fe for our advance charges for freight routed by the Santa Fe, and the same way to the Southern Pacific. On the outward freight the Santa Fe would collect direct from us for their proportion of the through rate on any charges there might be, and the same way with the Southern Pacific—they would collect direct from us their proportion.

Q. In other words, while the traffic was turned over to the Southern Pacific, or on the Southern Pacific tracks, it was in pursuance with the arrangement you had with the Atchison that certain portions of it should be routed by the Atchison, and the Atchison settled with your company for the charges on that that was moved by the Atchison?

A. Yes, sir.

2797 Comr. LANE. Does that mean that it was not left to the Southern Pacific Company to decide what should go to the Atchison at all?

WITNESS. No, sir, it was up to us.

Mr. LOVETT. Is that all, your Honor?

Comr. LANE. Yes.

Q. Mr. Severance asked you something about the arrangement for chartering the "Manchuria" and "Mongolia," and you testified, I believe, that the charter or contract was with Mr. Harriman. You don't know whether the beneficial ownership of those boats is in the Oregon Short Line, or the Union Pacific, or Mr. Harriman; but he is the registered owner?

A. Yes, sir.

Q. Was the rental, or charter, I believe, is the term you used, that was paid for those ships, reasonable, Mr. Schwerin?

A. Yes, sir, it is a fair charter.

Q. You regarded it as fair to the Pacific Mail?

A. Yes, sir.

Q. You testified just now that at the time the present rates or divisions, I believe you call it, with the Southern Pacific were put in by agreement between Mr. Stubbs and yourself, that the Southern Pacific Company had no interest in the Pacific Mail. That is correct?

A. Yes, sir.

Q. You testified yesterday to the appointment of certain agents in the east, Hawley in New York, and Neimyer in Chicago. When were those appointments made?

A. In 1894 and 1895.

Q. In 1894 and 1895?

A. Somewhere along that period.

Q. The Southern Pacific had no interest in the Pacific Mail at that time?

A. No, sir.

2798 Q. You were working with the Southern Pacific as a connecting line?

A. There were certain questions that would come up from time to time that required quick action in the east, in competition for traffic, and I solicited to have those people appointed there, so they could communicate direct with me, and get our authority as to what we were willing to do at the steamship end of it, and they acted there entirely under that understanding.

Q. In 1900 and 1901, Mr. Schwerin, about how frequently were the sailings of your vessels from this port?

A. About the same as they are now, sir.

Q. That is, about every nine days?

A. Yes, sir.

Q. How often were the sailings from Puget Sound at that time?

A. There was one, at that time there was really one, what we considered one regular line there which had sailings that were absolutely definite. The Canadian Pacific and ourselves consider that we run those lines on railroad train service. That is, we know just exactly what ship is to come into port, and exactly what day she is to leave, and they carry mails. Outside of the Northern Pacific Steamship Company, that operated at that time from Tacoma, I think the Canadian Pacific and ourselves were the only ones that maintained an absolutely regular schedule, although they advertised a schedule possibly of dates of sailings.

Q. How often were the sailings from the Sound?

A. Very frequent; there were a great many tramp steamers coming in there under the guise of regular lines, and sailings were very frequent.

2799 Q. Were they as often, do you think, as your sailings—that is, all the lines from the Puget Sound?

A. Yes, sir; I should think they were more frequent.

Q. More frequent?

A. Yes, sir.

Q. Were there other lines running out of here at that time besides the Pacific Mail?

A. The Pacific Mail—I am speaking of the Pacific Mail, and by that I mean what we call the San Francisco lines, the three lines.

Q. Yes. It takes the three lines to make the nine days' schedule, does it?

A. Yes, sir.

Q. The Dodwell line from Portland was discontinued by 1900, was it?

A. I think it was discontinued somewhere along in 1900, yes, sir.

Q. The Portland & Asiatic Company was organized in 1901?

A. Yes, sir; at least, I think so; I was not connected with the line at that time.

Q. No; but you have general knowledge of it?

A. Along in that period, I think—yes, that is right; about 1901.

Q. Were there any regular lines out of Portland for Asiatic ports at that time?

A. There was a line advertised there, but we didn't consider it a line.

Q. In 1900 and 1902 was it in operation?

A. Prior to 1901.

Q. Prior to 1901?

A. Prior to 1901.

Q. What line do you refer to?

A. I think Mr. Graham started a line there.

Q. You refer to the Graham line?

A. Yes, sir.

Q. If that be deemed a line, there was that line, but there
2800 was no other line out of Portland?

A. No, sir.

Q. How often were the sailings of the Portland & Asiatic?

A. They were at first to sail once a month.

Q. Did they maintain that schedule?

A. No, sir; nowhere near it.

Q. I beg pardon.

A. Nowhere near it.

Q. How many steamers were they operating?

A. Three.

Q. Were they carrying both freight and passengers?

A. No, sir; freight only. I believe they did carry some inward Asiatic passengers.

Q. Mr. Schwerin, what is the principal traffic of the Portland & Asiatic?

A. Almost entirely flour.

Q. Do you understand why that line was established?

Mr. SEVERANCE. You mean going out flour?

WITNESS. Yes, sir.

A. I understood it was to take care of the business that originated on the lines of the O. R. & N.

Q. The flour industry?

A. Flour and grain—to protect, have the grain go to the mills on the line of the O. R. & N., and to protect the grain going to the south.

Q. But flour was the principal commodity that they transported?

A. Yes, sir. We have got two ships there now with a full cargo of flour.

Q. Has that line ever been able to compete with the San Francisco & Puget Sound lines for business from the east, Mr. Schwerin?

A. You mean from the east, the Atlantic seaboard?

Q. Yes.

A. No, sir.

Q. Why, if you can give the reason, was that?

2801 A. On account of the irregularity of the service. May I scratch that out? A man who ships from the East wants to know when his freight is going to leave the seaport through which the freight passes, and he will figure to send his freight over by rail and reach the port so as to go by a certain steamer. We maintain our schedule some five, six, seven to eight months ahead of our sailings, so that a shipper in correspondence with the Orient can tell his correspondent what freight he is going to get a long time ahead. If a man puts his agreement into the form of a contract, he would contract that freight to be delivered by a certain steamer. It is to maintain that traffic, hold that traffic, that we have tried so hard to maintain our schedule. On the Portland and Asiatic line, they get bunched up sometimes in Portland, and then again they get bunched up in the Orient. They advertise a steamer to sail on a certain date, and she may sail two or three weeks later than that. The result was that the shipper would be continually growling about his freight, or, there might be some delay on the railroad, and the freight would not get in until the steamer had left, she might have gotten out at near her schedule, and then there would not be another steamer at all for a month, and meanwhile that freight would lie in Portland for a month waiting for a steamer; whereas in San Francisco, in case he missed one steamer, we had another steamer in 9 days, and that would take the freight right forward. That was the superiority of our line over the Portland and Asiatic, so far as the shippers are
2802 concerned, and what they demand in the handling of this Oriental freight.

Q. A line that is not able to afford more than a monthly service really cannot compete with a line running on a 9 or 10 days schedule, on business that originates some distance from port?

A. Yes, sir. We look upon our line as an express service, as against tramp service in some of these other lines. We are not able to accumulate the overland freight in Portland, as you can do in some ports of the world—they won't stand for that at all.

Q. What has been the result of the Portland and Asiatic Steamship Company?

A. Well, it has been a decided loss, as a financial venture.

Q. Have you a statement showing the result of its operations?

A. Yes, sir. Here is the statement.

Mr. LOVETT. Mark that "Exhibit No. 1, Schwerin." We offer that in connection with Mr. Schwerin's testimony as Exhibit 1 to his testimony, it being a statement of the earnings and expenses of the Portland & Asiatic Steamship Company for the year ending June 30, 1902, and for each subsequent year.

Comr. LANE. Does it show a loss for each year?

Mr. LOVETT. It shows a loss for each year, except for the year ending June 30, 1905, during which the Japanese-Russian War was in progress, which helped it out. It shows a loss for the entire period of $283,749.29.

Said exhibit is as follows:

## SCHWERIN EXHIBIT No. 1.

### PORTLAND AND ASIATIC STEAMSHIP CO.

*General statement of receipts and expenses for 12 months ending June 30, 1906, 1905, 1904, 1903, and 1902.*

| Receipts. | 1906. | 1905. | 1904 (revised figures). | 1903. | 1902. | Total 5 years. |
|---|---|---|---|---|---|---|
| From steamers operated: | | | | | | |
| Passenger earnings | $642.88 | $148.78 | $31,541.21 | $31,113.52 | $17,601.96 | $81,048.35 |
| Mail earnings | 705.99 | 600.81 | | | | 1,306.80 |
| Freight earnings | 609,894.95 | 645,960.38 | 454,612.88 | 449,029.91 | 383,816.29 | 2,543,314.41 |
| Miscellaneous earnings | 207.56 | 483.16 | 116.93 | 217.15 | 2.52 | 1,027.32 |
| Salvage S. S. Pleiades | | 8,842.91 | | | | 8,842.91 |
| Total steamer earnings | 611,451.38 | 656,036.04 | 486,271.02 | 480,360.58 | 401,420.77 | 2,635,539.79 |
| From other sources: | | | | | | |
| Misc. receipts at agencies | 2,928.22 | 1,743.63 | 105.55 | | | 4,779.40 |
| Exchange | 1,371.86 | 585.15 | | | | 1,957.01 |
| Total receipts | 615,751.46 | 658,366.82 | 486,376.57 | 480,360.58 | 401,420.77 | 2,642,276.20 |
| Expenses of steamers operated: | | | | | | |
| Steamer expenses | 239,199.88 | 221,464.88 | 173,676.87 | | | |
| Charter of steamers | 351,220.93 | 292,425.80 | 318,272.37 | | | |
| Total steamer expenses | 590,420.81 | 513,890.68 | 491,949.24 | | | |
| Other expenses: | | | | | | |
| Agency expenses | 47,383.93 | 67,125.19 | 68,316.25 | | | |
| General exp.—San Fran. | 11,481.40 | 13,032.87 | 13,872.74 | | | |
| Int. disc. & commissions | 1,875.51 | 1,273.11 | 95.00 | | | |
| Ins. on frt. & adv. chgs | 1,817.50 | | | | | |
| Fire of April 18, 1906 | 3,421.35 | | | | | |
| Total expenses | 656,400.50 | 595,321.85 | 574,233.23 | 572,735.89 | 527,334.02 | 2,926,025.49 |
| Earnings over expenses | | 63,044.97 | | | | |
| Expenses over earnings | 40,649.04 | | 87,856.66 | 92,375.31 | 125,913.25 | 283,749.29 |

ERASTUS YOUNG, *General Auditor.*

OMAHA, Nebr., January 15, 1907.

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Comr. LANE. On the face of those figures why do you maintain the line?

WITNESS. Well, if we don't maintain the line, Mr. Wilcox,
2803 who has the Portland Flouring Mill, will be compelled to close that mill at the port of Portland, and the people of Portland would very seriously object to having that enterprise destroyed there and moved to Puget Sound. He has another mill at Dayton upon which it would have some effect. Then all the grain that originates along the line of the O. R. & N., would go to Puget Sound Mills, and mills along the lines tributary to Puget Sound, and be milled there, and shipped to the Orient.

Comr. LANE. So that really you can stand a loss on the steamship line, because of the freights you get on the O. R. & N. from the tributary territory to Portland?

WITNESS. Well, they are doing that.

Q. Without this steamship line, your understanding is that the grain originating on the O. R. & N. in northern Oregon and Washington would go to the Northern Pacific and Puget Sound, and then out by the Puget Sound lines to the Orient, and Portland Mills and Portland grain people would be practically out of business, would they not?

A. Yes, sir, unless they got tramp steamers to come in there from time to time and take the cargo and take it out across the Pacific. But they would have no regular service that they could well send their flour by, or sell it against. They sell their flour on monthly deliveries, and there must be a steamer there regularly, in order to meet those monthly deliveries.

Comr. LANE. Has the Wilcox mill expanded at all in the last four or five years?

2804 WITNESS. It has doubled in capacity in the last three years.

Comr. LANE. It has doubled in capacity?

WITNESS. Yes, sir.

Comr. LANE. How much larger is it now than it was in 1900?

WITNESS. I don't remember the exact capacity, but I know he has told me he has doubled his capacity.

Comr. LANE. On export business?

WITNESS. No, sir; on the number of barrels per day he turns out at the Portland Mill.

Comr. LANE. Do you know what proportion for export he has increased?

WITNESS. His tonnage?

Comr. LANE. Yes. Do you know what the increase in tonnage has been?

WITNESS. I think his tonnage has just varied from year to year—some years more than others, and some periods of the year more than others, varying quantities all the time. We have gone out of Portland with not enough freight to ballast the ship.

Comr. LANE. Ten years ago they shipped a good deal of flour across the ocean, did they not?

CLOSE IN CENTER

WITNESS. From Portland?

Comr. LANE. Yes.

WITNESS. No, sir; not such a large amount ten years ago. We had 72 per cent of the total flour sent to the Orient from here until the time Mr. Wilcox came into the market.

2805 Comr. LANE. At what time was that?

WITNESS. I think he became a factor—it is just about ten years ago that he became a factor, and he has gradually worked it up until he has got the control of it—reversed the situation between the Sound and San Francisco.

Q. You understand that the O. R. & N. Company owns the stock of the Portland & Asiatic?

A. I understand so, yes, sir.

Q. And you undertsand that the object it has in maintaining this line of steamers at a loss is to hold the traffic to its rails?

A. Yes, sir; to its rails.

Q. As against the Great Northern and Puget Sound lines?

A. Yes, sir.

Q. Without the support of the O. R. & N. in that way could a steamship line of this character be maintained out of Portland?

A. Unless somebody wanted to simply pay the operating expenses of steamers, it could not.

Q. In other words, as a steamship proposition, it is not practicable, is it?

A. No, sir.

Comr. LANE. Could it be made so, if you ran a regular schedule, put on more boats up there and did a regular competitive business with San Francisco?

WITNESS. The more steamers you put on there, Mr. Lane, the more money you will lose.

Comr. LANE. Why could you not do the same kind of business over the Short Line and the O. R. & N., that you do over the Central, Union and Southern Pacific?

WITNESS. If the San Francisco line was dependent upon
2806 through freights alone they would go out of business. There is not a steamer out of the port of San Francisco to-day that we could run if it were merely a question of freight, I mean transcontinental freight. But we have here inward and outward passenger business, and we also have a large passenger business between the Orient and the Hawaiian Islands. It is a combination of the freight and passenger business that permits this line to run, although this year the Pacific Mail line has lost nearly half a million dollars here in this port.

Comr. LANE. Go on.

WITNESS. We have mentioned a fairly regular schedule out of Portland. The only time that our schedule has varied we were running four steamers—and in reality it has been at the earnest solicitation of the Portland shippers that we have made the divergences that have caused the irregularity of the schedule, and have sent one

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of our steamers, instead of sending it over to Hong Kong or Moji, at their earnest solicitation, to Kadodate or Newschwang, or some other place out of the regular line, and as those vessels are freight carriers and run to maximum speed, it is impossible, when making those divergences, to get them back into the schedule again without some little lapse. We tried to maintain a steamer every three or four weeks. Now, in Portland, you have had an illustration there of the "Oregonian," lying four or five days at St. Helena trying to go up the river to discharge a cargo. And while she is lying there, she ought to have been up there and discharged. The "Nikomedia," again, appears up there off Astoria, and we have worked in Portland day and night to keep those ships on schedule. And the same
2807 way in the Orient, we have turned them around in Hong Kong in 48 hours, unloaded and loaded in 48 hours, working day and night and we come over to Portland and we can't get in on account of the bar. Then we make up that time again at Portland and go down the river and lie there 7 days trying to get over the bar again.

Comr. LANE. That is what I was trying to get at——

WITNESS. (Int'g.) We not only have the difficulty of not getting this passenger business, but we have physical difficulties to contend with on the Portland line.

Q. The ships out by the Portland and Asiatic are not passenger steamers?

A. No, sir, they are modern freighters.

Q. Does the Portland and Asiatic own any steamers?

A. No, sir.

Q. Has it ever owned any, so far as you know?

A. No, sir.

Q. It charters them?

A. Yes, sir.

Q. How long, for what period at a time, does it charter these ships?

A. This present charter—I believe the previous charter of the "Intervelli" Steamers was three years.

Q. That is, the original charters of 1901?

A. Yes, sir.

Q. That was for three years?

A. And this charter was for the period of three years and an option of two more, as I remember, and we declared the option—we have so declared it.

Q. When were the present charters made?

A. They were made in 1903, and became operative, I think, in 1904, that is, negotiations were made in the spring of 1904.

Q. I asked you just now about the frequency of the sailings from Puget Sound in 1901. About how many are they now, taking all of the lines?

2808 A. Well, I should say, including the lines and the tramp vessels—do you include both?

CLOSE IN CENTER

Q. Yes.

A. I should say they are more frequent than they were in 1901.

Q. You testified yesterday about the handling of some business originating in the Orient and going over to Portland via the Portland & Asiatic, and then to San Francisco by the San Francisco lines. Was that business of considerable volume, or small?

A. Very small.

Q. Practically trifling?

A. Well, it is practically nothing, except some shipper in the Orient may at some time route his freight that way and we take it.

Q. It is not a traffic of any consequence, really?

A. No, sir. It is not a physical way to ship the business, when we have as many steamers coming into San Francisco; it is an unreasonable way to ship business under those circumstances. Not only that, but our rates in competition with the Dollar Line and the Standard Oil Company's steamers to San Francisco at the present time are very low, and then the trans-ship to San Francisco again is practically not remunerative at the present rates that prevail.

By Mr. SEVERANCE:

Q. Mr. Schwerin, you have spoken of the losses in the operation of the Portland & Asiatic. I understood you to say the Pacific Mail sustained a loss of half a million dollars this last year?

A. Yes, sir.

Q. What is the capital stock of the Pacific Mail Steamship Company?

A. $20,000,000.

Q. Does it pay any dividends?

A. Indirectly.

2809 Q. How?

A. Paid for the "Siberia" and "Korea" out of earnings.

Q. How long ago?

A. Just finished up paying for them this last year. It would run into some $1,300,000 in the last four years, I think.

Q. Now, Mr. Lovett asked you if the rental that you paid for the "Mongolia" and "Manchuria" was fair, and you stated it was fair?

A. Yes, sir.

Q. Who pays the insurance and taxes on those boats? Does the Pacific Mail pay it or the lessor?

A. Insurance is taken out in the name of the Pacific Mail, E. H. Harriman beneficiary, as I remember it.

Q. Who pays the premium?

A. The premium is paid out of this $30,000 which we send on to New York.

Q. That is what I want to know.

A. I suppose so.

Q. The Pacific Mail does not pay the insurance premium?

A. No, sir.

Q. Who pays the taxes on the boat?
A. Mr. Mahl, I suppose.
Q. Is that paid by the Pacific Mail?
A. No, sir.
Q. Is it paid by the owner?
A. Yes, sir.
Q. Do you happen to know what the taxes and insurance amount to, approximately?
A. The legislature of the state of New York, by an act to promote American shipping, in the foreign trade, collects no taxes upon an American bottom in the foreign trade.
Q. So there are no taxes?
A. No, sir.
Q. Do you happen to know what the insurance amounts to per annum?
2810 A. No, sir, but they are insured for nearly four millions of dollars.
Q. Do you know what the premium amounts to—you mean the two boats together are insured for about four million dollars?
A. Yes, sir, and it is pretty nearly three per cent.
Q. About $120,000?
A. Yes, sir.
Q. The aggregate rental, or what you have to pay is $720,000 a year for the two boats?
A. Yes, sir.
Q. And out of that are there any fixed charges, aside from the $120,000 for insurance?
A. The owners pay for all the repairs and all the maintenance of the ships.
Q. They pay for all the repairs?
A. Yes, sir, all the maintenance of the ships, all the upkeeps and outfit, and all the renewals.
Q. Do you happen to know what that originally amounts to, in percentage to the value of the ships?
A. No, sir, I do not; I know Mr. Harriman told me they had not made very much money on the ships.
Q. You were saying that the Portland and Asiatic cannot compete with San Francisco on business originating on the Atlantic seaboard. How is it with business in the Orient and destined to eastern points in the United States?
A. It is the same difficulty here. Kobe is one of our principal ports, and sometimes in the port of Kobe there are four different lines of express steamers, and we have a pretty hard time getting any freight on a tramp steamer against four express steamers, for instance, the "Minnesota" might be there and the "Fremont" might be there, and the Canadian express steamer in there, and perhaps one of our express steamers in there.
2811 Q. I noticed the other day, Mr. Schwerin, when we were in Portland, an item about this ship that you spoke about, being stuck in the ice?

A. Yes, sir; the "Arragonia."

Q. And it gave a statement of the tonnage, the commodities on board of her. There were 7000 tons, were there not?

A. I don't remember just what was on the "Arragonia," but the newspaper report is absolutely misleading, Mr. Severance, because we have had the "Manchuria" and "Mongolia" go out reported with 17,000 to 18,000 tons of freight in them when we have not more than 3,000.

Q. I don't know anything about that.

A. I would be very glad to furnish you with the inward manifest of the "Arragonia."

Q. As a matter of fact, you do bring back from the Orient considerable portions of merchandise on the Portland & Asiatic boats, do you not?

A. Yes, sir, we bring back some, but we don't bring back anything like full cargoes.

Q. Do you bring back full cargoes on the Pacific Mail boats?

A. Sometimes.

Q. Do you usually?

A. At certain periods of the year, yes, sir.

Q. Do your agents over there in the Orient work equally hard for all the boats they represent?

A. Those are our instructions.

Q. That is, you instruct them to compete on behalf of the Portland line with yourself acting for the Pacific Mail, do you, as actively as they can?

A. No, sir.

Q. What are your instructions in that regard?

2812 A. I will tell you. There is a certain class of freight that we can get by tramp steamers, that moves by tramp steamers. We can't get silk, or silk piece goods, or high-grade curios, for the tramp steamers; they all move by the express steamers. But we will work just as hard for the Portland and Asiatic line for the matting and teas, and for general curios, as we will for the San Francisco line. Those are our instructions. For instance, we may have a steamer on the berth now, and then there may be an interval when there will be no steamer on the berth. Shippers in the Orient will almost invariably ship by the first steamer, and they will give the preference to the better steamer.

Q. Then, as I understand it——

A. (Cont'g) Then again——

Q. Pardon me. I thought you had finished.

A. (Cont'g) Then again, where freights control in the East, we try to solicit freight in this country by the Portland and Asiatic line.

Q. Do the Portland and Asiatic Steamship Company have agents in the east?

A. Yes, sir, Mr. Ten Broeck.

Q. In New York City?

A. Yes, sir.

Q. You solicit, your agents in the Orient solicit just as actively for the Portland and Asiatic as they do for the Pacific Mail, and the Occidental and Oriental, do they?

A. Yes, sir, or the T. K. E.

Q. And the agents are the same?

A. Yes, sir; that is, the Pacific Mail Steamship Company is the agent in the Orient for the Portland and Asiatic.

Q. Yes, I understand.

2813 A. And we get a commission, we transact the business of the Portland and Asiatic, and they pay us a regular commercial commission; the same as we pay any commercial house that transacts the business for us.

Q. Suppose a Pacific Mail ship is in port at an Oriental port at the same time with a ship of the Portland & Asiatic. How do your agents distribute the cargo between those two, the cargo that they have accumulated to ship to this country?

A. They don't distribute it. For instance, the ships may be in the port of Hong Kong. If we allowed the agent in liners we will say he will go to Kobe and have no space, and go to Yokohama and have no space.

Q. Let us imagine they are both at Yokohama, the last port of call.

A. Before the ships arrive there, the agents have been engaging space. The San Francisco line might not have more than 200 tons of space alloted to Yokohama, and the Portland & Asiatic steamer might have 550 tons of space available for Yokohama. Our agent will go out and try to get all the freight he can to fill up the 200 tons of space on the San Francisco steamer, and what he can for the Portland & Asiatic steamer.

Q. That is, you give the Portland & Asiatic steamer what the Pacific Mail steamer cannot carry. That is the idea, is it?

A. No, sir.

Q. That is what you said just now.

A. You asked me a question involving a specific case. I say they go out and take all the freight they can get. If the shipper de-

2814 clined to ship the 200 tons on the San Francisco steamer, and said he wanted to ship on the P. & A. steamer, it would go on the P. & A. steamer.

Q. I understand, but the first duty of the Pacific Mail agents over there is to load the Pacific Mail steamers, because that is a more important branch of your business than the Portland & Asiatic line?

A. I can only say, Mr. Severance, that the agents have no instructions of that kind.

Q. I thought from your statement just now that they did.

A. No, sir. That is merely a physical way of explaining to you when you take the port of Yokohama, our ships go into Yokohama in the busy season of the year jammed for freight.

Q. Do I understand it that it is to be left to the discretion of your agents in the Orient, as far as unrouted traffic is concerned, as to which way they will send it?

A. The agent must use his own discretion to get the ships unloaded, and get as much competitive freight as he can get hold of.

Q. That is, competitive as between your lines and outside lines?

A. Yes, sir.

Q. There is no competition between the Portland & Asiatic, the Occidental & Oriental, the Pacific Mail, and the Japanese line, controlled by the Pacific Mail Steamship Company, but they are all four lines competing against the Great Northern and Canadian Pacific and other lines?

A. Well, you might describe it that way.

Q. That is about right?

A. About right, yes, sir.

Q. Do the Pacific Mail take shipments from the Orient for Los Angeles, the port of San Pedro?

A. Yes, sir.

2815 Q. How are they delivered? How are shipments for Los Angeles delivered? Are they transhipped at San Francisco?

A. Transhipped by the Pacific Coast Steamship Company.

Q. You were asked by the Commissioner, and also by Judge Lovett, with reference to these conversations with Mr. Paul Morton concerning the San Diego line. In 1902, there was an investigation in Chicago—it was January, 1902, five years ago and Mr. Stubbs, Mr. J. C. Stubbs, gave testimony there. He was asked about this same matter, and I would like to see if your recollection corresponds with what Mr. Stubbs testifies to. Mr. Stubbs was asked with reference to all-rail shipments from California, orange shipments, and the maintenance of rates, and about a certain arrangement between Mr. Morton and Mr. Stubbs.

Mr. LOVETT. From what page are you reading, or about to read?

Mr. SEVERANCE. Page 24 of the record. Then the testimony is as follows:

"Mr. DAY. Is there not an understanding regarding the percentage of the transpacific traffic that the Atchison shall have or take?

"Mr. STUBBS. No, sir. The Atchison has run its own lines. Its own steamers.

"Mr. DAY. Where?

"Mr. STUBBS. From San Diego.

"Mr. DAY. Is it running now?

"Mr. STUBBS. I don't know whether they are running now or not.

2816 "Mr. DAY. Is there any arrangement that the line shall be abandoned?

"Mr. STUBBS. There is an understanding that after the 1st day of April, I will not be sure about the 1st day of April, I believe that the Santa Fe will use the transpacific lines from San Francisco.

"Mr. DAY. Is that what is popularly known as the Pacific Mail?

"Mr. STUBBS. That is one of them.

"Mr. DAY. What was the consideration for that proposal? How was the Atchison to profit or benefit by them?

"Mr. STUBBS. I think the understanding is that it will receive a fair share of the traffic from those steamers.

"Mr. DAY. Is that an arrangement between the Southern Pacific railroad officials or the Union Pacific Railroad officials and the Atchison?

"Mr. STUBBS. I don't think there is any agreement.

"Mr. DAY. Or understanding; is it an agreement between the steamship company and the railroad, or all three?

"Mr. STUBBS. I don't think there is anything more than the expectation of that result.

"Mr. DAY. There has been no promise?

"Mr. STUBBS. I think there has been no complete promise.

"Mr. DAY. Well, what propositions were made?

"Mr. STUBBS. Well, propositions were made to the effect that if you work for the San Francisco lines, you get a fair share of the traffic.

"Mr. DAY. That they will abandon the San Diego part?

2817 "Mr. STUBBS. It would not be stated that way, in my judgment. It would be stated, 'If you work in connection with our lines from San Francisco, we will see that you get a fair share of the business.'

"Mr. DAY. What steamship line at San Diego is the Atchison connected with?

"Mr. STUBBS. I don't recall the name of the line."

Does that correspond with your recollection of the transaction and the negotiations?

WITNESS. Well, I have never known Mr. Stubbs to have this discussion that he spoke about there. I was not present at the time.

Q. You would not undertake to say, would you, that Mr. Stubbs has not correctly stated the suggestions that were made to the Santa Fe Company?

A. No, sir, I could not state as to the correctness of that statement.

Q. All you know about it is as to your talk with Mr. Morton?

A. And from time to time I have talked generally on the question.

Q. Talked with Mr. Stubbs?

A. Talked to Mr. Stubbs and talked to Mr. Sproule.

Q. Did you talk with Mr. Stubbs and Mr. Sproule about the desirability of getting the Atchison to quit San Diego, and bring their stuff here?

A. Naturally. They were connecting carriers of ours.

Q. You were asked this question by Judge Lovett, and I was a little surprised at your answer. Judge Lovett asked you

2818 whether the Southern Pacific had any reason to object to

your giving traffic to the Santa Fe, and you said "No." Do you mean that sir, that the Southern Pacific Railroad Company, carrying freight east from San Francisco, has no reason to object to your handing traffic over to the Santa Fe, "no object in objection"—that is the way the question read, I think?

A. Perhaps I may not have understood Judge Lovett's question just as you put it now. But I have always recognized my right as manager of the Pacific Mail and the affiliated San Francisco lines, to work those lines in every way that I know how for the benefit of San Francisco, and for the individual lines, and that I had a right to go to the Santa Fe and to ask the Santa Fe to make an arrangement with me by which they would give me a larger share of their through freight, in return for which I could turn any or all of the business of our lines over to the Santa Fe. I have always believed I had that right.

Q. That is what you meant, then, by that answer?

A. Yes, sir.

Q. You did not mean by that that the Southern Pacific would not have less traffic if you gave it to the Santa Fe? They would, would they not?

A. Well, naturally, if the Southern Pacific Company had had the entire traffic that came in, and a part of it were given to the Santa Fe, they would lose traffic. But we felt that we were building up this traffic all the time. There is a larger volume of traffic coming in, and the competition for outward traffic was very fierce, and we wanted the entire assistance of the Santa Fe if we could get them to help us through this port.

Q. You do not want us——

2819 A. (Int'g.) I do not recognize the railroad at all, and do not consider the railroad at all.

Q. Mr. Schwerin, you do not want the Oriental traffic coming to California or going from California to the Orient to be divided between two ports, but you want to bring it all to San Francisco?

A. Naturally. My interests lie in the port of San Francisco.

Q. Do you operate in connection with the Hawaiian Line?

A. Yes, sir.

Q. You take shipments from here and take them up to Portland?

A. Yes, sir.

Q. And also the Panama route. That is all.

Mr. LOVETT. We have no further questions.

By Comr. LANE:

Q. Mr. Schwerin, you understand there is a difference between the statement as made by Mr. Stubbs and the statement as made by you this morning in relation to the reason for abandoning the San Diego line across the Pacific?

A. No, sir, I don't think so. As I understand Mr. Severance's question, it was whether I had previous knowledge of that under-

standing that Mr. Stubbs may have stated as taking place between him and the Santa Fe officers.

Q. As I understand Mr. Severance, he asked if you knew whether that was a correct statement as made by Mr. Stubbs?

A. I don't know what conversation Mr. Stubbs may have had with any officers in relation to this question, except with myself.

2820 Q. Except yourself?

A. I can't remember, Mr. Lane, that Mr. Stubbs and myself were present at any meeting with Santa Fe officers where this question was seriously considered.

Q. You did not know that Mr. Stubbs was carrying on negotiations with the Santa Fe Railroad for the abandonment of its steamship line across the water?

A. No, sir.

Q. And making an arrangement by which that business was to be diverted from San Diego to San Francisco, and go over your lines to the Orient?

A. No, sir.

Mr. DUNNE. I don't think Mr. Stubbs' testimony will bear that construction, your Honor.

Comr. LANE. I understood that that was Mr. Schwerin's statement, that he knew nothing about any transaction, anything in the way of a negotiation looking towards the divergence of this traffic, until after the San Diego line had been abandoned. Now, then, I understand Mr. Stubbs' statement to be that there were negotiations of that kind.

Mr. DUNNE. I don't understand Mr. Stubbs' testimony to mean that this general traffic arrangement between the Santa Fe and Pacific Mail Steamship Company was made as a result of and in transpacific connection out of San Diego. I understood the historical fact to be that that transpacific connection had ceased because it was financially unprofitable, and that it was after that and independently of that that the general traffic arrangement between the Pacific Mail Company and the Santa Fe was entered into.

Comr. LANE. I may have misunderstood the statement of Mr. Stubbs as read by Mr. Severance from Mr. Stubbs' testi-

2821 mony. Will you kindly read that?

Mr. SEVERANCE. I wish Judge Lovett would kindly read it for me, my voice is so bad, if you don't mind, Judge Lovett.

Mr. LOVETT. I will read it. I understood also Mr. Schwerin to testify that he had frequently solicited this business from Mr. Morton during the existence of that line.

Comr. LANE. So I understood.

Mr. LOVETT. But that no arrangement was made until after that line was discontinued.

Comr. LANE. Yes. Now, if Mr. Stubbs' statement, as I understand it, is correct, Mr. Stubbs was negotiating for the abandonment of the steamship line and transfer of the traffic to the Pacific Mail, over which Mr. Schwerin is in absolute control.

Mr. LOVETT. I will read the statement, your Honor.

"Mr. DAY. Is there not an understanding regarding the percentage of the transpacific traffic that the Atchison shall have or take?

"Mr. STUBBS. No, sir. The Atchison has run its own lines, its own steamers.

"Mr. DAY. Where?

"Mr. STUBBS. From San Diego.

"Mr. DAY. Is it running now?

"Mr. STUBBS. I don't know whether they are running now or not.

"Mr. DAY. Is there any agreement that the line shall be abandoned?

"Mr. STUBBS. There is an understanding that after the
2822 1st day of April, I will not be sure about the 1st of April, I believe"——

Q. Right there. Mr. Schwerin, do you know of or were you a party to that understanding relating to the 1st day of April?

Mr. SEVERANCE. That is 1902.

Q. (Cont'g) 1902.

A. I can't recollect of having any definite talk with Mr. Morton in relation to the operation of our lines positively, until after the abandonment of the California & Oriental line.

Q. You do not know that there was an arrangement, not a contract, but an arrangement or a gentlemen's understanding, that after the 1st day of April, 1902, there should be a transfer of their business to you?

A. I will frankly state that my impression is that there was an interregnum, that the California & Oriental line had practically gone out of business when Morton told me "Well, we will give you some of the business." But I want to say that this had been talked over (you understand unofficially) for all of the two or three years that the California & Oriental line had been running.

Mr. LOVETT. Does your Honor desire the rest of this read?

Comr. LANE. Yes. I want to see how far Mr. Stubbs went.

Mr. LOVETT. I did not finish the last answer of Mr. Stubbs. I will repeat it:

"Mr. STUBBS. There is an understanding that after the 1st day of April, I will not be sure about the 1st day of April, I believe that the Santa Fe will use the transpacific lines from San Francisco.

2823 "Mr. DAY. Is that what is popularly known as the Pacific Mail?

"Mr. STUBBS. That is one of them.

"Mr. DAY. What was the consideration of that proposal. How was the Atchison to benefit or profit by that?

"Mr. STUBBS. I think the understanding is that it will receive a fair share of the traffic from those steamers.

"Mr. DAY. Is that an agreement between the Southern Pacific railroad officials, or the Union Pacific railroad officials and the Atchison?

"Mr. STUBBS. I don't think there is any agreement.

"Mr. DAY. Or understanding; is it an agreement between the steamship company and the railroads, or all three?

"Mr. STUBBS. I don't think there is anything more than the expectation of that result.

"Mr. DAY. There has been no promise?

"Mr. STUBBS. I think there has been no completed promise."

Comr. LANE. "No completer promise" is the language.

Mr. LOVETT. (contg.) "Mr. DAY. Well, what propositions were made?

"Mr. STUBBS. Well, propositions were made to the effect that if you work for the San Francisco line, you get a fair share of the traffic.

"Mr. DAY. That they will abandon the San Diego part?

"Mr. STUBBS. It would not be stated in that way, in my judgment. It would be stated, 'If you work in connection with our lines
2824 from San Francisco, we will see that you get a fair share of the business.'

"Mr. DAY. What steamship line at San Diego is the Atchison with?

"Mr. STUBBS. I don't recall the name of the line.

"Mr. DAY. Is there not an agreement regarding the division of the"——

Q. That is all there is that I wanted to hear. Thank you. That account differs from your statement to the Commission, does it not, as to there being an agreement or understanding that the Santa Fe should have a proportion of the business?

A. From what Mr. Stubbs says there, taking his testimony there, it seems that he had discussed that thing with the Santa Fe in relation to a proposition of that business.

Q. Was he not trenching on your preserve when he was negotiating for transpacific business?

A. Well, I have asked Mr. Stubbs to help me in a great many things.

Q. But you did not ask him in that matter?

A. In this? I have discussed that question with Mr. Stubbs, as to our advisability of handling the Santa Fe traffic for the benefit of the steamship line, a great many times, and I have discussed with the other officials of the Southern Pacific Company, in regard to the port of San Francisco, building up the port of San Francisco, that is, the steamship connections. You understand, Mr. Lane, the more steamers that can be gotten out at the port of San Francisco and an increasing of the importance of the port of San Francisco, will naturally increase the volume of the tonnage that moves by
2825 the port of San Francisco, and I look to the question of having the rail connection; in fact I have asked the Southern Pacific to help me in that direction, to help me to get the Santa Fe to make a traffic arrangement with us.

Q. Is it in furtherance, or was it in furtherance of any negotiations which you had with Mr. Stubbs, that this agreement was had?

A. I have no doubt Mr. Stubbs may have discussed the thing with the Santa Fe people—must undoubtedly have done so.

Mr. DUNNE. Mr. Schwerin, do you understand that there is anything in this testimony that has been read here of Mr. Stubbs' statements, which goes to the point that he made this understanding?

WITNESS. No, sir, I do not.

Mr. DUNNE. Do you understand this to be any more than a suggestion that he knows as a matter of history, that there was some such arrangement, or result, or expectation?

WITNESS. I so understand it, the way it was read, yes, sir.

Mr. DUNNE. By the way, Mr. Schwerin, do you know whether the date here specified by Mr. Stubbs was before or after the abandonment by the Santa Fe of its transpacific water connection at San Diego?

WITNESS. What was the date, please, that he specified there?

Mr. DUNNE. The date he specified is April, 1902.

Mr. SEVERANCE. That is the time they were to begin the work at San Francisco on the transpacific line?

Mr. DUNNE. Yes. He says here he is not certain about
2826 the date, but assuming provisionally that that was the date, do you happen to know whether or not at that point of time the Santa Fe had abandoned its connection with the water carrier out of San Diego?

WITNESS. Well, I would not like to state on that. I am not positive of the exact date that they abandoned that line.

Mr. DUNNE. At all events, Mr. Schwerin, independently of this whole question of abandonment, the Santa Fe had a connection with a water carrier at San Diego and you had been seeking yourself, prior to the abandonment of the connection, to have the Santa Fe establish joint traffic relations with you. Was that not so?

WITNESS. Yes, sir, during the entire time, practically—well, not the entire time, but practically after the first year of the operation of the California & Oriental.

Mr. DUNNE. As connecting carriers?

WITNESS. Yes, sir.

Q. May I ask, Mr. Schwerin, if Mr. Stubbs did not do this, and you didn't do it, who did it? Now, as I understand Mr. Dunne's question, it is based upon the implication that Mr. Stubbs did not carry out that arrangement, and you say you did not. Now then, is there anybody in authority, anybody with authority from you who could carry it out?

A. I don't think I have said I didn't carry out that arrangement, Mr. Lane.

Q. You have mentioned the arrangement, and——

A. (Int'g.) You mean in regard to these negotiations?

2827 Q. At the time that Mr. Stubbs testifies to; at the time that he refers to prior to the 1st day of April, 1904.

Mr. SEVERANCE. 1902, your Honor.

Q. 1902, yes.

A. I can only answer that question by saying that that was a matter of general discussion all along the line in relation to our getting control of the Santa Fe outward tonnage.

Q. The whole thing amounts to this: that there was an understanding and that Mr. Stubbs knew about it, and I want to know by whom it was done. Mr. Stubbs, as I understand him, didn't do it, and as I understand you, you didn't do it. Now I would like to know just who did.

A. The first information I had upon the subject was that the Santa Fe—and Mr. Paul Morton told me "Well, I guess we are going to give you some business" in New York, and I asked him when, "Well," he said, "I don't know when." I don't remember the date of this conversation, but he said, "We have thought the whole thing over, and we are not going to put on a line of our own, and we will give you the business." Now, we had previously discussed many times before that in relation to a division of the traffic outward and homeward. So I understood that when the first arrangement was made in regard to the division of the traffic I understood from Mr. Sproule that the Santa Fe had accepted my proposition, and the date of that I am unable to state—had accepted my proposition that we were to reserve a certain amount of our tonnage space for the outward Santa Fe traffic, and we were to give them in the neighborhood of 25 per cent of the homeward traffic.

2828 Comr. LANE. I think that is all.

Mr. DUNNE. I would like to ask this question of Mr. Schwerin: This matter had been developing and progressing, this question of joint traffic relations between your company and the Santa Fe, throughout quite a period of time had it not?

WITNESS. Yes, sir, it was all mixed up, and it is absolutely impossible for me to state now how the thing culminated in an agreement.

Mr. DUNNE. I was just going to put that question to you, if it would not be extremely difficult to reduce the proposition to its concrete elements?

Comr. LANE. It manifestly is, Mr. Dunne. There isn't anybody that appears to know exactly how it was done.

Mr. DUNNE. I want your Honor to appreciate that we want to give you all the information that we can.

Comr. LANE. I appreciate that.

Mr. DUNNE. That this thing had been going on a long time, backwards and forwards, to and fro, and to take it and give it concrete dimensions and proportions and limitations is very difficult to do, and that is true of a great deal of business that this witness does, or any other man of large affairs.

Comr. LANE. Are there any further questions to be asked of Mr. Schwerin?

Mr. DUNNE. That is all, Mr. Schwerin.

Mr. LOVETT. Counsel for the defendants objects to the questions and answers as read and as above set forth, beginning with
2829 the question, "Do you recall any conference between the officials," etc., on page 2732, in reference to the abandonment by the Atchison, Topeka & Santa Fe Railway Company of the relations with the said line of steamships operating between San Diego and Asiatic ports, as testified to by said witness, upon the ground that said questions and answers are irrelevant to the issues made by the pleadings in this case.

It is understood that this objection may apply to all questions involving the said matter without repeating the same as to each question.

The hearing was then adjourned until the morning of Tuesday, March 16, 1909, at the office of the United States Marshal, in the Federal Building, in the City of Chicago, Illinois.

2830 UNITED STATES MARSHAL'S OFFICE,
FEDERAL BUILDING, CHICAGO, ILLINOIS,
*Tuesday, March 16, 1909, 10.30 A. M.*

Counsel for the respective parties appeared before the Special Examiner, Hon. Sylvester G. Williams, at the above time and place, pursuant to adjournment, and thereupon proceeded to room 653, Federal Building, where the hearing was resumed.

Present: On behalf of the Complainant, Mr. C. A. Severance and Mr. G. E. Husted; on behalf of the Defendants, Mr. R. S. Lovett.

The EXAMINER. Are you ready to proceed, Mr Severance?

Mr. SEVERANCE. All ready.

(Papers marked Complainant's Exhibits 117 and 118 and offered in evidence. Afterwards withdrawn as being duplicates of Complainant's Exhibits 81–J and 81–K.)

The EXAMINER. Call your first witness.

2831 J. A. WENTZ,

being duly sworn as a witness on behalf of the Complainant, testified as follows:

Direct examination by Mr. SEVERANCE.

Q. Mr. Wentz, where do you live?
A. I live in this city.
Q. In Chicago?
A. Yes, sir.
Q. You are not in business at present, are you?
A. No, sir.
Q. What has been your business?
A. I have been a railroad man all my life.

Q. With what railroads have you been connected, and in what capacities, commencing at the end and stating it backward?

A. I served the Rock Island Railroad in Chicago as commercial agent for fifteen years, nearly; and previous to that——

Q. When did you go out of that service?

A. The first of January, 1908.

Q. Go ahead.

A. Previous to that I served them as general agent at Kansas City, for thirteen years.

Q. Did you have railroad experience prior to that time?

A. A year previous to commencing with the Rock Island in Kansas City I was in business for myself. Previous to that I was with the Cairo & St. Louis Railroad, as general freight and passenger agent, four years.

Q. During the time that you were the commercial agent of the Rock Island in Chicago, were you engaged in soliciting coast business?

A. Yes, sir.

Q. And how did the business that you were able to secure, move?

A. Generally, at first, before the Rock Island built
2832 their extension from the Missouri river west, it moved via Union Pacific from Missouri river, and sometimes by the Northern Pacific and Great Northern. Those were our principal outlets for Pacific coast business.

Q. Then, when you built west of the river how did it move?

A. We figured to get the long haul as much as possible by way of El Paso (the line was extended to El Paso) and we worked that route as a preference. Frequently we were obliged to give up business of that character to the Union Pacific at Omaha, and some times the Atchison, Topeka & Santa Fe after they were built through.

Q. Was your line built to Denver before it was to El Paso?

A. Yes, sir. We worked Denver largely before we were built to El Paso. I overlooked that.

Q. When you secured coast traffic moving by Denver, how did it go on to the coast?

A. Well, by the Rio Grandes and also the Union Pacific. We exchanged a great deal of business at Denver with the Union Pacific as well as with the Rio Grande roads.

Q. And from Ogden, of course it all went over the Southern Pacific?

A. Southern Pacific from Ogden, yes, sir,—all of it.

Q. How was it on business to Portland, Oregon?

A. We worked that most any old way we could. Some times Great Northern and Northern Pacific by way of St. Paul, and Union Pacific by way of Ogden, Oregon Short Line.

Q. Did business to Portland move by way of the Southern Pacific and Sacramento?

A. I believe they had a route there called the Shasta Route,
2833 on which we took quite a little business to Portland.

Q. That would move from Ogden to Sacramento and then south?

A. Yes, sir.

Q. Or to Roseville Junction?

A. I believe so, yes, sir.

Q. Do you remember the time when the Union Pacific and the Southern Pacific had separate commercial agencies here in Chicago?

A. Yes, sir.

Q. Who were the heads of those agencies?

A. Mr. Neimyer represented the Southern Pacific, and Mr. W. H. Knight represented the Union Pacific.

Q. Were those gentlemen active in soliciting coast business?

A. Yes, sir.

Q. Personally and through their soliciting agents?

A. And through their solicitors, yes, sir.

Q. Which way did Mr. Neimyer endeavor to send his business to the coast? What was his preferential route?

A. Well, I don't know. Sometimes I thought the Southern Pacific by way of New Orleans, and some times I thought the other way. I know the business moved both ways.

Q. How did the Southern Pacific by way of New Orleans reach Chicago—over what lines?

A. Out of Chicago going to the coast?

Q. Yes, or coming back, either one.

A. The Illinois Central, generally.

Q. That route was actively worked for business both ways, wasn't it?

A. Why, I thought so, yes, sir.

Q. You felt it in your business?

A. Yes, sir.

Q. You said that after the Rock Island was extended to El Paso, you solicited business that way. Do you remember what
2834 year that was?

A. No, sir; I can not recall it now. I can't recall the date.

Q. How did Mr. Knight solicit Pacific coast business? By the Union Pacific?

A. He figured to get the business by the Union Pacific, Omaha to Odgen generally. That is my recollection.

Q. How did he work the Portland business?

A. I think he worked the Oregon Short Line, but I won't be certain. Anyway, he sought to get the business over the Union Pacific.

Q. Now, how was this competition for business between the Southern Pacific and the Union Pacific, the coast business? Was it an active competition? Were these gentlemen active in their solicitation?

A. Why, I thought so. We lost business quite frequently, I know. I recall losing business, that was taken from us by way of New Orleans. Of course they got a haul on any of it in those days, either from Ogden or from New Orleans.

Q. Do you remember when the offices here were consolidated?
A. No, sir, I can't recall the date.
Q. You remember the fact?
A. Yes, sir, very well.
Q. A change took place in the effort to work coast business on the part of Mr. Neimyer after that change?
A. I can't say.
Q. You don't know?
A. I can't say; no, sir.
Q. When the offices were consolidated, Mr. Neimyer became agent of both lines, did he?
A. Yes, sir.
Q. Do you have any recollection of a fast freight train run by the Illinois Central to New Orleans on which coast business moved?
A. Why, I remember that in the soliciting of business they
2835 used that as an inducement to ship that way. I forget now whether it was the Union Pacific solicitors that especially mentioned that or the Illinois Central.
Q. You mean the Southern Pacific?
A. I mean the Southern Pacific, yes, sir.
Q. You remember such a train existing, do you not?
A. It was so reported to me.
Q. It was claimed to exist, at any rate?
A. Yes.
Q. What class of commodities moved to the coast by these different routes, from Chicago territory? All classes?
A. All classes, I should say. I remember especially one time some large shipments of furniture that were moving, and, if I remember right, we lost those shipments or some of them. Some furniture shipments I recall one of my solicitors reporting to me that he could not get. They were pledged to the Southern Pacific.
Q. Do you remember anything about the kinds of equipment that these different lines had? I am speaking now of the Union Pacific and the Southern Pacific, and referring particularly to the size of freight cars and that sort of thing. Was there any rivalry in that regard?
A. I do not remember now just what their equipment consisted of. I think they were right up to date, though, with large cars for furniture, the same as all other roads.
Q. In soliciting furniture shipments, is it an important item to be able to furnish large equipment?
A. Oh, yes, sir.
Q. Do you remember how many years ago the furniture car first came in vogue?
A. No, I do not. If I were going to guess roughly I would say about 15 or 20 years.
2836 Q. Do you remember what trans-continental lines first had them?
A. No, I do not.

Q. Assuming that business moves on a parity of rates, what are the methods employed by soliciting agents in securing traffic?

A. Competitive traffic is secured largely on personality, and of course the time, and the prompt adjustment of claims is a consideration, largely.

Q. What is your opinion as to the necessity of railroads maintaining commercial agencies, if they are going to compete for traffic in competitive territory?

A. I imagine if they were all done away with, one road would be as well off as another.

Q. Suppose they were not all done away with, but part of them were?

A. The road which kept the solicitors on would get the greater portion of the business, all other things being equal. There is no doubt of that.

Q. Is it your opinion that soliciting agents through their efforts do secure business for their lines?

A. Yes, sir.

Q. And do you think that they are useful, or otherwise, to shippers in the service they can perform for them?

A. Yes, sir.

Q. What are the services that soliciting agents can properly perform for shippers?

A. They can look after their interests in a great many ways. Sometimes they want a particular tariff and the solicitors will wait on them and get it and carry it to them. And he will take an interest in the settlement of their claims, and so forth.

Q. Do they ever have anything to do with securing equipment?

2837 A. Yes, frequently; in helping to get the equipment set for the business.

Q. While you were at Kansas City, was the Southern Pacific in that field working coast business?

A. I don't remember of their having a representative in Kansas City.

Q. That is a good many years ago. I think they left the solicitation of that business to their connections.

A. Yes, sir. That was 15 or——

Q. 15 or 20 years ago?

A. 16 years ago. I left there in 1893.

Cross-examination by Mr. LOVETT:

Q. Mr. Wentz, when was it that you ceased to solicit for the Rock Island?

A. The first of January, 1908.

Q. And you had been employed as solicitor here for the Rock Island how long before that?

A. About 15 years.

Q. Prior to that you acted for them in Kansas City?

A. Yes, sir.

Q. For how long at Kansas City?

A. 13 years.

Q. How many lines were engaged in soliciting business for the Pacific coast during the time that you were engaged in business, in the territory where you solicited? Were not practically all of the lines leading westerly and northwesterly and southwesterly engaged in soliciting that business?

A. Yes, sir.

Q. Will you name the principal lines?

A. The C., B. & Q., the Chicago, Milwaukee & St. Paul, the Chicago & North Western, the Atchison, Topeka & Santa Fe, the Missouri Pacific, the Chicago & Alton, the Chicago Great Western. I don't know whether I have overlooked any or not.

2838 Q. You would not forget the Rock Island, would you?

A. Oh, no, sir.

Q. The Wabash?

A. Yes, I thought I mentioned the Wabash.

Q. The Missouri, Kansas & Texas?

A. Well, I don't know. I don't remember of their being very active on Pacific coast business.

Q. Didn't they work that business by way of their connections in Texas—El Paso?

A. They might have done so. I don't recall of any strong competition for that business.

Q. Doesn't the Iron Mountain work that business?

A. I think probably they did; I am not certain.

Q. Don't you know, Mr. Wentz, that that was an active competitor of the Rock Island as far as El Paso?

A. We did not consider them as any great competition on Pacific coast business.

Q. I mean, of course, the Iron Mountain in connection with the Texas & Pacific, by way of Texarkana and El Paso.

A. Yes, I know the route.

Q. You did not consider them a factor in the competition?

A. I don't think we ever had any trouble from that direction in the way of competition.

Q. And you do not recall the Missouri, Kansas & Texas as competing for that business or soliciting that business?

A. They might have done so. So far as soliciting business is concerned, solicitors solicit business wherever they have a tariff, and a great many of them are too anxious to work, as a rule, for tonnage instead of earnings.

2839 Q. Didn't all the lines that I have mentioned here and that you mentioned as engaged in this business, have tariffs for California business?

A. I don't recall whether the Pacific coast rate applied by way of the M., K. & T. or not, or the St. Louis, Iron Mountain & Southern.

Q. But the Missouri Pacific, the Rock Island, the Burlington, the North-Western, the St. Paul, the Northern Pacific, the Great Northern, the Wabash, the Chicago & Alton—those lines at least were actively soliciting this California business, weren't they?

A. Yes, sir.

Q. They are doing so still, are they not?

A. I believe so.

Q. They were as long as you were engaged in the business?

A. Yes, sir.

Q. Hasn't the Iron Mountain and the Texas & Pacific together, by way of Texarkana, the shortest line from this territory to El Paso?

A. I think not.

Q. Well, from St. Louis to El Paso?

A. Possibly. I don't know.

Q. Now, such business as the Rock Island secured for the Pacific coast, as I understood you to testify on direct examination, went originally to the Missouri river and was there turned over to the Missouri Pacific?

A. Yes, sir.

Q. And then it passed over what line to get to California?

A. Southern Pacific from Ogden.

Q. Then after the Rock Island was extended to Denver, it was there, I believe you testified, turned over either to the Union Pacific or the Rio Grande?

A. Yes, sir.

Q. And then over what line to California?

A. The Southern Pacific. The Southern Pacific was the
2840 outlet for all those three lines for a long time.

Q. What three lines do you mean?

A. Well, I mean the two lines. When I speak of the Rio Grandes I mean the Denver & Rio Grande and the Rio Grande Western. That is one route. I should have said two.

Q. The situation of the Burlington with reference to Pacific coast business was much the same as the Rock Island, wasn't it? It turned it over to the Union Pacific?

A. Yes, sir.

Q. And that is true of the Missouri Pacific?

A. Yes, sir; I believe so.

Q. And the outlet for all those lines—the Burlington, the Rock Island, the Missouri Pacific, the North-Western and the St. Paul—for Pacific coast business was by way of Ogden and the Southern Pacific, wasn't it?

A. Yes, sir, generally so.

Q. Such business as the Rock Island took to El Paso, the outlet for that to California was over the Southern Pacific, was it not?

A. Yes, sir.

Q. So, the Rock Island had two lines—one by way of El Paso and one by way of Denver.

A. Yes, sir.

Q. And you worked for both of those lines?
A. Yes, sir.
Q. Did it occur to you that you were working for competing lines?
A. No. Not at all.
Q. You tried to get it the way that——
A. We tried to get the longest haul possible, that which would give the best earnings, and that was generally by El Paso, after the road was built to El Paso. We frequently gave up business, however, at Omaha, even up to a late date—we were obliged to.

Q. Yes, but wherever you could work it so as to get the long
2841 haul, naturally you did that?

A. Yes, sir.
Q. The Southern Pacific did the same thing, as far as you observed, didn't it?
A. I think so.
Q. All railroads do that, don't they?
A. Yes, sir, that is the rule.
Q. The North-Western would deliver its Pacific coast business to the Union Pacific at Omaha, naturally, wouldn't it?
A. Yes, sir.
Q. It has always had an agent here soliciting that business?
A. Yes, sir, by that route.
Q. And the Union Pacific soliciting business by the same route?
A. Yes, sir.
Q. And the St. Paul has had solicitors here for the same business, except that it tried to carry it over its own rails to Omaha?
A. Yes, sir.
Q. All of the solicitation in this territory for California business, by the Rock Island, the Burlington, the Missouri Pacific, the St. Paul, the North-Western, the Chicago & Alton, inured ultimately to the benefit of the Southern Pacific, did it not, Mr. Wentz?
A. Yes, sir, on Pacific coast business.
Q. The shipments that you testified about as having gone by way of New Orleans, were for Los Angeles, weren't they?
A. I believe they were as a rule.
Q. Isn't it true that you never knew any to go that way from this territory for San Francisco?
A. No, sir.
Q. By way of New Orleans?
A. No, sir. I am inclined to think some did go to San Francisco.
Q. You are inclined to think so?
A. Yes, sir.
Q. You know some went to Los Angeles?
A. Yes, sir.

2842 Q. You can not swear positively they went to San Francisco by that way, can you?

A. Well, I know they were in the field for that business. I can not say—I can not put my finger right now on any business they really got.

Q. Who was in the field for it?

A. The Southern Pacific people.

Q. Do you mean by that, that they were actively soliciting freight from here that way, or were like you—would not refuse any freight offered? Weren't they really working in this territory with you and with other western and southwestern lines, either by way of Ogden or by way of El Paso?

A. How is that question, please?

Q. Isn't it true that the agents of the Southern Pacific in this territory were working with you and other western and southwestern lines for the business by way of Ogden or El Paso rather than by way of New Orleans? Wasn't there active solicitation and co-operation with you and other soliciting agents in this territory, for the west and southwest?

A. I think they did work with us largely.

Q. Well, isn't it true that you never knew any solicitation by the Southern Pacific in this territory by way of New Orleans? I am not asking whether they had refused business that way, but isn't it true that they did not solicit it that way?

A. I was under the impression that they did solicit it. That is my recollection.

Q. That is your recollection?

A. Yes, sir.

Q. Whom do you recall as soliciting from this territory by way of New Orleans?

A. The Southern Pacific representatives.

2843 Q. Who?

A. Mr. Neimyer and his assistants.

Q. As soliciting by way of New Orleans?

A. I think they were.

Q. Will you be positive about that? Can you recall any instance?

A. I can't recall any instance right now. I know we regarded them as competitors for San Francisco business by way of New Orleans as strong as by way of Ogden, because it was a little longer route.

Q. You regarded all lines as competitors for that business, didn't you?

A. Yes, sir.

Q. In other words, don't you think there were probably as many as 50 different lines—I mean you could form lines by joint tariffs from this territory for California business?

A. Well, I don't think there were 50.

Q. There were a considerable number? Would you say 40?

A. Possibly so. 30 to 40 I should guess, counting all the lines that went in to make the different through routes. It would appear to me that there were 30 to 40, possibly.

2844 Q. You would consider the Chicago & Alton one of those lines?

A. Yes, sir.

Q. And you would consider, I suppose, the Houston & Texas Central from Denison down to Houston one of these lines?

A. Well, I do not remember of any competition for business that went down that way, by way of the H. & T. C.

Q. You would consider the Morgan railroad extending from New Orleans to Lafayette, Louisiana, one of those competing lines, would you not?

A. I never heard of the route being used on the Pacific coast business from here, although it might have been.

Q. You do not happen to know that that is one of the links in the main line of the Southern Pacific System, do you?

A. Oh, yes; I know it is.

Q. But taking all of these different lines, long and short, that participated in this transcontinental traffic, and solicited along with the other business, and taking the way by which these joint tariffs were laid out by the various companies, don't you think that there would be forty or fifty routes between Chicago and the Pacific coast?

A. I presume that number of routes might be made up by the tariffs; yes, sir. It depended altogether on how the tariff read.

Q. Were not most of them soliciting business more or less?

A. Yes, sir.

Q. And that went on up to the time as long as you were in business, did it not?

A. Yes, sir.

2845 Q. Did you ever send any business to California from this territory by way of Portland and boat down from Portland to San Francisco?

A. I do not think I ever worked any business that way.

Q. You never tried to work it that way?

A. No, sir.

Q. Did you ever attempt to work any by way of El Paso and the Sunset Route to Portland?

A. I think we did.

Q. By way of El Paso and around that way to Portland?

A. Yes, sir.

Q. Would you work it that way as against the short line by way of Denver?

A. No, sir.

Q. Why would you work it that way?

A. There might have been some reason for it on the part of the shipper wanting it to go that way. I believe the rates applied that way; I am not certain.

Q. You are not certain about that?

A. No, sir.

Q. I think you testified on your direct examination that you had moved some business to Portland by way of the Union Pacific and the Oregon Short Line?

A. Yes, sir.

Q. Did I understand you to testify that you had moved any by way of Sacramento—that is, by way of the Southern Pacific to Sacramento—the Shasta route?

A. Yes, sir.

Q. How did that move?

A. It moved by way of Sacramento and the Shasta route.

Q. Why did you move it that way, as against the Denver and the Union Pacific and Short Line?

A. As a rule it did not go that way at my direction. Occasionally a shipper would want to use that route, for some reason or other,

and we would take it that way if he expressed a preference
2846 for it.

Q. It was rather unusual though, was it not?

A. Yes, sir. We did not do any great volume of business that way.

Q. Haven't you in mind business going to Oregon and points south of Portland, rather than Portland, for that business?

A. No, sir; we handled Portland business that way.

Q. You are sure you handled Portland business that way?

A. I am quite certain of it.

Q. But your recollection is that it was not large?

A. Are you speaking of the Shasta route?

Q. Yes.

A. Oh, yes; that was very light compared with the whole volume; yes, sir.

Redirect examination by Mr. SEVERANCE:

Q. On business moving to Portland over any of the lines leading up to Ogden, the Southern Pacific could not participate in that business, unless it went by the Shasta route, could it?

A. No, sir.

Q. I am speaking of the time when the Southern Pacific-Union Pacific were separate entirely and distinct.

A. Yes, sir.

Q. Were the Southern Pacific representatives here in the field for Portland business, endeavoring to secure the routing of business by the Shasta route in connection with the lines leading east from Ogden?

A. Yes, sir; that is my recollection.

2847 Q. Judge Lovett was drawing out from you the fact that there are in existence a great many soliciting agents at the present time. Do you know of any soliciting agents who have been taken out of the Chicago territory, with the exception of—I do not know whether you can say the Southern Pacific or the Union Pacific agents were taken out; it is united in one man now.

A. Yes.

Q. Do you know of any other cases of that kind, as to lines that were formerly competing with each other?

A. Well, I was a victim myself of a combination of that kind.

Q. That was the Frisco and the——

A. The Frisco and the Rock Island.

Q. I was going to ask you about that; that is the reason I brought it up. That was the Frisco and the Rock Island?

A. Yes, sir.

Q. Were those lines competing for coast business before you became the victim?

A. Yes, sir.

Q. Which way did the Frisco business move?

A. I do not know just how active they were on Pacific coast business, but if they got any—and they did, of course, probably—what they got went by way of St. Louis, by the Chicago & Eastern Illinois, and then the Frisco.

Q. To what point?

A. I forget their junction with the Southern Pacific. The Southern Pacific would naturally be the outlet.

Q. Was that business actively competed for by the Frisco?

A. Well, I cannot say how active they were on Pacific coast business.

2948 Q. You were actively working for Pacific coast business?

A. Yes, sir; I was after it all the while.

Q. Outside of the union of those offices—the Frisco and the Rock Island, and the Union Pacific and Southern Pacific—do you know of any others here? As to lines that had been competing lines; not lines that were connecting lines.

A. I cannot recall any other cases.

Q. The agents of all these connecting lines, lines leading up to the transcontinental lines, work with the agents of the transcontinental lines, do they not?

A. Generally, yes, sir.

Q. Has that not always been so?

A. Yes, sir.

Q. Then, do the agents of the transcontinental lines work for business through the connecting lines?

A. Yes, sir.

Q. And how do they do that—by personal solicitation of the agents of the connecting lines? For instance, take a line like the Rock Island, which had a connection, as you stated, with the Rio Grande, and thence with the Southern Pacific to the coast, also a connection at El Paso, a connection at Omaha; would the agents of those various lines work with you to secure the routing of traffic that you secured over these lines?

A. Quite commonly, yes, sir.

Q. Quite commonly?

A. Yes, sir.

Q. And did Mr. Knight work with you to get business from you for his line, when he was the agent?

A. Somewhat.

Q. And Mr. Neimyer, to get business for his line?

A. Yes, sir.

Q. You stated that even since you have had the long lines
2849 leading out toward the coast you have had to give up—I think your language was you had to give up some—were compelled to give up some business at Omaha. What did you refer to by that answer to Judge Lovett?

A. Well, frequently the shipper would want to favor the Union Pacific, and we would not, in such cases, be too persistent on our own routes.

Q. Would that be cases where the Union Pacific people had been soliciting the business?

A. Yes, sir; I imagine so.

Q. After the common control of the Union Pacific and Southern Pacific, was there any change, as far as you observed, in the movement of eastbound traffic coming through Ogden; that is as between the movement east over the Union Pacific or over your connections by Denver?

A. Well, I cannot say whether there was any change in that regard. Of course I knew that they preferred the route by way of Omaha to get the entire——

Q. Was there any change in the volume of traffic coming to you from the coast, by reason of that preference?

A. Coming from the coast?

Q. Yes, sir.

A. I cannot say.

Q. You don't know?

A. No.

Q. Judge Lovett has asked you whether the Pacific coast business that was solicited by New Orleans by the Southern Pacific was not destined to Los Angeles. Was the Union Pacific soliciting business at Los Angeles?

A. Yes, sir.

Q. Actively, weren't they?

A. Oh, yes. They had a route to Los Angeles by way of Sacramento.

Q. Can you give any idea which way the largest tonnage
2850 moved to Los Angeles from this territory; whether it was over the Union Pacific route or over the southern route, either by New Orleans or El Paso?

A. I do not think the New Orleans route cut much figure. I do not think they got a very large percentage.

Q. I understand. Of the whole?

A. Of the whole. But I cannot say about the balance, as between the Union Pacific and the other more direct lines to Los Angeles.

Q. But the Southern Pacific, in soliciting Southern California business, solicited by El Paso or New Orleans?

A. Yes, sir; they have always solicited for Southern California.

Q. That was their preferred route for that business?

A. Which route do you refer to?

Q. By the south—either El Paso or New Orleans.

A. I cannot say whether that was their preferred route. I think it was before——

Q. Yes; that is what I understood you to testify before?

A. Yes; before the——

Q. Yes; I mean before the amalgamation.

A. Yes, sir.

Q. Were the other lines leading east from Ogden working Los Angeles business too—such as your line and the Rio Grande?

A. Yes, sir.

Q. Was the Santa Fe an active competitor for all of that coast business?

A. Yes, sir.

Q. By coast business I mean California business.

A. Yes, California business.

2851 Q. They did not work Portland business, did they, in any way?

A. The Santa Fe?

Q. Yes.

A. I am not certain.

Q. You were asked by Judge Lovett whether you ever solicited business for San Francisco by way of Portland and then down by boat. You said, I believe, that you never did. Did you ever know of business going that way?

A. Yes, sir. I remember one time—I cannot recall the shipment—some party insisted, for some reason or other, on carrying business that way. It might have been on account of a blockade, or something; I do not recall the circumstances and I believe we took some that way.

Q. You knew that route was always open, did you not?

A. Oh, yes.

Q. This is not strictly re-direct, but I do not think Judge Lovett will object: Do you remember years ago when the Canadian Pacific for a while maintained a differential to San Francisco?

A. Yes, sir.

Q. Did business move to San Francisco from this territory on that differential?

A. I cannot say now. I do not remember how successful they were in getting business by that route.

Q. That was in a number of years? You remember of its existence?

A. Yes, sir.

Re-cross examination by Mr. LOVETT:

Q. The occasion of this shipment to San Francisco which
2852 the shipper insisted on going by way of Portland, I believe you testified you did not recall just when that was.

A. No.

Q. Wasn't that just after the earthquake?

A. No, sir; I think it was previous to the earthquake.

Q. Are you sure about that?

A. I am quite certain. It was not as recent as the San Francisco earthquake, I am quite sure of that.

Q. About how long ago was it?

A. I don't know, but I presume, I should say, ten years ago; eight or ten.

Q. It must have made quite an impression on your mind.

A. Well, it did.

Q. It was so very unusual.

A. Yes, sir, exactly.

Q. The only instance of the kind that you ever knew of a shipment being made that way?

A. It is the only business I recall, yes. I do not remember just what that was, what it consisted of. It did, as you say, make an impression on me that I remembered.

Q. And you have been actively soliciting here for twenty-six years, and that is the only instance you recall of a shipment ever moving that way?

A. Well, I have only been actively soliciting here fifteen years.

Q. I mean here and at Kansas City.

A. Oh, yes; twenty-eight years.

Q. Twenty-eight years.

A. Yes. I believe that is the only time I recall that.

Q. You spoke of the Union Pacific having a line to Los Angeles by way of Sacramento. Business moved from this territory to
2853 Los Angeles over the Union Pacific went by way of Sacramento, I believe you testified?

A. Yes, sir.

Q. About what is the distance from Ogden to Los Angeles by way of Sacramento?

A. I cannot say. I do not know the mileage.

Q. I am told it is 1154 miles. Does that approximate your idea, or have you any idea as to the distance?

A. Well, I should have guessed somewhere about a thousand miles, if I was going to make a guess at it.

Q. So, if business went to Los Angeles by way of the Union Pacific and the Southern Pacific, it would still get about a thousand mile haul out of it from Ogden, around by Sacramento, to Los Angeles; and if it went by way of New Orleans, it would get about a two thousand mile haul?

Mr. SEVERANCE. I suppose you mean the Southern Pacific.

Q. I mean the Southern Pacific.

A. Yes, sir.

Q. About 1800 instead of 2000, as suggested.

(No response.)

By Mr. SEVERANCE:

Q. Just one other question I neglected to ask you. Judge Lovett was inquiring about these various roads that were soliciting business. There are a great many roads leading up to the Missouri River, are there not?

A. Yes, sir.
Q. And very few roads leading from there through?
A. Yes, sir.
Q. And the solicitation of the roads this side, that he mentioned, was for the haul from here to the river?
A. Yes, sir.
2854 Q. What about orange shipments coming east from southern California to this territory? Did they move both by Sacramento and by El Paso?
A. Yes, sir; I believe they did.
Q. Did you participate in that orange traffic?
A. Yes, sir.
Q. From El Paso?
A. Yes, sir. But that business was not solicited at this end. That was controlled by the shippers generally, or at the point of shipment, by some one.
Q. But you knew the way it moved?
A. Oh, yes, generally.

By Mr. LOVETT:

Q. Did you get any of the orange shipments by way of Denver?
A. Not in late years; no, sir. I think our orange shipments all came via El Paso after the road was built there.
Q. Did you get them from the Denver & Rio Grande at Denver?
A. We might have done so. I had nothing to do with the routing of that business, and so I could not really say.
Q. But they might have moved either by way of Denver or by way of El Paso?
A. Yes.
Q. Or Omaha?
A. Yes, sir.
Q. You have the two lines—one running westerly to Denver, and the other southwesterly to El Paso?
A. Yes, sir.
Q. You would take it either way you could get it, but preferably by your longer line?
A. Yes, sir.

2855 JOHN W. MORSE,

being duly sworn as a witness on behalf of the Complainant, testified as follows:

Direct examination by Mr. SEVERANCE:

Q. Mr. Morse, where do you live?
A. In Chicago.
Q. What is your business at present, Mr. Morse?
A. I am an auditor for a private corporation.
Q. What was formerly your business?

A. Railway business.

Q. With what companies, and where?

A. I was with the Burlington at Omaha, and with the Union Pacific——

Q. Will you, if you can readily, give the years that you were in the service of these different companies, Mr. Morse?

A. I was with the Burlington from 1870 to 1877 at Omaha.

Q. In what capacity?

A. General agent.

Q. And after that what were you doing?

A. With the Union Pacific.

Q. Whereabouts?

A. In Chicago and Omaha.

Q. For how long?

A. For ten years.

Q. And after that what was your business?

A. With the Missouri Pacific.

Q. Whereabouts?

A. In Chicago.

Q. In what capacity?

A. Commercial agent.

Q. Up to what time, Mr. Morse?

A. Up to May 1, 1906.

Q. During what years did you represent the Union Pacific in Chicago?

A. In 1877, 1878, and 1879.

Q. Who succeeded you here as their general agent?

A. I will have to explain that to you. I was general agent
2856 representing both the passenger and the freight department. After I left, the business was divided, and Mr. Godfrey McDonald represented the freight department, and Mr. Thomas B. Gault, who is now dead, represented the passenger department.

Q. How long did Mr. Gault remain with the company as their passenger representative here?

A. I think about seven or eight years.

Q. And how long did Mr. Godfrey McDonald remain with them in charge of the freight?

A. About the same length of time.

Q. And who succeeded him?

A. I think Mr. Wood succeeded him—E. H. Wood, who is now general freight agent of the Union Pacific.

Q. And how long, if you remember, did he stay here; about how long?

A. He stayed until he was promoted. I don't know. Just a few years.

Q. And who succeeded him?

A. I think Mr. W. H. Knight succeeded him.

Q. And he continued until the time Mr. Neimyer was placed in charge of both offices?

A. Yes, sir.

Q. Who represented the Southern Pacific here in the first instance?

A. I do not remember who did.

Q. Do you remember anyone here previous to Mr. Neimyer's incumbency of the office?

A. No, sir; I do not.

Q. Do you have any recollection of how many years ago Mr. Neimyer's office was established, or he came here from San Francisco, or wherever he came from?

A. I do not know definitely, no.

Q. It is a good many years ago?

2857 A. It is a good many years ago.

Q. During the days when you were familiar with the conditions here, previous to the time the two offices were united—the Southern Pacific and the Union Pacific—which way was the Southern Pacific working its coast business, as far as it could?

A. By way of El Paso.

Q. Did you know of any business being worked by the Southern Pacific by way of New Orleans?

A. Yes, sir.

Q. When was that?

A. That was almost from my first coming here for the Missouri Pacific—many years ago.

Q. You spoke of their working it by way of El Paso; were they working it that way at the same time they were by New Orleans?

A. Yes, sir. New Orleans meant by way of El Paso.

Q. Oh, well, I misunderstood your answer. That is, did they work their coast business direct from here to New Orleans and thence through El Paso to the coast?

A. They did, and also by way of the shorter lines to El Paso.

Q. Made the connection at El Paso?

A. Yes, sir.

Q. But when you gave your first answer, saying they worked it by way of El Paso, you meant by that the Sunset Route either at New Orleans or the other junction point?

A. Yes; I referred to El Paso as the converging point.

Q. There were other junction points between El Paso and New Orleans, weren't there?

A. Yes, sir.

Q. Where they took business?

A. Yes, sir.

Q. But they worked the southern route to the coast?

A. Yes, sir.

Q. In working their business by way of New Orleans what line did they work with?

A. The Illinois Central.

2858 Q. When you were with the Missouri Pacific did you work coast business?

A. Yes, sir.

Q. Via what route?
A. Mostly by the El Paso route.
Q. And where did you take that business?
A. We took it to Texarkana and El Paso.
Q. Where did you pick it up; over what line?
A. Out of Chicago?
Q. Yes.
A. Out of any line running to St. Louis.
Q. You took it from St. Louis on?
A. Yes, sir.
Q. Was the solicitation of business here as between the Union Pacific agency on the one hand and the Southern Pacific on the other an active solicitation?
A. Yes, sir.
Q. Active competition?
A. Yes, sir.
Q. And did that continue up to the time of the amalgamation of the offices?
A. Yes, sir.
Q. During the time you were with the Union Pacific line how did the Union Pacific work business to Portland?
A. Well, by way of San Francisco and the boats until the Oregon Short Line was completed. The Oregon Short Line was completed while I was with the Union Pacific.
Q. The Oregon Short Line belonged to the Union Pacific, did it not?
A. Well, it did and it did not.
Q. Well, it did not for a while?
A. It didn't for a while.
Q. During the receivership?
A. No.
Q. You were with the Union Pacific during the time of the receivership, were you?
A. No, sir.
Q. Oh, no; you had gone out before that; that is right. You went with the Missouri Pacific in 1887?
A. Yes, sir.
2859 Q. During the time that you were with the Union Pacific was the Shasta route used in business to Portland?
A. No, sir, it was not.
Q. There was no business moving over the Shasta route to Portland?
A. No, sir.
Q. It moved by boats, did it?
A. It moved by boats.
Q. During the time that the Union Pacific had this Mr. Gault here as general passenger agent, did the Southern Pacific have a passenger agent here, or did Mr. Neimyer have charge of both?
A. Mr. Neimyer had charge of both.
Q. When you were with the Union Pacific in the old days did your Portland business move over the Shasta route or by boat? I do not know whether I understood you.
A. By boat.
Q. By boat?

A. Yes, sir.
Q. From San Francisco?
A. Yes, sir.
Q. You carried it through to San Francisco and then up by boat?
A. Until the Oregon Short Line was completed.
Q. After Mr. Neimyer was appointed as the general agent of both the Union Pacific and the Southern Pacific here in Chicago, after the offices were united in him, what became of the competition that had previously existed, which you testified to, between the Union Pacific and the Southern Pacific organizations?
A. Why, it was materially reduced.
Q. Well, did it exist at all?
A. I do not think it did.
Q. Do you know of the boat line that the Union Pacific, or the Oregon Railroad & Navigation—the Union Pacific line had from Portland to San Francisco?
A. The Union Pacific didn't have the line.
2860 Q. I say the Oregon Railroad & Navigation Company?
A. Yes, I do.
Q. You knew of that boat line?
A. Yes, sir.
Q. Did you know of any shipments going that way to San Francisco?
A. No; very rarely.
Q. Very rarely; but you did know of their moving that way?
A. Well, I do not recall any definitely.
Q. You do not recall any?
A. No.
Q. All right. Did you know of the Canadian Pacific differential, Mr. Morse?
A. No, I didn't.
Q. You had nothing to do with it? That did not come to your attention?
A. No.

Cross-examination by Mr. LOVETT:

Q. When did your connection with the Union Pacific cease, Mr. Morse?
A. In 1887.
Q. You have had no connection with the Union Pacific since then?
A. No, sir.
Q. And when did you retire from the railroad business?
A. In May, 1906.
Q. And you represented the Missouri Pacific up until that time?
A. Yes, sir.
Q. From what date?
A. From 1887 to May, 1906.
Q. You retired from the Union Pacific in 1887?
A. And immediately came to the Missouri Pacific.
Q. And went to the Missouri Pacific and stayed there until 1906?

A. Yes, sir.

2861 Q. You did not have very good opportunities for observing the relations between the Union Pacific and the Southern Pacific after 1887, did you?

A. Up to what time?

Q. After 1887?

A. Well, that is the time I did have the opportunity.

Q. After 1887?

A. Yes, sir.

Q. I thought you said your connection with the Union Pacific ceased in 1887?

A. Then I misunderstood you. It did cease in 1887. I came to the Missouri Pacific.

Q. You have had no connection either with the Union Pacific or Southern Pacific since 1887?

A. No, sir.

Q. Well, were not your opportunities rather limited, then, to observe the relations between those two systems after 1887?

A. Well, I was doing business with them.

Q. How?

A. Soliciting freight for California; both by way of Ogden and by way of El Paso.

Q. For the Missouri Pacific?

A. Yes, sir.

Q. And that is the only opportunity that you had for knowing the relations between the Union Pacific and the Southern Pacific?

A. Yes, sir.

Q. Where did you solicit business from?

A. From Chicago and Chicago territory, so-called, which takes in parts of several States.

Q. And did I understand you to testify that the Southern Pacific prior to 1901 solicited business by way of New Orleans rather than by way of El Paso or Ogden, from this territory?

A. Yes, sir.

Q. Is that of your own knowledge, Mr. Morse, or is it an

2862 impression that you have?

A. My own knowledge.

Q. Your own knowledge. Who solicited it?

A. Through Mr. Neimyer and his agency. We were co-operating with them and were doing business with them.

Q. Moving it by way of New Orleans?

A. By way of Texarkana and El Paso.

Q. By way of Texarkana and El Paso?

A. Yes, sir.

Q. But not by way of New Orleans?

A. No, sir.

Q. Well, I understood you to testify in answer to Mr. Severance that when you said El Paso you meant New Orleans?

A. Well, when I spoke of El Paso I spoke of El Paso as the converging point. The Illinois Central worked their business for the coast by way of New Orleans, but we had no connection at New Orleans at that time.

Q. All of your business for the coast was worked by way of El Paso or by way of Denver.

A. By way of Texarkana and El Paso, or by way of Pueblo and Ogden.

Q. And you worked with Mr. Neimyer for California business by way of El Paso and Pueblo?

A. No; not with Mr. Neimyer by way of Pueblo. With Mr. Neimyer by way of Texarkana and El Paso.

Q. You never worked with him by way of Pueblo?

A. With him?

Q. Yes.

A. No; he had no routes that way at that time.

Q. Hadn't he, from Ogden?

A. Business wasn't solicited that way by his agency.

Q. You mean to testify that he did not solicit business by way of Ogden, Mr. Morse?

A. Well, not to my knowledge. He might have done it, but
2863 his working with us was by way of Texarkana and El Paso.

Q. And not by way of Pueblo?

A. No.

Q. Why would he work with you by way of El Paso and not by way of Pueblo. Can you imagine?

A. Well, he was co-operating with us, and we wanted the business by way of El Paso, because we got a long haul on it.

Q. You wanted it by way of El Paso because you got a long haul?

A. Well, at that time he was working for—yes; that is correct.

Q. When you got it by way of Pueblo you got it because you could not get the long haul out of it by way of El Paso, didn't you?

A. Well, we used both the lines. We consulted the shipper's wishes. If he wished it to go by way of Pueblo and Ogden, it went that way.

Q. In other words, you had two lines—one by way of El Paso and one by way of Pueblo?

A. Yes, sir.

Q. Wasn't Mr. Neimyer in the same fix?

A. I suppose he was.

Q. Can you imagine any reason why he should not be controlled by the same considerations that controlled you?

A. Possibly not.

Q. If you wanted the long haul by way of El Paso, why, you assume that he wanted it too, do you not?

A. Yes, sir.

Q. And if you could not get the long haul by way of El Paso and could get the short haul by way of Pueblo you tried to get it, didn't you?

A. Yes, sir.

Q. Don't you think that the same reasons ought to control him?

A. Possibly.

2864 Q. Do you then mean to be understood as testifying that you would try to work preferentially by way of El Paso, and if you could not get it that way you would take it by Pueblo; but Mr. Neimyer, whose situation was the same as yours in that respect, would work it by way of El Paso and would not work it by way of Pueblo?

A. Well, I never knew of his soliciting any business by way of Pueblo. He might have done so without my knowledge.

Q. When you got it to El Paso, it was not necessary for him to work for it, was it; he got it anyhow?

A. He got it anyhow.

Q. No other outlet for you by way of El Paso, was there?

A. No, sir.

Q. It wasn't necessary for him to work very strenuously by way of El Paso, to help you, was it?

A. Well, he did.

Q. He did. Well, take the other way. When it went by way of Pueblo, it might go by way of the Atchison, might it not?

A. Not our business.

Q. Your business all went over the Rio Grande and the Southern Pacific?

A. Yes, sir.

Q. But it could have gone by way of the Atchison?

A. It could have gone.

Q. But you never sent any that way?

A. No.

Q. Although that was the way where there was the fiercest competition, Mr. Neimyer did not work that way?

A. I do not think he did; not to my knowledge.

Q. His competition was much fiercer by way of the west—Pueblo—than it was by way of El Paso, was it not? That is,

2865 the Atchison might have got it that way.

A. Well, I don't think so, no.

Q. It might have gotten it from this territory and he would not have gotten it at all; isn't that true?

A. Yes, that is true.

Q. So, notwithstanding that situation, you wish to be understood as testifying that the Southern Pacific agents in this territory solicited by way of El Paso and not by way of your line, and Pueblo?

A. Yes, sir.

Q. When you got your business to Pueblo how did it move, Mr. Morse?

A. Over the Rio Grande.

Q. To where?

A. To Ogden. The Rio Grande and Rio Grande Western, to Ogden.

Q. And then over the Southern Pacific?

A. Over the Southern Pacific, yes, sir.

Q. Did you handle any business for Los Angeles?
A. Yes, sir.
Q. And Southern California?
A. Yes, sir.
Q. Did any of that move by way of Pueblo and Ogden?
A. Well, rarely.
Q. Rarely?
A. There is certain business that will move with his longer route and certain business by a slower route. There is certain business that will move the longer route, because the shippers wish to use the cars for storage; they are not in a hurry to get through; save storage, because the cars are a longer time on the road.
Q. The same business would move, then, by Los Angeles over your western line?
A. Yes, sir.
2866 Q. Did climatic conditions have any influence upon it?
A. Yes, sir; especially in fruit shipments—a large influence.
Q. Did not a great deal of the fruit shipment move by way of El Paso?
A. Yes, sir.
Q. And many by way of Pueblo?
A. Some, there is not so much. We did not solicit any business for our line by way of Ogden, on account of the climatic conditions—that is, that fruit business.
Q. How did your San Francisco business move mostly?
A. It was about equally divided between Ogden and El Paso.
Q. You worked it both ways?
A. Both ways.
Q. Preferring the one that afforded you the longest haul?
A. Yes, sir. I might amend that a little—because I represented the Texas & Pacific, and it was my business to give them a haul if I could.
Q. Well, I am counting the Texas & Pacific as part of your line.
A. Yes; it was a part.
Q. So you preferred the El Paso route because the combined lines gave you the longest haul?
A. Yes, sir.
Q. Which route would the Missouri Pacific get the longer haul—by way of Texarkana or by way of Pueblo?
A. By way of Pueblo; the Missouri Pacific proper.
Q. How much longer?
A. Well——
Q. Fifty per cent longer?
A. No; not more than twenty per cent. longer.
Q. But you took your longest combined line, did you not?
A. Yes, sir.
2867 Q. Without reference to the separate control of the Texas & Pacific and the Missouri Pacific?
A. Yes, sir; and also on account of the better service.

Q. Better service by way of El Paso?

A. Yes.

Q. What other lines were soliciting California business in the territory where you were acting for the Missouri Pacific?

A. Well, about all of them were, I guess.

Q. Well, name them please—the principal ones.

A. Our immediate connections were, on El Paso business, with the Wabash and the Alton.

Q. I am not asking about your connections merely, but about all lines engaged in and actively soliciting business from the territory where you were soliciting for California—all lines.

A. What was the question?

Q. I asked you to name the principal lines in the territory in which you were soliciting that were soliciting California business. You spoke of your connections merely. I meant others than your connections.

A. Well, I might say all the lines west of Chicago.

Q. You mean by that the Rock Island, the Missouri Pacific, the Burlington, the Northwestern, the St. Paul, the Chicago & Alton, the Missouri, Kansas & Texas, the St. Louis & San Francisco and——

A. Chicago—Great Western.

Q. The Chicago—Great Western.

A. The Illinois Central.

Q. The Illinois Central, the Wabash, the Northern Pacific, and the Great Northern?

A. Yes, sir.

Q. Any other lines leading toward New Orleans?

A. The Chicago & Eastern Illinois also.

2868 Q. And lines leading in a northerly direction?

A. Yes, sir. The Chicago & Eastern Illinois had a St. Louis connection.

Q. All of those lines were actively soliciting business to California?

A. Yes, sir.

Q. That continued during the whole time you were engaged in business?

A. Yes, sir.

Q. Now, most of those lines had to pass that traffic ultimately over to the Southern Pacific, hadn't they?

A. I think they did.

Q. The Northwestern & St. Paul—their outlet was by way of Ogden, was it not?

A. Yes, sir, it was.

Q. And so with the Missouri Pacific and Rock Island?

A. Yes, sir.

Q. The Missouri, Kansas & Texas, and the Frisco, and Iron Mountain, and Texas & Pacific were worked by way of El Paso?

A. Yes, sir.

Q. When you were connected with the Union Pacific—that is, the connection which terminated in 1887—how long prior to May, 1887, were you engaged in the freight department, the soliciting department of the Union Pacific?

A. Why, I was not connected with the freight department at all for seven years, from 1880 to 1887.

Q. You had no connection, then, with the freight department from 1880 to 1887?

A. No, sir.

Q. Your connection, then, with the freight department of the Union Pacific was prior to 1880?

A. Yes, sir. Three years prior to that; the previous three years.

Q. From 1877 to 1880?

A. Yes.

2869 Q. You held what position with the Union Pacific?

A. General agent for the Union Pacific.

Q. General agent of the Union Pacific?

A. Both freight and passenger.

Q. At Chicago?

A. At Chicago.

Q. Those shipments to Portland by way of San Francisco, did they occur prior to 1880?

A. Yes. Those were the shipments by boat from San Francisco to Portland from 1877 to 1880; and then again when I resumed the freight business we used the boats also.

Q. When you what?

A. When I resumed the freight business again in 1887.

Q. With the Missouri Pacific?

A. Yes.

Q. How did that business move?

A. The business for Portland moved by way of El Paso and San Francisco and the boats.

Q. And then by boat?

A. Yes. The volume, however, was small.

Q. You never knew any to move by rail from this territory to El Paso and the Shasta route to Portland, did you?

A. No, sir.

Q. You never knew any freight to move from this territory, by the boat line from Portland down to San Francisco, did you?

A. No, I did not.

Q. During your connection with the Union Pacific you never knew it to be solicited that way, did you?

A. No, sir, I did not.

Q. The Union Pacific used the direct line?

A. Yes, sir.

Q. From Omaha and Kansas City to Ogden and thence
2870 connection with the Southern Pacific, to California?

A. Yes, sir.

Q. In one of my questions a few moments ago, I recall that, in naming the lines that were competing for California business, I mentioned the Great Northern and the Northern Pacific. They never competed for California business, did they?

A. No, sir, they did not.

Q. The shipments to Portland by boat, by way of San Francisco, as I understood you to testify on your direct examination, were prior to the opening of the Oregon Short Line?

A. Yes, sir.

Q. You never knew of any shipments to go that way by boat, by way of San Francisco, after the completion of the Oregon Short Line?

A. No, sir.

Q. Do you remember about when that was?

A. The Oregon Short Line?

Q. Yes.

A. It was completed about 1884.

Redirect examination by Mr. SEVERANCE:

Q. Just one or two questions please, Mr. Morse. You stated in answer to Judge Lovett that one reason you worked business by way of El Paso was that there was better service that way to California points. What is the difference in the time of freight movement from St. Louis to the coast via El Paso rather than by Ogden—that is, San Francisco, we will say.

A. Well, I only referred to the service up to the junction point. The service by way of Pueblo was comparatively slower than it was by way of Texarkana.

Q. Do you mean the Missouri Pacific service?

A. Yes, sir.

2871 Q. Oh, yes.

A. For the reason that the line was new and the equipment was light.

Q. You did not mean the through time service was better?

A. No, sir.

Q. What was your official connection with the Union Pacific from 1880 to 1887?

A. General passenger agent.

Q. Where?

A. At Omaha.

Q. What lines were competing for the coast passenger business in those days?

A. The Santa Fe and the Union Pacific.

Q. And the business from the eastern points—was the Sunset Route also competing for that business?

A. Well, not very actively.

Q. You did not feel that in your territory?

A. No, sir.

Q. Was there any connection of the Southern Pacific at El Paso in those days?

A. Why, yes. The Texas & Pacific.

Q. Well, were there through trains, or through cars, to the coast that way in those days?

A. There was by the Southern Pacific, from New Orleans.

Q. From New Orleans?

A. Yes.

Q. Now, take passenger traffic moving to California points from the east, from New York and the central territory, Cincinnati and

that region; was there any competition between the New Orleans route and these routes through here at that time?

A. Oh, yes, there was.

Q. That is what I wanted to get at.

A. Yes, sir, there was.

Q. On passenger business?

A. Yes, sir.

Q. That is between the New Orleans route on the one hand
2872 and the Union Pacific and Santa Fe on the other?

A. Yes, sir.

Mr. LOVETT. What was that? Where was that competition?

Mr. SEVERANCE. I asked him about from the eastern points—Cincinnati and the points further east.

WITNESS. Mostly the far east.

Mr. SEVERANCE. Mostly the far east. I asked him about New York and as far west as Cincinnati.

Recross-examination by Mr. LOVETT:

Q. Let me understand that last statement about the passenger business, Mr. Morse. What do you mean by that?

A. That is the competition between the Union Pacific?

Q. Yes.

A. The Southern Pacific, by way of New Orleans, solicited business at eastern points by way of New Orleans, and at that time the Galveston, Harrisburg & San Antonio and the Southern Pacific at El Paso. I do not know that they were consolidated at that time, but they solicited passenger business in the east at that time and obtained a large amount of business, and especially the emigrant business.

Q. When was that?

A. That was in 1883 and 1884 and subsequently.

Q. 1883 and 1884 and subsequently. And what was the competing business that you spoke of then—the Union Pacific competing with that?

A. The Union Pacific, and, at that time, the Central Pacific.

Q. Where did that business go when the Union Pacific got it?

A. It went to Ogden.

Q. And then over the Southern Pacific?

2873 A. Over the Central or Southern. I do not remember just when they were consolidated. It was the Central, I think, at that time.

Q. Where was that business going to—San Francisco, or Southern California?

A. Well, to various points in California. We were all trying to populate California, and took it to all points.

Q. Do you happen to know when the Texas & Pacific were open to the connection with the Texas & Pacific and west Texas?

A. Well, I think in about 1880.

Q. 1882, was it not?

A. Perhaps.

Q. Wasn't that before the Southern Pacific to New Orleans was opened?

A. No, I don't think it was.

Q. You do not know, then, that the Texas & Pacific completed a connection with the Southern Pacific by way of El Paso before the Southern Pacific line from New Orleans was opened?

A. No, I do not.

Q. Did any of that business go over the Texas & Pacific by way of El Paso?

A. Very little.

Q. Why?

A. Well, I could not say as to that. I presume more active solicitation on the part of the New Orleans route.

Q. Well, did not the Texas & Pacific run to New Orleans?

A. I don't think it did at that time. It had not been completed.

Q. When was it opened to New Orleans?

A. I think it was opened to New Orleans in about 1883.

Q. Do you mean to be positive about those dates, Mr. Morse?

A. No, I do not; although I was—

Q. Don't you know the Texas & Pacific line from New
2874 Orleans to El Paso was opened before the Southern Pacific line?

A. Well, I suppose they were opened—my recollection is they were opened about the same time.

Q. And don't you know that the Southern Pacific had the short line between New Orleans and El Paso?

A. Well, if it is, it is a very long line.

Q. Well, it is a long distance; it is bound to be a long line.

A. Yes.

Q. You do not know the relative distance of the Texas & Pacific?

A. No. I should say, though, there is very little difference.

Q. You think, however, that the Texas & Pacific got very little of that business?

A. Very little, yes.

Q. It had the short line, or at least not very different, as you understand it, from the Southern Pacific?

A. The Southern Pacific had the advantage of a boat line.

Q. Did passengers go by boat to New Orleans and then over?

A. Passengers by boat to Galveston. They had a line from New York to Galveston.

Q. The Southern Pacific?

A. The Southern Pacific.

Q. When?

A. About the same time. Shortly after they were opened.

Q. Did they have any line from Galveston?

A. Did they?

Q. Yes.

A. Yes, sir. That was the line.

Q. The Southern Pacific?

A. Yes, sir.

Q. And a rail line from Galveston?

A. Yes, sir.

Q. Is that the line you are testifying about?

A. Yes, sir.

Q. What line was it?

2875 A. Their rail line was the Galveston, Harrisburg & San Antonio. I do not remember just when it was consolidated with the Southern Pacific, but at the early date that was the line—Galveston, Harrisburg & San Antonio.

Q. Don't you know that line does not run to Galveston?

A. Well, it gets in there over other tracks.

Q. Yes; other connections.

A. Yes.

Q. How did these passengers go? You say they went by boat from New Orleans to Galveston?

A. No; I think they went by rail. The boat line went to Galveston itself.

Q. From New Orleans?

A. From New York to Galveston.

Q. From New York to Galveston?

A. Yes, sir.

Q. Aren't you mistaken about that?

A. I think not.

Q. Well, of course you are the witness. I know you are mistaken, but you are the witness. This passenger business, the emigrant business, you speak of, then went by way of boat from New York to Galveston, and then over the Southern Pacific to California: is that your testimony?

A. Yes, sir.

Q. And that is the business that you testified was in competition between the Union Pacific and the Atchison?

A. Yes, sir.

Q. And the Southern Pacific?

A. Yes, sir.

Q. Sunset Route. Were any other lines trying to get that business?

A. I don't know of any.

Q. The Northwestern. What about the trunk lines between New York?

A. They were all soliciting it, yes; all of them.

Q. Did the Union Pacific have any more interest in it than anybody else?

A. I guess they thought they had.

Q. The Union Pacific has merely an intermediate line,

2876 hasn't it, of about one thousand miles, in this transcontinental system?

A. Has what?

Q. The Union Pacific operates only the length of a thousand miles in these transcontinental railroads, does it not?

A. Well, more than that. They have the line from Kansas City.
Q. The line from Kansas City.
A. Yes.
Q. To Denver?
A. That made up about eight hundred miles more.
Q. Do you mean they have it as two lines?
A. It had two lines, yes, sir.
Q. And what about the Pennsylvania? It has several lines, hasn't it?
A. Yes, sir.
Q. And the New York Central system?
A. Yes, sir.
Q. Do you think the Union Pacific is more interested in that transcontinental business to the Pacific coast than they are?
A. Well, they were more interested in this: that they got more money out of it.
Q. Got more money?
A. Yes.
Q. On the matter of divisions?
A. On the matter of divisions.
Q. What proportion did they get out of it, do you know?
A. I do not know what the proportion was.
Q. What time are you talking about now—1880 to 1885?
A. Yes, sir.
Q. You were speaking about the passenger business existing at that time. Do you remember that the Union Pacific got more revenue out of that through rate than the line east of Chicago?
2877 A. They got more revenue because the rates were higher west of the Missouri River, for instance.
Q. Got more per mile?
A. More per mile.
Q. You mean on account of the mountain grades they got a higher rate per mile?
A. Well, heavy grades, and new territory, and sparse population, and the expense of operating.

By Mr. SEVERANCE:

Q. Judge Lovett was asking you about that boat line from New York to New Orleans or Galveston, and said that he knew you were mistaken. I suppose he meant that you were mistaken about the date the line to Galveston was opened. Do you remember what year the line to Galveston was opened, Mr. Morse?
A. No, sir, I do not.
Q. You remember the line to New Orleans was opened—the boat line—don't you?
A. I referred to the Mallory line.
Mr. LOVETT. He said the Morgan line.
Q. You meant the Mallory line?
A. I meant the Mallory line.
Q. The Morgan line you knew ran to New Orleans, didn't you?

A. Yes, sir.

Q. And some years afterwards extended to Galveston?

A. Yes, sir.

Q. Counsel was asking you with reference to the interest of the Union Pacific in this transcontinental business. The divisions are made on the Missouri River, aren't they?

A. Yes, sir.

Q. And then there is a division of the rate from the Missouri River to the coast between the lines west?

A. Yes, sir.

2878 Q. Do you recall what these divisions were in your day?

A. Yes. The Union Pacific had fifty-four per cent. and the Central Pacific forty-six.

Q. Yes. It was based on mileage, wasn't it?

A. It was based on mileage.

Q. There was an arbitrary?

A. Before the divisions there was some deduction for terminal expenses.

Q. There was an arbitrary at the Missouri River bridge, wasn't there, and another one at San Francisco?

A. There was a bridge arbitrary at Omaha, and a terminal arbitrary at San Francisco.

Q. Yes, that is right. Do you recall what the percentage of the through rate was that was assigned to the lines east of Chicago—Chicago to New York.

A. They were not based on percentages.

Q. That was an arbitrary?

A. That was an arbitrary.

Q. Wasn't it at times on percentages?

A. There were percentages from Chicago west, but I do not recall any percentages east of Chicago.

Mr. LOVETT. Are you asking him about freight or passenger?

Mr. SEVERANCE. Well, I am asking him about freight. That is what I had in mind.

Q. Did you understand I was asking you about freight, or did you understand it was about passenger?

A. As far as I have answered, it applies to both.

Q. There was the same division of the revenue west of the river, wasn't there?

A. Just the same, yes.

2879 Q. Do you recall what percentage of the rate from Chicago to the coast was received by the lines from here to the river?

A. I do not. It varied with different years. I think something from twelve to seventeen per cent.; but it varied.

Q. Yes. About fifteen on a average, wasn't it?

A. Probably it was.

Q. And the balance of the rate from Chicago to the coast was divided between the Union Pacific and the Southern Pacific?

A. Yes, sir.

Q. In the proportion that you have stated?
A. Yes, sir.
Q. Fifty-four per cent. to the Union and forty-six to the Southern?
A. Yes, sir. Practically a mileage basis.
Q. Now, the Judge was asking you with reference to these soliciting agents of other lines. Did the transcontinental agents work with these agents east in getting business?
A. Yes, sir.
Q. You also made a remark, in answer to Judge Lovett, with reference to certain business being controlled by active solicitation. What is your opinion, Mr. Morse, from your experience, as to the value of solicitation by agents in securing business for railroads?
A. I think it is of great value.
Q. Is not a great deal of business controlled by the active solicitation of agents?
A. A large percentage of it, yes.

By Mr. LOVETT:

Q. What was your principal work in this territory, and your agents? Was it working with connections, or soliciting?
2880 A. Both.
Q. Well, wasn't your work and your connections—that is the connections on the traffic originating—very important?
A. Yes, sir.
Q. You could not very well control the business against them, could you?
A. No, I could not.
Q. Wasn't it a fact that in soliciting business the lines other than the initial lines at times secured the business and controlled it?
A. Yes, sir.
(Recess until 2 o'clock p. m.)

2881 W. J. EVANS

being duly sworn as a witness on behalf of the Complainant, testified as follows:

Direct examination by Mr. SEVERANCE:

Q. Mr. Evans, where do you live?
A. Peoria, Ill.
Q. What is your business?
A. I am traffic manager for the Kingman Plow Company.
Q. How long have you occupied that position?
A. Almost ten years.
Q. Is that a large manufactory?
A. Reasonably so.
Q. To what parts of the country do you ship your product?
A. Principally to the south, southwest and west, occasionally to north Pacific Coast points, California points, and our export business to Russia.

Q. Which way does your export business to Russia move—by Suez?

A. It is now moving by the Suez Canal. Formerly it went via the north Pacific coast points, or via San Francisco.

Q. To Vladivostok?

A. Yes, sir.

Q. Previous to your connection with the Kingman Plow Company, what was your business?

A. I was for four years general agent of the Great Northern Railroad at St. Louis.

Q. During what years?

A. 1896 to 1900.

Q. Previous to that time what was your business?

A. I was assistant general freight agent of the Great Northern at St. Paul, having charge of the local territory in Minnesota, North and South Dakota, and business to and from those states.

Q. How long did you occupy that position?

2882 A. About three years and one-half.

Q. Previous to that what was your business?

A. I was claim agent of the Great Northern lines.

Q. Were you ever connected with any other railroad except the Great Northern?

A. Prior to my connection with the Great Northern I was chief claim clerk for the St. Paul, Minneapolis & Manitoba, and prior to that I was chief clerk of the claim department of the Chicago, St. Paul, Minneapolis & Omaha Road, which is a part of the North-Western Line.

Q. How does your traffic move to California at the present time?

A. Our business is principally to Southern California points, and moves principally via the Union Pacific and San Pedro route.

Q. By what lines is your business solicited for those points?

A. By the Chicago-Missouri River and Chicago-St. Louis lines; also by the representatives of the lines west of the Missouri River.

Q. What lines west of the Missouri River solicit your business?

A. The Salt Lake route and the Union Pacific principally.

Q. Where do their agents live, who solicit your business?

A. The traveling agents who visit our territory report to their superiors at Chicago.

Q. Does the Southern Pacific solicit that business now?

A. Not as Southern Pacific business exactly.

Q. The joint agency?

A. The joint agency solicits it.

Q. Which way do they solicit it? This joint agency solicits by the Union Pacific, as I understand you?

A. That is their preference.

2883 Q. How do they solicit it beyond Ogden or Salt Lake as between the Southern Pacific and the San Pedro?

A. Well, I haven't had very much conversation regarding western routing. They simply ask for the long haul. They ask me what business we have, and I tell them. And oftentimes the consignees have requested us to give business to a certain route, and we tell them; and oftentimes they ask us to give them the long haul, if possible.

Q. What does that mean—the long haul?

A. Well, I imagine they want the long haul to Ogden or to Denver.

Q. Is your business solicited by that agency—by the southern route? I mean at the present time.

A. If they know of any specific business they ask for the long haul, but if I simply tell them we have certain cars to move, then they figure on getting the long haul, if possible.

Q. I don't know as I quite understand you as to what the long haul is. Do you mean the long haul for the joint agency, or the long haul for the separate lines?

A. The long haul for the lines represented by the joint agency.

Q. That is Union and Southern Pacific together?

A. Yes, sir.

Q. When the San Pedro solicitor seeks your business, over what lines does he solicit it in connection with the San Pedro?

A. Naturally he wants the long route, but he is satisfied with the route via Provo—I think it is the Denver & Rio Grande and Rio Grande Western.

Q. And he has a connection there at Provo with the Rio Grande and also at Salt Lake with the Short Line?

A. Yes; in connection with the Union Pacific.

2884 Q. With the Union Pacific. Do I understand you, then, that they solicit it preferably by Provo?

A. No; they are willing to let it go C. B. & Q. to Denver, or Rock Island to Colorado Springs.

Q. And in soliciting the business, does the San Pedro road express any preference between the lines?

A. No; they do not.

Q. They simply want to get it over the San Pedro?

A. That is all.

Q. While you were at St. Louis, were the Southern Pacific and the Union Pacific separately represented there?

A. They were.

Q. Which way was the Southern Pacific endeavoring to route its coast business from St. Louis?

A. You mean its north coast business?

Q. No, to California points.

A. I only know of that incidentally. Being the general agent of the Great Northern, I was looking after the north Pacific coast business, but incidentally I knew of the business going to Southern California, and I think they were working with nearly all the lines operating west from St. Louis.

Q. Did they work business by way of New Orleans from St. Louis, in connection with the Illinois Central?

A. I think they did.

Q. Which way did the Union Pacific work their business to the coast?

A. They wanted it through Denver and Pueblo—through Denver or—what line did you say?

Q. The Union Pacific.

A. My understanding is that the Union Pacific wanted the long haul on it to Denver.

2885 Q. By Denver, you mean?

A. Yes, via Denver.

Q. To Ogden?

A. Yes.

Q. Which way would that business move from St. Louis to reach the Union Pacific? Would it go to Omaha or Kansas City?

A. Kansas City principally.

Q. Did you meet the competition of the Union Pacific or Southern Pacific on business to north Pacific coast points?

A. We met the competition of the Union Pacific.

Q. To what points?

A. To Portland—Portland especially.

Q. That is when you were with the Great Northern?

A. Yes, sir.

Q. And over what line did you reach Portland?

A. We reached Portland over the Oregon Railway & Navigation Company.

Q. From Spokane?

A. Yes, sir.

Q. How was the competition as between the Union Pacific, the Oregon Short Line and the Oregon Railway & Navigation Company on the one hand, and the Great Northern and the Oregon Railway & Navigation Company on the other, for Portland business? Was it active or otherwise?

A. It was quite active according to my understanding and recollection.

Q. Was the Northern Pacific interested in that traffic?

A. They were.

Q. Did they have an agency at St. Louis?

A. They did.

Q. Was that agency soliciting that business?

A. Very actively, in connection with the Burlington via Billings, if they could not get the haul from St. Paul.

Q. Now, you spoke of the Southern Pacific soliciting business in connection with all the lines leading to the west. What junc-

2886 tion points did the Southern Pacific get the business west of New Orleans—the Sunset Route?

A. Well, there were various junctions in Texas. As I say, I was not actively interested in California business, but in a general way

I knew about what routes were open. The Iron Mountain & Southern had a route in connection with the T. & P. via Texarkana and El Paso, and the Frisco had a route, I believe, in connection with the Texas Midland, via Fort Worth and El Paso, and the M. K. & T. also had a connection with the T. & P. at Fort Worth. They were the principal southwestern lines.

Q. Did business move to Portland from that territory by the Shasta Route?

A. I never heard of any going at that time.

Q. What time do you mean—when you were in St. Louis?

A. I mean when I was in St. Louis, during the four years.

Q. Do you remember the name of the gentleman who represented the Southern and the Union Pacific, respectively, in St. Louis?

A. I can't recall the names. I did remember one during the lunch hour, but I have forgotten it.

Cross-examination by Mr. LOVETT:

Q. During what years were you located at St. Louis representing the Great Northern?

A. From the early summer of 1896 until 1900.

Q. You were representing the Great Northern at that time?

A. The Great Northern, yes, sir, soliciting principally their oriental cotton traffic and coast business.

Q. I believe you testified that you did not attempt to get the California business?

A. We did not.

Q. You did not try to get any business south of Portland?

A. No.

2887 Q. The Southern Pacific, you say, was actively soliciting that business at that time?

A. I only know by hearsay.

Q. Only by hearsay?

A. Yes. The California business you are speaking of?

Q. Yes. What you have testified to, in answer to questions by Mr. Severance, as to soliciting that business—the Southern Pacific soliciting that business—is simply hearsay?

A. That is all.

Q. And from hearsay your understanding was that it went by all lines—that is, New Orleans, the various Texas junctions, El Paso, and they also sought to send it by Ogden, didn't they?

A. I think that is true.

Q. In other words the Southern Pacific agent in soliciting freight acted on the same principle that you always acted upon, and tried to get the long haul, and if you could not get the long haul you would take such haul as you could get?

A. That is it.

Q. That is true?

A. Yes, sir.

Q. Isn't that the same principle upon which the joint agents work still, as you understand?

A. It is.

Q. They always take it the long way, if they can get it, and, if not, they take it whatever way they can get it?

A. Sometimes, of course, they are governed by the representative from whom they obtain the "tip," as they call it, as to the business.

Q. Just what do you mean by that—the local man who got it?

A. For instance, if the Union Pacific man understands from the Chicago & Alton man at Peoria that there is a car going to
2888 California, he tries to work that in connection with the Chicago & Alton from Peoria to the Missouri River.

Q. Exactly. The solicitor tries to cooperate with the initial line?

A. With the initial line.

Q. With the line whose solicitor gives him the information?

A. The "tip." That is customary.

Q. That is customary?

A. Yes.

Q. Where are your plants located now?

A. At Peoria, Illinois.

Q. And your business to California moves generally by what lines? I did not catch your testimony.

A. We have been shipping principally by the Rock Island, through Denver, and the Chicago & North-Western and Union Pacific, or the Chicago & Alton and Union Pacific.

Q. When you ship by the Union Pacific and North-Western, you go by Omaha?

A. Yes, in connection with the North-Western we go via Omaha.

Q. And the Rock Island by way of Denver?

A. Yes, sir.

Q. Any by El Paso?

A. We don't ship that way. Our Southern California business has been principally to Los Angeles, for which we use the San Pedro route.

Q. You are actively solicited by all of these western lines, aren't you?

A. I am.

Q. That is, those that you mentioned—the Rock Island, the Burlington, the North-Western, the St. Paul, the Union Pacific, the Santa Fe, the Missouri Pacific, the Missouri, Kansas & Texas, the Texas & Pacific, all of those lines?

A. Yes, sir.

Q. I believe you testified that the Southern Pacific, during the time that you were located at St. Louis representing the Great
2889 Northern, solicited business by New Orleans as well as by El Paso and all the other connections?

A. They were handling business that way.

Q. In other words, they would take the business which ever way they could get it?

A. The Illinois Central had a considerable voice in that routing. They were trying to get the long haul, which was via New Orleans.

Q. The Illinois Central was actively working for business from the St. Louis territory to the Pacific coast by way of New Orleans?

A. They were, yes, sir.

Q. And also by other lines leading out there?

A. Yes, sir, they were. They had no Omaha gateway at that time.

Q. Since then they have extended their line westerly to Omaha?

A. Now I think they are working that via Omaha.

Q. Do you happen to know definitely as to that?

A. No, because we have not given them any encouragement.

Q. But they would naturally work it the way they could get the most revenue, like all other railroads do?

A. We would not give them any business to Southern California by way of New Orleans on account of the time.

Q. No, but I was speaking of the Illinois Central. I say the Illinois Central would naturally try to get the business by its long haul, wouldn't it?

A. They would, yes.

Q. If they could.

By Mr. SEVERANCE:

Q. The Southern Pacific tried to get the business by a route that would give them the long haul, too, didn't it?

A. They would, yes.

Q. Do you know of any longer haul that the Southern Pa-
2890 cific could get from this territory than by way of New Orleans?

A. I do not.

Q. That is their longest haul?

A. That is their longest haul.

Q. You stated, in answer to a question that Judge Lovett put to you, that the separate agencies were working for the long haul and the joint agencies were doing the same. In the case of the joint agency, the long haul means the long haul made up of the two lines—the Union Pacific and the Southern Pacific—doesn't it?

A. Yes.

Q. And the long haul, when Mr. Neimyer represented the Southern Pacific alone, meant the longest haul he could get by the Southern Pacific?

A. Yes.

By Mr. LOVETT:

Q. As a shipper you are not interested in the division of the rates between the cariers, are you?

A. I am not.

Q. It does not make any difference to you whether the Union Pacific or the Southern Pacific gets the most revenue out of it? You are interested in the through rate?

A. I care nothing about divisions.

2891 W. A. BROLIN,

being duly sworn as a witness on behalf of the Complainant, testified as follows:

Direct examination by Mr. SEVERANCE:

Q. Mr. Brolin, where do you live?
A. Rockford, Illinois.
Q. What is your business?
A. I am secretary and treasurer of the Skandia Furniture Company, manufacturing furniture.
Q. Manufacturing all kinds of house furniture?
A. Yes, sir.
Q. To what parts of the country do you ship your product?
A. All parts.
Q. How long have you been with that company?
A. About 20 years, except a few intervening years.
Q. You say you ship to all parts; that includes the Pacific coast?
A. Yes, sir.
Q. And have you for many years shipped to the coast?
A. We have.
Q. Do you remember when the Southern Pacific and the Union Pacific had separate soliciting agencies here in Chicago?
A. I do.
Q. Were you acquainted with the gentlemen at the head of those agencies?
A. I may have met them personally, but I am not certain about that.
Q. Did you meet their solicitors?
A. I met their solicitors, yes, sir.
Q. You knew that Mr. Neimyer headed one agency and Mr. Knight the other?
A. Yes, sir.
Q. At that time, when the agencies were separate, in what way did the Southern Pacific solicit coast business? Which way
2892 did they try to move it?
A. I can't answer that positively.
Q. Did their solicitors call on you and solicit business?
A. They did.
Q. Which way did they try to move it to the coast? I am speaking of the Southern Pacific people.
A. My recollection would be that they would want it to go via the Illinois Central.
Q. By the Illinois Central to New Orleans?
A. Yes.
Q. And the Union Pacific, of course, by their own line?
A. By their own line, yes, sir.
Q. You remember the fact that the two offices were consolidated?
A. I do.

Q. Since that time have you been called on by the representatives of the joint agency?

A. Yes, sir.

Q. Which way do they solicit the business now?

A. They don't specify.

Q. Just want to get the business?

A. Just want to get the business, yes, sir.

Q. Do you remember whether at that time the Southern Pacific agents ever called together with the agents of the Illinois Central, soliciting business?

A. I do not remember any specific instance, no, sir. My impression is that the Illinois Central were very active in getting business by the Southern Pacific.

Q. You do not remember of any instances when they called together?

A. I do not.

Q. How did your Portland business move?

A. Principally via the northern lines.

Q. That is, you mean the Northern Pacific and the Great
2893 Northern?

A. Yes, sir.

Q. Did it ever move via any other line?

A. Why, undoubtedly; yes.

Q. By what line?

A. The Union Pacific.

Q. By Omaha and the Short Line?

A. Yes, sir.

Q. Has that always been the case since you have been with the company, as far as you recall?

A. Yes, sir.

Q. Do you remember of the time when the Canadian Pacific had a differential in by boat lines?

A. I do.

Q. Did you ever make any shipments that way?

A. Yes, sir.

Q. And how would those shipments move?

A. I don't recall the route. Either Vancouver or——

Q. That is, you mean you do not recall the initial route out of Rockford?

A. No.

Q. But they moved by the Canadian Pacific?

A. They moved by the Canadian Pacific, yes, sir.

Q. And then by boat from Vancouver to San Francisco?

A. Yes, sir.

Q. Did considerable of your business, or only a small amount, move that way?

A. Only a small amount.

Q. Do you remember how many years you continued to ship that way?

A. No, I do not. My recollection would be that it was a short time only.

Q. Have you had charge of the traffic during all the time you have been with the company?

A. Yes, sir. We are not a large factory and have not any traffic manager.

Q. At whose solicitation did you ship that traffic by way of the Canadian Pacific? Did they have an agency?

2894 A. They had an agency; yes. I think they had local representation.

Q. In Rockford?

A. In Rockford.

Q. How large a town is Rockford?

A. It is 45,000.

Q. What is it—a manufacturing town?

A. A manufacturing town.

Q. How far from Chicago?

A. 85 miles.

Q. What railroads is it on?

A. The "Q," the Illinois Central, the North-Western, and the St. Paul.

Cross-examination by Mr. LOVETT:

Q. When were those shipments by way of the Canadian Pacific, do you remember?

A. I could not state the year.

Q. Would you say prior to 1901?

A. Well, it would be about that time; either prior or about that time.

Q. Your understanding is that that condition existed for only a short time?

A. Yes, that is my recollection.

Q. You never shipped anything to California by way of Portland, Oregon, and then by boat down from Portland, did you?

A. If my memory serves me right we have occasionally—that is, a car or two.

Q. How did that move?

A. Do you mean out of Rockford?

Q. Yes.

A. I do not remember.

Q. And would go to Portland and then by boat down to San Francisco?

A. Yes, sir.

Q. What is your recollection about that?

A. I have no reply to make. I can't remember any circumstances connected with it.

Q. Do you remember about when or about the quantity of shipments or why they were shipped that way?

A. No, I do not. The quantity would be a carlot.

2895 Q. Well, would there be many cars?

A. Not many, no, sir.

Q. It would go to Portland and then by boat?

A. Yes, sir.

Q. Can you approximate about the year?

A. I don't believe I would care to answer.

Q. You could not say whether it was 3 or 10?

A. Well, it would be nearer 10.

Q. Can you say whether that occurred frequently or otherwise?

A. Not frequently, because on our class of goods it is not a desirable way of shipping—by water.

Q. You would not ship that way at equal rates, would you—with the all-rail rate?

A. No.

Q. I believe you testified that the Illinois Central very actively solicited business by way of New Orleans for the Pacific coast.

A. Yes, sir.

Q. That is true, is it?

A. Yes, sir.

Q. Did you testify that the Southern Pacific solicited actively that way, or was it immaterial as to the route? I didn't understand your testimony.

A. I didn't catch the question.

Q. I asked whether in your direct examination you testified that the Southern Pacific actively solicited by way of New Orleans, or whether it solicited by the various gateways.

A. Not being interested in the gateways, why, I don't know. I don't remember how they solicited.

Q. You can not say positively whether they solicited preferentially by way of Ogden or El Paso or New Orleans, can you?

A. No, sir.

Q. You don't mean to give any testimony on that point?

A. No, sir.

2896 Q. Your business is solicited by all lines leading to the Pacific coast, isn't it?

A. It is, yes.

Q. You are familiar with the location of the Southern Pacific lines, are you not?

A. Yes, in a general way.

Q. You understand that such traffic as you turned over to the Union Pacific, or consigned by way of the Union Pacific to California, passed also over the Southern Pacific, do you not?

A. You mean prior to the consolidation?

Q. Any time.

A. I don't know that I do, no, sir. I am not familiar with that.

Q. You are not familiar with that?

A. No, sir.

2897 ALBERT EVI,

being duly sworn as a witness on behalf of the Complainant, testified as follows:

Direct examination by Mr. SEVERANCE:

Q. Mr. Evi, where do you live?
A. Moline, Illinois.
Q. What is your business?
A. Traffic manager for Deere & Company.
Q. What kind of product is put out by Deere & Company?
A. Agricultural implements.
Q. What kind?
A. Plows, cultivators, harrows, corn planters, disc cultivators, hay tools.
Q. That is one of the large companies of the kind, isn't it?
A. Yes, sir.
Q. How long has it been established?
A. It was established in 1847.
Q. To what parts of the country do you ship your product?
A. All parts.
Q. Including the Pacific coast?
A. Yes, sir.
Q. By what routes do you ship to California points?
A. We use the Ogden gateway and the El Paso gateway.
Q. Do you ship any over the Santa Fe?
A. Yes, sir.
Q. How do you ship to Portland?
A. We ship both through Ogden and via the northern routes, both through Minnesota Transfer and Billings.
Q. Do you remember when the Southern Pacific and the Union Pacific had separate agencies here in Chicago? I don't ask you for the year, but do you remember the fact?
A. I do; yes.
2898 Q. Did you know the gentlemen who headed those agencies?
A. I did. I had a personal acquaintance with them.
Q. Who were they?
A. Mr. Neimyer for the Southern Pacific, and Mr. Knight for the Union Pacific.
Q. Was the Southern Pacific solicitation at Moline under the charge of Mr. Neimyer or someone else?
A. In charge of the St. Louis office.
Q. And who was the gentleman that you were brought in contact with in connection with that business?
A. Mr. Townsley.
Q. For which route to the coast did Mr. Townsley solicit your traffic?
A. He solicited both the Ogden and the El Paso route.

Q. By which route did he endeavor to get it moved, if he had any preference or choice?

A. I don't recall that he ever expressed a preference.

Q. He never did?

A. No, sir.

Q. He did not attempt to move it by El Paso as against Ogden, as far as you remember?

A. No, I don't remember that he did.

Q. Who represented the Union Pacific at that time?

A. Mr. Rose.

Q. After the two offices were consolidated who called on you on behalf of the joint agency?

A. Mr. Rose.

Q. And how did he solicit your business?

A. He preferred the Ogden gateway, getting the long haul for the Union Pacific by the Missouri River.

Q. That is, he solicited by Omaha or Kansas City—which?

A. Either one—preferably Omaha.

Cross-examination by Mr. LOVETT:

2899 Q. About what is the distance from Moline to Omaha?

A. About 250 miles.

Q. And from Moline to El Paso about how far?

A. I would say about 800.

Q. It is more than that, I guess. How far is it to Kansas City?

A. About 250.

Q. Well, it is a good long way from Kansas City to El Paso, isn't it?

A. Well, I can't say exactly what the distance is. I am simply guessing at it when I say 800.

Q. Omaha is much nearer to your factory, anyway, than El Paso?

A. Very much nearer, yes, sir.

Q. And Mr. Rose, you say, solicited preferentially by way of Omaha?

A. Yes, sir.

Q. And that gave the Union Pacific-Southern Pacific the long haul on California shipments from your place?

A. Yes, sir.

Q. Your business for the Pacific coast is solicited by various lines, isn't it?

A. It is.

Q. Will you name the principal lines that solicit it?

A. That is, for California business?

Q. Yes.

A. The Burlington, the Milwaukee, the Union Pacific, the Missouri Pacific, the D. & R. G., the Colorado Midland.

Q. The Atchison, the Rock Island?

A. The C. R. I. & P. use the Rock Island.

Q. I didn't know that you mentioned that. The Santa Fé?

A. Yes; I think that is all.

Q. The Missouri, Kansas & Texas?

A. Through the various gateways, through the Missouri river, and also through Texas.

Q. That has been true for a great many years, hasn't it?

A. Yes, sir.

2900 Q. They have all been actively soliciting that business?

A. Yes, sir.

Q. Can you indicate about how many of them work preferentially by way of Ogden?

A. The Burlington and the Rock Island by way of Denver, and the roads running between Denver and Ogden on account of the long haul for their respective lines, the Union Pacific in preference to the Ogden gateway for the same reason.

Q. The Northwestern?

A. The Northwestern does not solicit California business.

Q. The St. Paul?

A. The St. Paul have no preference—never expressed a preference.

Q. The preference is all as against El Paso?

A. They handle practically all of their Moline business via Omaha.

Q. That is, they have no preference because they have but the one route? Isn't that true?

A. Well, they have the Kansas City route as compared with the Omaha gateway.

Q. Oh, yes.

A. But they are both practically the same in length.

Q. And both connections of the Union Pacific?

A. Yes, sir.

Q. As a shipper you are not interested in the division of the through rate between the carriers, are you?

A. No, sir.

Q. Did you ever ship your plows by water?

A. No, sir.

Redirect examination by Mr. SEVERANCE:

Q. Do you ship to foreign countries at all?

A. Yes, sir.

Q. They go by water, don't they?

A. They go by water, yes.

Q. To what parts of the world do you ship?

A. We ship to practically all parts of the world.

2901 Q. Do you ship to the Orient at all?

A. Yes.

Q. How does your traffic to the Orient move?

A. It has moved both by way of Suez Canal and also by way of the Pacific ports.

Q. What Pacific ports?

A. San Francisco, Seattle and Vancouver.

Q. In connection with what rail lines does that move? I am speaking of the Pacific coast shipments?

A. The business that has moved via San Francisco has been handled by the Southern Pacific and also the Santa Fe.

Q. Handled by the Southern Pacific—which route do you mean?

A. In connection with the Union Pacific via Ogden.

Q. By Omaha and Ogden, or Kansas City and Ogden?

A. Omaha and Ogden.

Q. And how does your Seattle business move?

A. That has been handled in connection with the Great Northern, by Minnesota Transfer.

Q. And Vancouver by the Canadian Pacific?

A. By the Canadian, yes, sir.

Q. How does the quantity of traffic that you move by El Paso to the coast, as compared with that which moves by Omaha, compare with the situation before the consolidation of these agencies?

A. There has been no comparative change.

Q. You move just as much by El Paso as you did before, do you?

A. I think we do, yes, sir.

Q. Who divides up your traffic?

A. I do.

Q. And do you endeavor to apportion it fairly among the different gateways?

A. No, I have never apportioned it that way. It depends upon rail conditions, when the traffic is ready to move.

2902 Q. What do you mean by "rail conditions?"

A. It depends upon which lines are open and apparently able to give the best service.

Q. Does that differ at times, or are there times when you get better service by El Paso, and other times when you get better service by Ogden?

A. Yes, sir.

Q. What is the occasion of the difficulty?

A. Principally the snow. Our business moves practically all in the winter time, and some of the northern lines are quite frequently congested, and then we use the El Paso gateway.

Q. Do you give the preference to northern lines when they are not congested?

A. No, we do not give the northern lines any preference.

Q. How do your shipments by El Paso compare in volume with those via Ogden to California points?

A. Well, I will say possibly twenty per cent via El Paso.

Q. And has that varied at all in the last ten years, on the average?

A. No, sir.

Q. Just about the same?

A. Yes, sir.

Q. And you do not usually ship by El Paso, except when there is snow trouble north?

A. Very little.

Q. Is your business solicited by El Paso by connecting lines with the Southern Pacific?

A. No, sir.

A. But it is solicited by lines going to Omaha?
A. Yes, sir.
Q. What is your opinion as to whether or not soliciting agents are able to influence traffic?
A. They can influence some traffic.
Q. You think they can?
A. Yes, sir.

2903 By Mr. LOVETT:

Q. The joint agency of the Union Pacific and the Southern Pacific serves your purposes very well, doesn't it, Mr. Evi?
A. Yes, sir.
Q. That is, one man or two men, representing both lines, namely the Union Pacific and the Southern Pacific, can check up your freight and look after your interests as a shipper of that freight satisfactorily?
A. Yes, sir.
Q. You have had no occasion to complain on account of that so far as the Union Pacific and the Southern Pacific are concerned, have you?
A. No, sir.
Q. What about the service on trans-continental business? Hasn't the railroad service very much improved in recent years?
A. I think it has, yes.
Q. The physical condition of the Union Pacific and the Southern Pacific has been very much improved, hasn't it, in the last six or seven years, or haven't you been over them?
A. I haven't been over either one of them.
Q. You have no personal knowledge as to that, then?
A. No, sir.

By Mr. SEVERANCE:

Q. Isn't it a fact that the railroad service all over the country has improved in the last few years?
A. I think that is quite true.
Q. That is one thing in which the Union Pacific and the Southern Pacific have no monopoly. That exists all over the country, does it?
A. I think it does.
Q. And the service has improved on the Santa Fe, hasn't it?
A. Quite perceptibly.

2904 Q. And it has improved on the lines running to the Missouri river?
A. Yes, sir.
Q. The Illinois Central?
A. I don't know much about the Illinois Central.
Q. You don't use that?
A. We don't use that to any extent.
Q. Judge Lovett asked you whether you were not very well served by the joint agency of the Union Pacific and Southern Pacific.

What did you mean by your answer that you were well served by them? What do they do for you?

A. They look after our freight as well as the separate agencies did, or as well as other lines' representatives.

Q. That is, if you ship freight over the line and want it traced, they trace it for you?

A. Yes, sir.

Q. And if you have losses, they pay the losses?

A. Yes, sir.

Q. Or help you to get them adjusted?

A. Yes, sir.

Q. Now, when you said that soliciting agents could divert some traffic from one line to another—I believe you so stated, didn't you?

A. Yes, sir.

Q. That they could influence the movement of traffic?

A. Yes, sir.

Q. Then, in your opinion, if the Southern Pacific had an agent of their own who was seeking to route traffic to California by the long haul for the Southern Pacific (not the Southern and Union Pacific together—assuming they are separate lines) do you think that he would be able to move some traffic over that line that now goes over the Union Pacific?

A. I do, yes, sir.

By Mr. LOVETT:

2905 Q. Do you know of any particular reason why he should rather have it by way of El Paso than by Ogden, Mr. Evi?

A. Well, our business is seasonable business and we are anxious to get it to destination promptly.

Q. No, you misunderstood my question. Mr. Severance has been asking you about what a separate agent might do for the Southern Pacific in soliciting your business. I say now that you do not see any reason, do you, why he should rather have that business by way of El Paso than by way of Ogden except for a little longer haul?

A. That is all.

Q. If the separate agent of the Southern Pacific was soliciting against the Union Pacific, as Mr. Severance would have him do, the difference would be that if he got it by way of El Paso he would get a little longer haul than if it went by the way of Ogden? That is the only difference you see, isn't it?

A. Yes, sir.

Q. I believe you have also testified that you are not interested in the division of the through rate?

A. Yes, sir.

By Mr. SEVERANCE:

Q. Let me make another suggestion to you, as Judge Lovett has made one: You say you can not see any reason why they would rather haul it by El Paso than by Ogden, except the longer haul. Haven't

they a more level road to California by El Paso than they have climbing the Sierra Nevadas?

A. I can not say as to that; I have never been over either one of the roads.

Q. You are aware of the fact that it is more expensive to haul freight over the mountains than it is on a level, aren't you?

A. Yes, sir.

2906 EMANUEL L. PHILIPP,

being duly sworn as a witness on behalf of the Complainant, testified as follows:

Direct examination by Mr. SEVERANCE:

Q. Mr. Philipp, where do you live?

A. Milwaukee, Wisconsin.

Q. What is your business?

A. I am president and manager of the Union Refrigerator Transit Company.

Q. How long have you been occupying that position?

A. About six or seven years.

Q. Previous to that what was your business?

A. From 1900 back to 1894 I was in the lumber business in the state of Mississippi.

Q. Previous to 1894 what were you doing?

A. From 1892 to 1894 I was traffic manager for the Schlitz Brewing Company at Milwaukee; and prior to that time, from 1889 to 1892, I was agent at Milwaukee for the American Refrigerator Transit Company, and in 1891 also for the Union Pacific Railroad; and prior to that time, if you wish to go back, I was with the North-Western.

Q. Do you remember when the Union Pacific and Southern Pacific had separate traffic representatives?

A. Yes, sir.

Q. Do you know whether any freight moved in those days to the Pacific coast, from Milwaukee, over the Illinois Central by way of New Orleans?

A. Yes, some freight moved that way in the winter—perishable freight.

Q. How was it with reference to the movement of freight to
2907 El Paso from Milwaukee territory?

A. Considerable freight moved by El Paso.

Q. Was it solicited that way?

A. Yes, it was solicited at times, and the route was also desirable for other reasons.

Q. The Union Pacific, at the time you were connected with them, were soliciting California business, I suppose?

A. Yes.

Q. And did you work Portland business at that time?

A. Yes, sir.

Q. What way?

A. Via the Oregon Short Line.

Q. Did you know of any business for Portland moving by the Shasta route?

A. I knew of a few shipments; they did not amount to much.

Q. Which way would they go—by Ogden, or the south, or El Paso?

A. No; shipments that I know of went via Portland, and I heard of a few cars that moved via El Paso, but it was very small.

Q. It was a roundabout route?

A. A roundabout route, and only a very few shipments.

Q. You spoke of certain advantages of the El Paso route. What were those advantages which you had in mind?

A. The shippers of perishable freight preferred the southern routes in the winter, to get the shipments out of the cold territory, in order to protect them against frost.

Q. When you were traffic manager of the Schlitz Brewing Company how did your Pacific coast shipments move?

A. Probably most of them moved via Ogden. The export business was divided between all the ports on the Pacific coast. I could not say now which port got the most. It was largely a matter
2908 of vessel room.

Q. Which ports do you mean?

A. Seattle, Tacoma, Portland, San Francisco, and Los Angeles.

Q. To what places did you export business? Export beer, I mean.

A. Practically to every country on the globe, but the Oriental business, of course, went to China, Japan, India, Australia, and the Philippines.

Q. Did the boat lines have soliciting agents looking up that business, or did the railroads making the connection with the boat lines work it?

A. Well, no; the boat lines had no soliciting agents that I know of.

Q. They worked by the rail connections?

A. They worked by the rail connections. But during my time in that business it was determined largely by vessel room. We sought that ourselves.

Q. That is, it depended on what time you could get a boat to go where you wanted to ship?

A. Yes, sir.

Q. What was the annual output of the Schlitz Brewing Company when you were with them?

A. In carloads probably you would like to have it?

Q. Yes.

A. At that time they shipped, as nearly as I can remember now, about 12 or 14 thousand carloads a year.

Q. Did you ship over the Santa Fe too?

A. Oh, yes.

Q. What were the initial lines that took your product out of Milwaukee?

A. The Chicago, Milwaukee & St. Paul, the Chicago & North Western, and the Wisconsin Central.

Q. In the case of traffic moving by El Paso, where did these initial lines deliver it to the connection?

A. Much of it came via Chicago, in fact most of it, and was
2909 delivered to the St. Louis lines here.

Q. The Omaha, I suppose, took it right to Omaha?

A. Yes.

Q. That is two lines—the Milwaukee and the North-Western?

A. Yes.

Q. Did you know anything about the movement of traffic of the other breweries in Milwaukee at that time?

A. No, only in a general way—that the larger concerns there did a similar business and used like routes.

Q. Like routes. That is what I wanted to get at.

A. Yes.

Q. Export beer from Milwaukee is a very large business?

A. Yes, sir, it is.

Q. And has been for many years?

A. Yes, sir.

Q. Does that product move under refrigeration?

A. Yes, sir.

Q. Altogether?

A. The bottled beer does not move under refrigeration in summer. It needs to be protected against frost in the winter, however, the same as water or any other liquid.

Q. Do you remember a time when the Canadian Pacific had a differential rate into San Francisco?

A. I do.

Q. Was that route used by the breweries in Milwaukee?

A. To some extent, with their bottled product.

Q. What is the great distributing point for beer on the Pacific coast?

A. I can't answer that as to then as well as now.

Q. How was it then?

A. I would say that San Francisco at that time was the largest market.

Q. Do the brewing companies in Milwaukee maintain agencies and distributing depots out there at these towns on the coast?

2910 A. Some did. The Schlitz Company, however, had no distributing point, as far as I know. They sold to people there who bought f. o. b. Milwaukee and did the distributing themselves, without their direction.

Q. Wholesalers?

A. Wholesalers, yes.

Q. And those wholesale merchants on the coast were located in what cities, as you recall?

A. San Francisco, Los Angeles, Portland, Seattle, Tacoma; in fact I think every city of any importance out there.

Q. Over what lines of rail did the traffic move destined to Portland?

A. Usually over the Northern Pacific; however, some over the Union Pacific and the Oregon Short Line.

Q. Did the Northern Pacific maintain a soliciting agency in Milwaukee?

A. They have one now. I don't recall whether they had one at that time.

Q. They have now?

A. They have now, yes.

Q. Outside of the brewing business, what other large lines of industry are there in Milwaukee?

A. The machine business; it has very extensive manufactories of machinery.

Q. And has had for a good many years?

A. Has had for a great many years—such as leather, sash, doors and blinds and articles made of wood. In fact the city has all kinds of manufacturing, practically.

Q. It is distinctly a manufacturing city, isn't it?

A. It is, yes.

Q. How large a place was Milwaukee in 1900, if you remember?

A. In 1900 about 320,000.

2911 Cross-examination by Mr. LOVETT:

Q. Over what lines principally, Mr. Philipp, did this beer, about which you have been testifying, move to the Pacific coast?

A. Well, it moved over all lines. I would say that the Ogden route handled more, perhaps, than any other.

Q. You mean the Southern Pacific line west of Ogden?

A. West of Ogden, yes.

Q. And it reached there over the Union Pacific, the Denver & Rio Grande, and the connections of the Union Pacific and Denver & Rio Grande easterly?

A. Yes, sir.

Q. That business was actively solicited by all of the principal lines extending westerly from and lying westerly of Milwaukee?

A. Yes.

Q. The St. Paul, the North-Western, the Burlington?

A. They all asked for it.

Q. Yes; they were all seeking it. But you think the most of it moved over the Southern Pacific?

A. As a guess; and it is merely a guess now. It is a good many years ago. I would say that the Southern Pacific west of Ogden handled more of that traffic than any other Pacific line.

Q. The only other Pacific line at that time was the Atchison, wasn't it—that is, for the Pacific coast?

A. I include in that the North Pacific lines.

Q. Oh, yes. Well, you understand that whatever the North-Western, the St. Paul, the Union Pacific, the Burlington and the Rock Island got of that traffic for California, passed over the Southern Pacific west of Ogden, do you not?

A. Yes, sir.

2912 Q. That was the only outlet for those lines?

A. That was the only outlet, yes, sir.

Q. These various lines have continued to solicit that business, have they not?

A. I assume so. I have not been connected with it for a good many years.

Q. You testified about some of that business going by way of the Southern Pacific—the Sunset Route?

A. Yes, sir.

Q. Did that go by way of New Orleans or by way of El Paso, or both ways?

A. Both ways.

Q. That movement, I believe you said, was principally in winter?

A. Entirely, so far as I know. So far as the New Orleans route was concerned, that, I think, was entirely in the winter. Now, the El Paso route always did get some business in the summer, particularly bottled beer, because the heat did not affect that particularly, and their route could be used, although it was not a very desirable one—from Milwaukee.

Q. But it was climatic conditions that controlled the movement by way of New Orleans?

A. It did in the winter, entirely, so far as perishable freight was concerned, that I know anything about.

Q. The El Paso gateway has always been kept open for traffic, has it not, so far as you know?

A. Yes.

Q. So far as you know, it still moves that way?

A. Yes, sir.

2913 Re-direct examination by Mr. SEVERANCE:

Q. Just one question, Mr. Philipp: Over what lines do the cars of the company of which you are president move? All lines?

A. All lines.

Q. That is a refrigerator car line?

A. Yes, sir.

2914 H. B. JILSON,

being duly sworn as a witness on behalf of the Complainant, testified as follows:

Direct examination by Mr. SEVERANCE:

Q. Where do you live, Mr. Jilson?

A. Rockford, Illinois.

Q. What is your business?

A. I have charge of the shipments for the Emerson Manufacturing Company.

Q. What is the business of the Emerson Manufacturing Company?

A. They make a general line of agricultural implements—a full line, I might say.

Q. How old a concern is that?

A. Well, this concern was originally Emerson & Company; after that, Emerson, Talcott & Company; and now, Emerson Manufacturing Company. Since 1852, I think.

Q. 1852, you say?

A. Yes, sir.

Q. You say you manufacture a full line of agricultural implements?

A. Yes, sir.

Q. Does that include harvesters?

A. Well, we do not make harvesters or binders, no.

Q. But everything else?

A. But we make most everything else in the way of agricultural implements.

Q. To what parts of the world, or the country, do you ship your products?

A. We do not ship to the eastern states at all. We ship to Texas and the southern states and to the western states; and we have an export trade.

Q. Especially to the Pacific coast?

2915 A. Especially to the Pacific coast and the north Pacific coast.

Q. To both California points and north Pacific coast points?

A. Yes, sir.

Q. How long have you been connected with the Emerson Company?

A. I have been connected with them for 18 years.

Q. How long have you had charge of their traffic?

A. Of the shipments?

Q. Yes, sir.

A. Well, for the last 10 years.

Q. How does your California traffic move at the present time, Mr. Jilson?

A. At the present time?

Q. Yes, sir.

A. You mean the lines out of Rockford, or the other lines?

Q. I mean the transcontinental lines.

A. Mostly by the Union and Southern Pacifics in connection with the San Pedro line, and by the Santa Fe. Mostly by those two lines.

Q. By the San Pedro line you mean the line from Salt Lake to Los Angeles?

A. Yes, sir; the Salt Lake route.

Q. Prior to 1901 were there any other routes that you sometimes used?

A. We did ship some over the C. R. I. & P. and the El Paso and Southern Pacific, yes, sir.

Q. You do not ship that way any more?

A. No, sir.

Q. Was your business solicited that way?

A. Our business usually comes to us routed by the California agents, and that routing is usually confirmed through the Chicago office of the Union Pacific.

Q. The Union Pacific?

A. The Union and Southern Pacific.

Q. The Southern Pacific, yes.

A. Yes.

Q. Well, previous to the time that the two offices here were
2916 consolidated——

A. Well, it was treated a good deal the same way at that time. That is, our agent specified.

Q. You said it was routed by the consignee in California?

A. Yes, sir.

Q. And the routing would be confirmed through the Chicago office?

A. Yes, sir.

Q. In the case of shipments via El Paso, that you spoke of, which Chicago office did you mean—the Union Pacific or the Southern Pacific?

A. I could not state positively as to that.

Q. I mean at the time their offices were separate?

A. Yes, I understand. I think we shipped very little by the way of El Paso. I think most of our shipments moved through Ogden at all times.

Q. Can you imagine any reason, Mr. Jilson, why shipments by El Paso should be confirmed through the Union Pacific office at that time when they were separate? They did not participate in the traffic, did they?

A. Well, I did not intend to convey that idea to you.

Q. That is what you said. I thought you misspoke.

A. I did; certainly.

Q. You said Union Pacific. That is the reason I thought you misspoke.

A. Well, I had reference—of course before that time it was Southern Pacific.

Q. Yes, Southern Pacific; that is what I thought. How does your traffic to Portland move?

A. We do not ship to Portland at the present time.

Q. Did you formerly ship there?

A. We did formerly ship there.

Q. And how did it move?

A. We generally divided the business up between the North-
2917 ern Pacific and the Union Pacific and Oregon Short Line. I think the Great Northern had some.

Q. Do you remember when the agencies in Chicago were separate?

A. Yes, sir; I do.

Q. Did those agencies solicit your traffic in those days?

A. I think they did.

Q. Did any of your traffic in those days ever move by New Orleans to the coast?

A. Yes, sir; it did—New Orleans and the Southern Pacific.

Q. To New Orleans by the Illinois Central, and then Southern Pacific?

A. Yes, sir.

Q. Since the consolidation of the agencies here—the Southern Pacific and Union Pacific—are you called upon by representatives of that agency?

A. Yes, sir.

Q. Which way is your traffic to the coast solicited by that joint agent?

A. Well, as I said before, our routings are specified, and they are confirmed through the Chicago office. They are specified just simply Union and Southern Pacific, without regard to junctions. I think the routing orders are printed that way, if I am not mistaken—Union and Southern Pacific.

Q. Does any of your business now move via New Orleans or El Paso?

A. No, sir.

Q. It does not?

A. No, sir.

Q. You spoke of some of your business moving by the San Pedro route.

A. Yes; quite a large percentage of it at the present time, in connection with the Union Pacific.

Q. In connection with the Union Pacific?

A. Yes, sir.

Q. Is that traffic solicited by some one?

2918 A. That comes the same way as the other.

Q. And from whom do you receive the confirmation of those shipments?

A. From representatives of the Union Pacific in Chicago.

Q. Mr. Jilson, is the Emerson Manufacturing Company one of the largest concerns of the kind in the country?

A. Yes, sir; I think the largest in the city.

Q. How is that?

A. The largest in Rockford, yes, sir.

Q. Rockford is a manufacturing town, is it not?

A. Yes, sir.

Q. And it is one of the large concerns of the country, in that line, is it not?

A. Yes, sir, it is.

Cross-examination by Mr. LOVETT:

Q. Mr. Jilson, you were asked if you remembered when the Union Pacific and Southern Pacific had separate solicitors in this territory?

A. Yes, sir.

Q. Which way did the Southern Pacific representatives at that time seek to route your traffic—by way of Ogden as well as El Paso and New Orleans?

A. I think that as far as I am able to recall our shipments went by way of Ogden at that time, with the exception of one occasionally by El Paso; and some went by New Orleans and the Southern Pacific.

Q. The Southern Pacific agent would seek it whichever way he could get it, would he not?

A. Yes. As I stated just a minute ago, our cars were routed by the consignee.

Q. Has that always been so?

A. That has always been so. And where they failed to do that, I respected the way the last car went, usually.

2919 Q. And the duty of the agent in this territory, then, was generally to check up the shipments, wasn't it?

A. Yes, sir; to see that it went by the route that was specified.

Mr. LOVETT. I do not believe I have any further questions.

2920 C. S. JONES,

being duy sworn as a witness on behalf of the Complainant, testified as follows:

Direct examination by Mr. SEVERANCE:

Q. Mr. Jones, what is your business?

A. I am a wholesale grocery broker.

Q. At what point?

A. Peoria, Illinois.

Q. How large a town is Peoria?

A. About 80,000.

Q. In general, what kind of a town is it, as to the business carried on there?

A. Quite large.

Q. Well, is it a manufacturing town?

A. Yes, sir; and it is a great distributing center.

Q. A great distributing center?

A. Yes, sir.

Q. What railroads are there at Peoria?

A. I think there are 14 altogether.

Q. Can you name them without much trouble?

A. The Rock Island, Alton, North-Western, T. P. & W., C. P. & St. L., Iowa Central, C. B. & Q., Chicago & Alton, Vandalia, Big Four, Lake Erie & Western, Peoria and Pekin Union. I think that about covers it, as I remember.

Q. How long have you been in the whole-sale grocery business at Peoria?

A. Since 1895.

Q. Previous to that what was your business?

A. I was with the Chicago & Eastern Illinois Railroad from 1890 up to that time.

Q. And before that?

A. I was with the Chicago & North-Western from 1886 to 1890.

Q. Does your firm ship to the Pacific coast, or import from the Pacific coast?

2921 A. The Pacific coast is one of the bases of supplies for us. We ship more from there than we do to there.

Q. Over what lines does your traffic from the coast move?

A. From the coast it moves Southern Pacific and Santa Fe, largely.

Q. And which route of the Southern Pacific?

A. It is now coming largely via the Ogden gateway. Part of it via El Paso.

Q. Are you called upon by freight solicitors?

A. Yes, sir.

Q. Have you been during all the time you have been in business?

A. Yes, sir.

Q. Do you remember when the Southern Pacific and Union Pacific had separate agencies?

A. Yes, sir.

Q. Did any of your business in those days ever move via New Orleans from the coast?

A. A very small portion of it.

Q. Did some of it?

A. Yes, sir.

Q. How did it happen to?

A. Some of it was destined into points in southern Illinois—not Peoria proper. If, for instance, on the line of the Illinois Central, and we could give them the business we handed it to them.

Q. And did a considerable amount move via El Paso?

A. Yes, sir; more than via New Orleans.

Q. Which way did the Southern Pacific agent endeavor to bring the business this way at the time that they had separate agencies? Which way did he solicit the business?

A. Well, he wasn't very particular with us, as a rule. At that time our houses were on Southern Pacific lines largely, and of course naturally he would incline to the southern gateway.

Q. That is what I meant.

A. But he would take it either way.

Q. Inclined to the southern gateway, and if he could not get
2922 it that way he would take it the other way?

A. Yes.

Q. Did the Union Pacific man call on you and solicit your business, too?

A. At that time?

Q. Yes.
A. Yes, sir.
Q. Which route did he solicit by?
A. He would solicit by Ogden.
Q. The only way he had?
A. To the Missouri river.
Q. Do you recall the fact of the agencies here being consolidated?
A. Yes, sir.
Q. Since that time have you been called upon by the solicitors?
A. Yes, sir.
Q. Which way do they now try to route the traffic, if either?
A. Well, that is largely governed by conditions. They seem glad to get the business either way, but I think they prefer the Missouri river. But it is largely on account of our local representatives there that might be soliciting the business with them. If it is the Rock Island, I should think they would take it El Paso; and if it was the Chicago & Alton, or Missouri river lines, they would want it to come that way.
Q. They call on you by themselves at times, don't they?
A. Yes, sir.
Q. And which way do they try to bring the business from California then?
A. I think their preference is Missouri river.

Cross examination by Mr. LOVETT:

Q. You spoke of the solicitor for the Union Pacific-Southern Pacific calling with your local representatives, Mr. Jones. You mean the representatives of your local lines?
A. Yes; and sometimes of lines that are not located in Peoria
2923 but interested in traffic moving from the west to Peoria.
Q. The agent of the Union Pacific frequently calls with those representatives, does he?
A. Yes, sir.
Q. And they try to work the business together?
A. Yes, sir.
Q. From what portion of California do your supplies principally come, Mr. Jones?
A. From San Francisco, Fresno, San Jose.
Q. And from Southern California?
A. And from Southern California, Yuba City.
Q. You testified just now as to the conditions existing prior to the consolidation of the agencies in 1901—that your houses at that time were located on the Southern Pacific tracks. Do you mean at these same places in California?
A. Yes, sir. I meant that the Santa Fe reached more of them now than they did at that time.
Q. And the Southern Pacific agent at that time was largely—it was largely immaterial whether it came by way of El Paso or by way at Ogden, I believe you testified?
A. Well, we felt that he preferred the southern gateway.

Q. Get a little longer haul that way?

A. Yes, sir. But I do not think he was as particular in our case, because our traffic does not admit of slow time. We want as quick time as we can get.

Q. But he was very glad to get it either way, wasn't he?

A. I think so; yes, sir.

Q. Now, there has been no material change in his position about that, has there? That is the joint agent. They are very glad to get it either way still, aren't they—either by way of the Missouri river or by way of El Paso?

A. Yes, sir.

2924 Q. Various lines solicit you for that traffic, do they not, Mr. Jones?

A. Yes, sir.

Redirect examination by Mr. SEVERANCE:

Q. Mr. Jones, in answer to Judge Lovett you just said that the joint agent was glad to get the traffic now either way?

A. Yes, sir.

Q. By that statement you did not mean to modify your testimony given on direct examination to the fact that they preferred to get it by Omaha?

A. That wasn't the question he asked me, as I understood it.

Q. No, but I said you did not intend to modify your answer that you made in answer to my question?

A. Not at all; no, sir.

Q. It is the fact, is it not, that he tries to route it via Omaha?

A. Well, as I say, he is not so particular in our business as he might be in others. Our business is all shipped with drafts, and we want quick time, on account of the return of the money, to the coast, and we want fast time on account of the business that we are in.

Q. Yes, I understand. But you testified on your direct examination that since the consolidation of the agencies the preferred route by this joint agency was by the Missouri river?

A. Yes, sir.

Q. And that is the fact?

A. Yes, sir.

2925 JACOB YOUNGE,

being duly sworn as a witness on behalf of the Complainant, testified as follows:

Direct examination by Mr. SEVERANCE:

Q. Mr. Younge, where do you live?

A. Peoria, Illinois.

Q. What is your business?

A. Traffic manager for the Wilson Interest.

Q. And what is the business of the Wilson Interest?

A. Distillery, wholesale grocery and packing house.

Q. How long have you been with the Wilson Interest?

A. From June, 1903, and am with them at the present time.

Q. And previous to that what was your business?

A. Traffic manager for the Acme Harvester Company, from 1900 to 1903.

Q. And previous to 1900 what was your business?

A. I was in the local office of the Santa Fe at Pekin, Illinois.

Q. Do you remember years ago, when the Union Pacific and the Southern Pacific had separate soliciting agencies here in Chicago?

A. Yes, sir.

Q. Were you acquainted with the gentlemen who officered those agencies?

A. Mr. Knight and Mr. Neimeyer.

Q. You knew them, did you?

A. Yes, sir.

Q. Did the Acme Harvester Company ship to the Pacific coast?

A. They shipped both to the south Pacific coast and the north Pacific coast, but the heaviest traffic went to the north Pacific coast.

Q. Was your traffic at that time solicited by these agencies?

A. Yes, sir.

Q. Which way did the Southern Pacific agent endeavor to route the traffic?

2926 A. It depended largely upon what local representative was with him.

Q. Suppose he was by himself?

A. If he was by himself he would try to get the longest haul.

Q. That would be which way?

A. That would be by El Paso or New Orleans gateway.

Q. And if he was with the agent of some intervening carrier, I suppose he worked with it?

A. He would be glad to get it by the Ogden gateway.

Q. But when he was soliciting by himself he solicited by the south?

A. By the longest gateway—by the longest route.

Q. And how about the Union Pacific?

A. The Union Pacific man solicited by Kansas City or Omaha.

Q. You remember the fact of these agencies being consolidated here, do you not?

A. Yes, sir.

Q. Does the Wilson Interest, which you have mentioned—that is, the distillery, wholesale grocery and packing house—have to do with traffic to and from the coast?

A. The distillery ships to the coast, and the grocery house receives from the coast.

Q. What about the packing house?

A. The packing house does not ship.

Q. It has no trans-continental business?

A. It has no trans-continental business.

Q. Is the distillery product and the grocery traffic that you have spoken of the subject of solicitation by agents?

A. Yes; it is.

Q. And do the agents of this joint agency call on you now, in soliciting business?

2927 A. They solicit the business by the Kansas City and Omaha gateways.

Q. How often are you called on by them?

A. I would judge about every ten days or two weeks.

Q. Is the traffic that you control large or small in volume?

A. At the present time it is small.

Q. How was it three or four or five years ago?

A. At the time before the earthquake at San Francisco, we had sort of an agency at San Francisco and we did more whiskey business there then than we are doing now; in fact, we are entirely out of it at the present time.

Q. Is this Wilson Interest, the Wilson whiskey, the Wilson highball, we see advertised so much?

A. No, sir.

Q. Not the same?

A. We don't claim to own that.

Q. I understand it was not, but I wanted to give you a chance to say so.

A. No. We have a better product.

Q. Now, in shipping to the north Pacific coast, when you were with the Harvester Company, which way did your traffic move?

A. The traffic moved via the various routes—Santa Fe to Colorado Springs and Denver, and the Colorado Midland, and the O. S. L. and O. R. & N.; by Omaha, Union Pacific and O. S. L. and O. R. & N.; by the Minnesota Transfer, Great Northern or Northern Pacific. But the heaviest traffic moved by the Omaha gateway, O. S. L. and O. R. & N. to the north Pacific coast.

Q. Was that traffic solicited by the different lines?

A. By all of them.

Q. Since you have been representing the distillery, have you shipped to north Pacific coast points?

A. Yes, sir.

Q. And over what routes does that traffic go?

2928 A. That we move both over the Union Pacific and the O. S. L. and O. R. & N., and via the Minnesota Transfer, Great Northern, and Northern Pacific.

Q. Has that business been solicited by those lines?

A. It has been solicited by all three lines.

Cross-examination by Mr. LOVETT:

Q. I believe you stated that when you were with the Acme Harvester Machine Company and when the Southern Pacific and the Union Pacific had separate solicitors in this territory, that the Southern Pacific representative, when he called in company with the representatives of other lines, attempted to work the business with such lines?

A. Yes, sir.

Q. Whether by way of Ogden or El Paso?

A. Or New Orleans, by the Illinois Central.

Q. And when he was soliciting alone he sought to work it by the longest route?

A. The longest gateway.

Q. He usually worked it in connection with other lines, didn't he?

A. Well, it was about equally divided. He would call alone and he would call with other representatives.

Q. You are not interested in the division of the rate between the different carriers?

A. Not in any way, shape, or form.

Q. You care nothing about that?

A. No, sir.

Q. Well, did he work actively with the Union Pacific agent by way of Ogden?

A. The Union Pacific by Ogden?

Q. Yes. I say did the Southern Pacific agent work actively with the Union Pacific and other lines leading to Ogden?

2929 A. Would he work with other lines leading to Ogden?

Q. Yes.

A. Yes, sir.

Q. All of the lines leading to Ogden?

A. Yes.

Q. All lines leading to El Paso?

A. All lines leading to El Paso, and all leading to New Orleans.

Q. That business was solicited by all of the lines in this territory, wasn't it?

A. Yes, sir.

Q. The North-Western, the St. Paul, the Burlington, the Rock Island, the Missouri Pacific, the Santa Fe—all of them were soliciting it?

A. All those that you mentioned, yes, sir.

Q. And others besides?

A. Yes, and you could add a few to that.

Q. You never shipped any business to Portland by way of El Paso and New Orleans, did you?

A. Via El Paso?

Q. Yes, or New Orleans.

A. We did not. We did have some cars to Portland via the Santa Fe, and the Southern Pacific by Sacramento to Portland.

Q. The Santa Fe?

A. On Santa Fe solicitation, yes, sir.

Q. On Santa Fe solicitation?

A. Yes, sir.

Q. You never shipped anything to California by way of the boat line down from Portland, did you?

A. No, sir.

2930 JOHN J. BOLGER,

being duly sworn as a witness for the Complainant, testified as follows:

Direct examination by Mr. SEVERANCE:

Q. Where do you live, Mr. Bolger?

A. Chicago.

Q. What is your business?

A. Traffic manager for the Michigan Stove Company.

Q. How long have you been traffic manager for the Michigan Stove Company?

A. Over four years.

Q. Previous to that what was your business?

A. Division agent for the Baltimore & Ohio.

Q. How long did you occupy that position?

A. About a year, being promoted from station agent, prior to that, as rate clerk.

Q. How many years all together were you with the B. & O.?

A. A little over three.

Q. In Chicago, and except when you were station agent at Chicago Junction?

A. Yes, sir.

Q. Previous to that what was your business?

A. With Swift & Company, Stock Yards.

Q. I don't want to suggest to you, but weren't you connected with the California Fruit Transportation Company?

A. Yes. In explanation of that I will say that the Swift family owned the California Fruit Transportation cars. I was in New York, and in the field there (that is, we call the field the territory of fruit) as assistant to the general manager down there for a year.

2931 Q. And what was your employment by Swift & Company in Chicago?

A. Rate clerk, in charge of all rates and tariffs.

Q. How long did you occupy that position?

A. About five years.

Q. And previous to that what was your business?

A. Chief clerk of the Illinois Central Fordham yards.

Q. Did you occupy another position with the Illinois Central for a time?

A. Yes, sir: chief route clerk and chief billing clerk. I worked my way up all through the office.

Q. Then, you have been in the railroad service, either as representing the shippers or working for the railroads direct, for how many years?

A. Practically ever since I graduated from school. Prior to the Illinois Central service I was with the Milwaukee & St. Paul, about three or three and one-half years, and with the Michigan Central before that.

Q. You have been at least 25 years in the railroad service either in connection with the traffic of shippers or working for railroads?

A. Yes; I should judge 22 years all told.

Q. Do you remember when the Southern Pacific and the Union Pacific had separate agencies here in Chicago?

A. Yes, sir.

Q. Do you know how the Southern Pacific were working their Pacific coast business, where they could, then?

A. When I was with the Illinois Central they were handling it via New Orleans, Sunset Route.

Q. Was that actively worked that way?

A. Yes, sir.

Q. And the Union Pacific were working it, I suppose, by——

A. When I was with the Illinois Central, the I. C. had no connections proper with the Union Pacific, as their Omaha line
2932 was not finished until about 1901. In the latter end of the year I met the entire inspecting party at Omaha. That was in 1901, I believe.

Q. You remember the Union Pacific agency here working business by that route at that time?

A. Yes, sir.

Q. At the time you say the Southern Pacific was working over your road, by New Orleans?

A. Yes, because when I was with the Milwaukee & St. Paul, the St. Paul had on their California fast train, and we loaded everything that time for the Union Pacific, that came that way, on this California train, via Omaha.

Q. How was that competition for coast business between the Southern Pacific by New Orleans and the Union Pacific by Omaha at that time? Was it active or otherwise?

A. Yes, it was keen.

Q. Do you remember, Mr. Bolger, in those days, prior to the amalgamation of those agencies, an Illinois Central train numbered 51?

A. Yes, that was their fast manifest train.

Q. Where did that run to?

A. Chicago to New Orleans.

Q. Did coast traffic move on that train?

A. Yes, sir; whatever was offered, and provided it was the class that was carried on the manifest train.

Q. What is a manifest train?

A. It is the fastest freight train on the road. It is a system, I might say, invented or at least copyrighted by J. M. Daily to put certain highest classes of freight on that train, with a manifest tacked on the car, and the car waybill accompanies it, the car number,
2933 etc. There is a lot of detail. The car number is known by a letter, marked after it leaves Chicago, for easy tracing in the car record office. In the operating department it is a second class train, and has the right over everything except the passenger trains.

1799

Q. What was the time of that train to New Orleans?

A. I could not give the exact number of hours now. I can probably chase up some of my old instructions on it. But I think it was in the neighborhood of 60 hours. I could not give the exact time.

Q. But it was a fast train, was it?

A. Yes, sir.

Q. You spoke of this train, number 51, carrying only commodities of a certain kind. What was it—first class, or something below first class?

A. No; there was a circular gotten up, as a rule, in conjunction with the operating department—the traffic department. The traffic department are usually the originators, at least they have the say as to what commodities shall be carried on it. For instance, all goods of a perishable nature, and as a rule all commodities above a certain class, or any commodity on which time is desirable and in which the railroads are interested in getting the business.

Q. How often did that train run—every day?

A. Daily; sometimes in several sections.

Q. Were those cars unloaded at New Orleans—those containing Pacific coast business—or did they go through?

A. They would go through, except the merchandise, of course. Of course that all depended on the arrangements there. I didn't know what arrangements they had there?

2934 Q. But as to a large part of the traffic, was it through traffic?

A. Through traffic of course would go through; at least we would never——

Q. In the same cars? That is what I mean.

A. Yes, sir.

Q. When you were with Swift & Company, did they ship to the coast from Chicago or from other points?

A. Very little from Chicago.

Q. Did their product all move under refrigeration?

A. Not all.

Q. Cured meats do not, do they?

A. Well, certain classes of cured meats do not.

Q. What routes did that product take to the coast, so far as it moved from Chicago?

A. Up to that I could not state. Their plants at Omaha, Kansas City and East St. Louis were under the control of traffic managers, who in turn were under the control of Mr. A. R. Fay, traffic manager at Chicago.

Q. Mr. Fay is in charge of all the traffic, is he?

A. Yes, sir.

Q. And you had charge of the Chicago business only?

A. Of their rates and tariffs, yes.

Q. Of their rates and tariffs?

A. And later on he checked up the rates from all the plants, and bills of lading.

Q. How does the business of the Stove Company, which you now represent, move to the Pacific coast?

A. To what are known as California terminals, excepting Portland; we give as much as possible to the Santa Fe line. To north Pacific coast terminals, of course the Northern Pacific and Great Northern.

2935 Q. Does any of it move to Portland over the Union Pacific and Oregon Short Line?

A. There have been one or two cars moved that way, but that was at the earnest request of the consignees, who put it up to us as sort of a favor to route it that way.

Q. Are you called on by the soliciting agents of the joint agency here?

A. Yes, sir.

Q. Of the Union Pacific and Southern Pacific?

A. Yes, sir.

Q. How do they endeavor to route the traffic to the coast now?

A. Of course he first solicits by the Union Pacific, and when he knows he can't get it that way he asks to have it routed Southern Pacific.

Q. By Southern Pacific, you mean by the southern gateway?

A. The Southern Pacific, when I cut out Union Pacific on him, wants to get either Ogden, and sometimes—well, that is within the immediate past he has been asked to have it moved El Paso, and at the solicitation of one of the Rock Island men I did send one car that way.

Q. What do you mean by cutting out the Union Pacific?

A. Why, ignoring them in routing.

Q. You say he first asks to get it by the Union Pacific?

A. Yes, sir.

Q. And when you cut that out——

A. He then asks to get it by the Southern Pacific in connection with any other line.

Q. Oh, I see. Where are your stove works?

A. Detroit.

Q. Do you ship any from Detroit by way of New Orleans now?

A. No, sir.

2936 Cross-examination by Mr. LOVETT:

Q. Did I understand you to say, Mr. Bolger, that all of your California shipments now go by way of the Santa Fe?

A. If possible, yes, sir.

Q. And all of your north Pacific coast shipments go by the Northern Pacific or Great Northern?

A. Yes, sir, except as I stated——

Q. You do not ship anything by the Union Pacific or Southern Pacific if you can help it?

A. No.

Q. It isn't a very good line, is it?

A. Well, it wasn't to me.

Q. It wasn't to you?
A. No, sir.
Q. Don't they give good service?
A. Not as good as the Santa Fe; no, sir.
Q. The Santa Fe gives better service to California, does it?
A. Yes, sir. As an illustration, I can put a car from Detroit into the coast over the Santa Fe lines in—I have done it in 12 days.
Q. And how long did it take over the Union and Southern Pacific?
A. Well, I had one car on that road that was in pretty near two months—so I cut it out.
Q. Two months?
A. Yes.
Q. The Union Pacific and Southern Pacific are a shorter line, too, aren't they?
A. Well, I couldn't say. You can't say it is a shorter line
2937 when one line can put it in in 12 days and the other takes two months.
Q. I mean shorter in length; not in time.
A. In distance, yes.
Q. It is the shorter line in length, and yet it takes two months as against 12 days?
A. They have a shorter line than the Santa Fe, but it took them the longer time.
Q. You would consider that a pretty rotten line that would take two months to move a car from Detroit to California?
A. I wouldn't consider the line bad; the system might be bad.
Q. You consider the management bad?
A. Yes, you might have it that way.
Q. This manifest train over the Illinois Central from Chicago to New Orleans; do you happen to know that that train is still in operation?
A. It was the last I heard of it, not very long ago.
Q. Your testimony on your direct examination about that train existing in 1901 and all those details about it: you did not mention the fact that it has been running every day since 1901, did you?
A. Because since 1901 I have not been connected with the Illinois Central.
Q. Oh, that is the reason?
A. Yes.
Q. But you do know that as a regular thing it has been running ever since then?
A. Yes.
Q. Does that train carry only California freight?
A. Oh, no; it carried everything for a point south of Cairo, Illinois, and later on——
Q. That is, this manifest train was not loaded, then, ex-
2938 clusively with California freight?
A. No, sir. First they included Cairo, but later they cut it out and included then everything for Memphis and points south.

Q. You don't know what proportion of it was made up of California freight?

A. No. It runs the same as all traffic does—some days heavy and some days light.

Q. Some days none?

A. Some days light. Some days heavy and some days light.

Q. They do not have any regular cars, then, assigned to California business?

A. At the latter end I would not care to state, because I was stationed at the yards out at Burnside, about 14 miles out, and all the detail work was handled at the local office. Of course I hadn't been there for three or four years, so I didn't pay much attention to that phase of the question.

Q. Then, in your testimony, on direct examination as to the transfer of cars at New Orleans to the Southern Pacific, for California, do you know anything about the number of the cars or what proportion of that train moved that way?

A. No, I could not tell the exact proportion.

Q. Do you know anything about the volume of business that moved that way in 1901?

A. No. That part of the thing was left to clerks who were in charge of that detail.

Q. And you were not one of those clerks?

A. No, I was rating, etc. The only thing we would know is that on certain days traffic was heavy and on certain days it was light.

Q. Has the Illinois Central always been trying to move California business that way?

A. It is, naturally, yes.

2939. Q. It does so still, doesn't it?

A. I couldn't answer, because they have never solicited that way from us.

Q. As far as your knowledge extended they attempted to move it that way, didn't they?

A. At that time they did not have their Omaha line built; so they could only move it one way. They had to move either by St. Louis or New Orleans, and they naturally wanted to get the long haul on the business.

Q. That is natural still, isn't it—that they would want to get the long haul out of it?

A. Presumably.

Q. If they could move it by way of New Orleans to-day from Chicago they would do it, wouldn't they?

A. They don't solicit it.

Q. Do they solicit it either way?

A. They don't come to me either way.

Q. Well, they can't get your business, but I mean generally.

A. Well, they don't try; so I couldn't say whether they could get it or not.

Q. They would have to turn it over to the Southern Pacific or the Union Pacific if they would get it, wouldn't they?

A. They wouldn't have to turn it over to the Union Pacific.
Q. Or the Southern Pacific, at New Orleans?
A. They could give it to the Southern Pacific.
Q. How long since they solicited business that way, do you know?
A. No, I could not say. They never solicited it from me.
Q. They never have solicited it from you?
A. No, sir.
Q. During the time prior to 1901 that you testified about on your direct examination, when there were separate solicitors, I understood you to testify that the Southern Pacific was soliciting
2940 California business by way of New Orleans.
A. Yes, sir.
Q. Was that the only way they solicited?
A. It is the only way I know of.
Q. Didn't they try to get it by way of El Paso?
A. I don't remember a car moving that way.
Q. I am asking you about the solicitation. Didn't they attempt to solicit it by way of El Paso?
A. The only time I would see their men would be to get the volume of business moving via New Orleans.
Q. And you assume that——
A. Well, to answer your question fully, I would say that I was employed by the Illinois Central, and in duty to my employers, at least for their benefit, I wanted to give business, anything that came unrouted our way—I would give that via New Orleans, Southern Pacific; and that is the sort of business that some of the solicitors used to come to me for—stuff that would come to the eastern lines unrouted.
Q. Do you mean to testify that the Southern Pacific did solicit business by way of New Orleans, over your road, from this territory, from Chicago?
A. There were men called on me in those days, yes, sir.
Q. From Chicago?
A. Yes, sir.
Q. And did any solicit it by way of El Paso or Ogden?
A. Well, they could not get it that way.
Q. Could not solicit business by way of El Paso?
A. Too many of the solicitors coming around to give them an idea of the traffic that was moving, coming to us unrouted. They
2941 would keep a tab on the cars, you know.
Q. I am asking not about you but about the Southern Pacific solicitors. I understood you to testify on your direct examination that prior to the consolidation of the agencies, the Southern Pacific solicitors sought to move the business by way of New Orleans?
A. Yes, sir, that is the way it would go.
Q. Are you testifying only as to how they solicited you and the line you represented, or solicited generally?
A. I don't want to answer generally. I am trying to tell you what they did to me.

Q. When you were connected with the Illinois Central?
A. Yes, sir.
Q. And the Illinois Central had no line to Omaha at that time?
A. No.
Q. And that the only intelligent way for them to solicit you was to solicit by way of New Orleans?
A. Yes, sir.
Q. But you don't mean to say they did not solicit as earnestly with lines going by way of Omaha, do you?
A. Not knowing, I couldn't say.
Q. Nor by way of El Paso?
A. No. It would be hardly possible if a man comes into your office and asks you to route business against your road by St. Louis, although it has been done. Wanted us to give our unrouted business over the eastern lines to the Illinois Central.
Q. I know, but you are testifying still about how he solicited you, and I was asking you how he solicited other lines reaching from this territory to Omaha or to El Paso. You don't know anything about that?
2942 A. No, I wouldn't answer as to that.
Q. Now this business that they solicited, in your knowledge, was business that you or the Illinois Central controlled, and they solicited then by way of New Orleans; isn't that true?
A. Yes, sir.
Q. But you don't know of any instance where they went to the merchant and solicited the merchant's business by way of New Orleans, when the control of it had not been secured by a New Orleans line, do you?
A. The only way I would know that would be through the local office.
Q. That does not quite answer the question. You don't know of them doing that.
A. The reason we know of that is that the commercial office would telephone over to the local office to look out for such and such traffic.
Q. You are speaking now of the Illinois Central?
A. Yes.
Q. I was speaking of the Southern Pacific.
A. I know, but we get the communications from both offices. Of course we could only make a pencil memorandum of it, and when the billing would go through the occasion for the memorandum's use having passed, it would be destroyed.
Q. But do you know of a single instance where a Southern Pacific soliciting agent went out to the shipper and solicited business by way of New Orleans when that business had not been secured by the Illinois Central or some other New Orleans line?
A. No, I would not want to swear to that.
Q. You would not want to swear to that?
A. No, sir.

By Mr. SEVERANCE:

Q. From your experience in railroading, can you imagine of
2943 any reason why the Southern Pacific should not have sought to get the long haul from the Mississippi River to California rather than the short haul from Ogden to California?

A. Only natural to increase their revenue.

Q. Yes; it is the natural thing, isn't it?

A. Yes, sir.

Q. I thought from the tone of Judge Lovett's question that it would be an extraordinary thing if they should try to get that long haul. That would not seem so to you as a railroad man, would it?

A. If a soliciting agent working for me did not endeavor to get the long haul where he could get it, why his days would be short.

Q. I should think so. Now, the difference to the Southern Pacific in getting business from this territory by New Orleans or by Ogden is, that they get the Mississippi River rate through, don't they, from New Orleans? They get that haul clear through?

A. Get their mileage percentage or division of the entire hauling.

Q. Do you know the distance from New Orleans to San Francisco?

A. No; I would pass it up. I knew it, but——

Q. You know it is above 2,000 miles, don't you?

A. Yes, sir.

Q. Do you know the distance from Ogden to San Francisco?

A. You've got me now: I can't give it in exact mileage.

Q. Now you were speaking of both offices. You said both offices would telephone in or send in word.

A. Yes.

Q. What do you mean by both offices—the Southern Pacific and the Illinois Central?

A. Yes. There were times when the commercial agent of the Illi-
2944 nois Central would telephone over to look out for certain shipments, and sometimes the soliciting agent would leave a little note in there, but as a rule it was a telephone communication.

Q. And the Southern Pacific agents did that?

A. Yes, sir. That is common practice amongst all the offices in Chicago.

Q. Then the Southern Pacific agent, in some way, either by soliciting the shipper, or in some way, had learned about this shipment?

A. Yes, sir. I usually kept a record of unrouted cars, so when the soliciting agents came out I would have a record for them, so they could make a report to their respective officials.

Q. Then, you did not discover at any time that the Southern Pacific were running away from that business, did you?

A. No.

Q. Trying to avoid it?

A. No, sir.

Q. Have you ever shipped anything over this consolidated line—the Union Pacific and the Southern Pacific—except this one car that you spoke of?

A. Oh, yes; they got our business up until a few years ago.

Q. Now that is what I wanted to get at. That was an isolated case, wasn't it—that case where it took two months to get the car through?

A. Yes, it was.

Q. Then, was your statement that the Santa Fe gave you better service than the Union Pacific and Southern Pacific based wholly on the fact that one car was two months going through, or was it ordinarily better by the Santa Fe?

A. Ordinarily it has been better by the Santa Fe; and then I got answers to my communications and tracers from the Santa Fe offices much better than I did from the Union Pacific and Southern Pacific offices.

2945 Q. How extensive is your Pacific coast business, Mr. Bolger?

A. The entire Pacific coast business will probably run from 60 to 100 or more cars a year; that is, figuring gas and coal.

Q. Is Detroit in the Cincinnati territory? Does it take the Cincinnati rates?

A. Detroit-Cleveland.

Q. Detroit, Cleveland, and Cincinnati are all in the same territory as far as rates are concerned, aren't they?

A. We get the same rates from Detroit as we do from Chicago.

Q. To the coast?

A. Yes. Detroit-Cleveland, they call it, as a rule.

Q. How is that?

A. As a rule, they call it Detroit-Cleveland territory.

By Mr. LOVETT:

Q. Nevertheless and not withstanding, when a car went from Chicago to New Orleans, for San Francisco, it was farther from its final destination when it got to New Orleans than it was when it started, wasn't it?

A. Well, that didn't make any difference on the hauling.

Q. It doesn't make any difference?

A. No, sir.

Q. It was the fact, though, wasn't it?

A. Yes. Send a car over——

Q. Answer that question.

A. Send a car over the Rock Island-El Paso route and you will get better time on it than some of the cars by Denver and Ogden.

Q. Yes. Now come back to my question. When a car was destined from Chicago to San Francisco and moved by way of New Orleans, it was farther from San Francisco when it got to New Orleans than when it left Chicago, wasn't it?

2946. A. That handicap was overcome by the better train service.

Q. Well, you haven't answered the question yet.

A. On the actual mileage do you wish to know?

Q. Yes.
A. Yes, sir.
Q. There was better train service, then, by way of New Orleans?
A. Yes, sir.
Q. Than the all-rail line?
A. They are both all-rail lines.
Q. Well, the short-rail line.
A. Yes.
Q. Is that better than by the Santa Fe?
A. The El Paso route better than the Santa Fe?
Q. No, the New Orleans route.
A. No, that is not better than the Santa Fe.
Q. Is it as good?
A. Well, I haven't worked anything via New Orleans-Southern Pacific on the stoves.
Q. When you said just now the better train service overcame the difference in distance——
A. I am speaking of just when I had the actual experience with it.
Q. When you were speaking just now of the better train service by way of overcoming the distance in mileage I was asking about by way of New Orleans. Do you mean to say there was better train service from Chicago by way of New Orleans to San Francisco than by the direct rail route?
A. At the time I speak of, in 1895, there was.
Q. In 1895?
A. Yes, sir.
Q. Has that condition been changed since?
A. Well, I never shipped anything that way since I have been using the Santa Fe. So I know that they——
Q. So when you quit shipping by way of New Orleans, the
2947 best train service was that way, was it?
A. Yes, sir.
Mr. SEVERANCE. He was not shipping; he was——
WITNESS. I was not shipping. Understand, I was with the Illinois Central that way then. So I know the actual conditions in the operating department.
Q. Since you have become a shipper you have not tried that route over which the best train service prevailed, according to your last information?
A. I know I can't beat the Santa Fe on it now.
Q. You know you can't beat the Santa Fe?
A. Yes.
Q. It is customary, I believe you testified, when one agent discovers traffic to notify the other line of that, in order to get him after it?
A. It is usually left to the clerks to do that.
Q. What is that?
A. When I was there the clerks usually attended to it. When they came under the jurisdiction of the agent, it usually depended on some clerk.

Q. Well, it is customary, isn't it, for soliciting agents to work with the lines on which the traffic originates, to work together to control the traffic?

A. Yes, if they can.

Q. Well, they do work together, don't they?

A. Yes, sir.

Q. And the only evidence that you have that the Southern Pacific ever solicited any traffic by way of New Orleans is those telephone communications that you——

A. Yes, and my acquaintance with the different railroad clerks and shipping clerks in Chicago keeping tab on what we were doing.

Q. Keeping tab on the Southern Pacific solicitors?

A. No, on the general railroad situation. We usually met
2948 and talked affairs over.

Q. And did you understand that way that the Southern Pacific was soliciting by way of New Orleans?

A. Why, I knew that from my experience with the Illinois Central and the traffic moving there. I knew that traffic was moving to the coast via the Milwaukee & St. Paul, from my experience with that line.

Q. You knew then the Southern Pacific was soliciting it by way of the St. Paul?

A. No, sir. You asked if they were soliciting by the St. Paul?

Q. You seemed to infer that the Southern Pacific was soliciting traffic by way of New Orleans because traffic moved by way of New Orleans to the Pacific coast.

A. Yes; and I knew that——

Q. Now you said that you also knew that the St. Paul was moving traffic to the Pacific coast because you were connected with the——

A. The Union Pacific was moving and soliciting via Omaha because the St. Paul were loading all their stuff via Omaha, to be turned over to the Union Pacific there.

Q. Well, didn't the Southern Pacific get a portion of that haul?

A. From Ogden, yes; couldn't get there any other way.

Q. How was that?

A. In those days it couldn't get there any other way.

Q. Wouldn't you infer they were working it that way too, for the same reason?

A. It is not natural to infer that way.

Q. Why not?

A. Because the Southern Pacific man was looking after the long haul.

Q. That is, you think he ought to have been looking after the long haul?

A. If he was doing what he was paid for, he would be doing that.

2949 Q. Suppose he couldn't get the long haul, wouldn't he rather have a haul of 850 miles than none?

A. That would look better than none. He would have to take what he could get.

Q. So if he couldn't get it by way of the long haul he would take it by way of the short haul, that is a haul of 850 miles, wouldn't he?

A. Yes, sir.

Q. So he would solicit by all the ways he could get it, naturally soliciting the long haul?

A. He would use his strongest cards for the longest haul.

Q. Then, if he couldn't get it that way, what? Try the next best?

A. The next best.

By Mr. SEVERANCE:

Q. Now, having had this long explanation, nothing has happened, has there, to call to your mind any circumstance that makes you doubt that your original statement is correct—that the Southern Pacific was trying to reach California by the southern gateway and the Union Pacific by Omaha, when they were competing, before the consolidation? Do you understand my question?

A. No, not the way you put it.

Q. I say, has anything that has been developed by Judge Lovett in his long cross examination caused you to doubt your original statement that you made in answer to me, that when the offices were separate the Southern Pacific was working business by the south and the Union Pacific by Omaha?

A. No, nothing causes me to doubt that because that I knew.

By Mr. LOVETT:

Q. Has anything that Mr. Severance said made you doubt your statement just now, that if they could not get it by way of
2950 New Orleans they would probably try to get it by way of El Paso or Ogden?

A. No, nothing has made me doubt that either.

Q. I am not sure that you have modified what I understood you to testify some time ago, Mr. Bolger; that you did not know that the Southern Pacific ever solicited business from this territory by way of New Orleans, from the shipper. What is your statement on that?

A. Why, I answered that before, as I recollect it, that I knew they solicited business that way because the Illinois Central was getting traffic that way.

Q. And you knew that the Southern Pacific was soliciting it from shippers in Chicago?

A. Yes, because, as I stated before, I had them come out to me at Fordham yards to get a record of the cars moving that way.

Q. By the Southern Pacific?

A. Yes, sir.

Q. Is that evidence that they solicited that from the shipper?

A. It undoubtedly is.

Q. They would not do that about a car that was controlled by the Illinois Central agent, would they?

A. They would not know anything about it until, as a rule, they were notified of the movement of it.

Q. Well, after they were notified——

A. Then the business was secured.

Q. Under what circumstances would they want this car that you speak of, that they came out to the Fordham yards?

A. Well, they would come out to me, for instance in your case, and say, "Mr. Bolger, any cars coming from the Lake Shore or the Nickel Plate, or the Belt (as the case might be) unrouted, we would like you to give them to the Southern Pacific."

2951 Q. And you would call that soliciting business from shippers? Now mind you I am not asking about cases where they worked with the Illinois Central agent to help him control business that he had secured, but business where they solicited independently of the shipper.

A. Yes, I would call that soliciting both from shippers and railroad men.

Q. You would call that soliciting both from shippers and from railroad men?

A. Yes. And then there were industries on the Belt, close, that I knew they were going to for Southern Pacific.

Q. Going to industries located on what?

A. On the Belt Railway of Chicago.

Q. And soliciting from them?

A. Yes, sir.

Q. For California, by way of New Orleans?

A. Yes, sir.

Q. Do you know any of those shippers or industries?

A. I can't recall now, because they were scattered from Burnside to Stock Yards.

Q. Couldn't you name one?

A. There were a number of industries at the Yard. I couldn't name any one in particular that I know they were going to.

Q. How would you happen to know they were going to them?

A. In talks with their men in their railroad departments.

Q. You mean in the railroad departments of these shippers?

A. Yes, sir.

Q. They would tell about Southern Pacific solicitors being there?

A. Yes, sir.

Q. Do you remember any one who ever said that?

A. I can't recall any particular name.

2952 Q. What Southern Pacific solicitors were they?

A. I can't give you their names, they change there so often.

Q. Mr. Neimyer hasn't changed for a good while, has he?

A. He was not a solicitor; he was general agent.

Q. And these were men under Mr. Neimyer?

A. Yes, sir.

Q. You don't remember their names?

A. That is what we call solicitors—that is what Mr. Neimyer called them.

Q. And you don't remember their names?

A. No, sir. In fact if I did I would have their cards and probably throw them to one side.

By Mr. SEVERANCE:

Q. I believe you stated in answer to Judge Lovett, in his endeavor to accentuate your testimony in this regard, that you were acquainted with a good many shippers in the town and the representatives of shippers, did you not?

A. Yes, sir.

Q. And you were familiar with the movement of traffic at that time? It was part of your business to keep track of it?

A. Yes, that was.

Q. And from your general knowledge of the situation, and from statements made to you by representatives of shippers and by shippers, you know that the Southern Pacific was endeavoring to work coast business by New Orleans at that time?

A. Yes, sir. That was, of course, Illinois Central and Southern Pacific.

(An adjournment was here taken until the morning of Wednesday, March 17, at 10 o'clock.)

2953 523 FEDERAL BUILDING, CHICAGO, ILLINOIS,
*Wednesday, March 17, 1909.*

The hearing was resumed before the Special Examiner, Hon. Sylvester G. Williams, at the above time and place, pursuant to adjournment.

Present: On behalf of the complainant, Mr. C. A. Severance and Mr. G. E. Husted; on behalf of the defendants, Mr. R. S. Lovett.

## F. B. MONTGOMERY,

being duly sworn as a witness on behalf of the Complainant, testified as follows:

Direct examination by Mr. SEVERANCE:

Q. Mr. Montgomery, you live in Chicago?

A. Yes, sir.

Q. What is your business?

A. I am connected with the International Harvester Company, having charge of their traffic and transportation matters.

Q. Have you held that position since the organization of that company?

A. Not entirely during that time, but for the last three or four years.

Q. What year was the International Harvester Company organized?

A. In 1902, as I recollect it.

Q. Previous to the organization of that company what was your business?

A. I was with the McCormick Harvester Machine Company, from February, 1900.

Q. Was the McCormick Company acquired or the business of that company acquired by the International Harvester Company?

A. It was, yes.

2954 Q. To what parts of the United States or the world does the International Harvester Company ship its product?

A. Wherever there are crops to grow and to be gathered, I should say; everywhere on the face of the earth.

Q. And was that also true as to the McCormick Harvesting Machine Company?

A. It was, yes, sir.

Q. In what direction does your Oriental or transpacific business move?

A. It moves in several directions; it moves across the continent to the Pacific coast and then across the ocean, or it moves to the Atlantic and through the Suez.

Q. When it goes to the Pacific coast, over what lines does it move to the Orient?

A. Inland lines, you mean—railroad lines?

Q. No, I mean steamship lines. Through what ports, I might say.

A. It would go through San Francisco or Portland or any of the coast ports.

Q. San Francisco, Portland, and Seattle, I suppose?

A. Yes, Seattle.

Q. And Tacoma?

A. And the Canadian Pacific, Vancouver.

Q. And was that also the case with the McCormick product when you were with them?

A. Yes. I think at that time there was a line in connection with the Santa Fe from San Diego, that moved some of the traffic also.

Q. But it moved by the various ports?

A. Yes, sir.

Q. And also through San Diego?

A. And also through San Diego,—some little of it.

Q. Over what lines does the product of the International Harvester Company move to the Pacific coast?

A. All lines.

2955 Q. Do you remember the time that the Union Pacific and the Southern Pacific had separate soliciting agencies here?

A. I do, yes, sir.

Q. Were you acquainted with the gentlemen?

A. Yes, sir.

Q. Who were the men at the head of those agencies?

A. Mr. Neimyer was at the head of the Southern Pacific, and Mr. William H. Knight (I believe those are his initials) was at the head of the Union Pacific.

Q. At that time which way did Mr. Neimyer try to route his traffic to the coast?

A. I think, as a general thing, he wanted the long haul through the Texas gateways. He would take it any way he could get it, I should say, naturally.

Q. But in soliciting it you say he wanted the long haul?

A. I think that would be a very natural thing to do.

Q. Did New Orleans participate in that solicitation?

A. I do not think any particular traffic moved through New Orleans. I am not sure that it was ever solicited that way by Mr. Neimyer or any of his force. It is possible that the Illinois Central people may have asked for some of it that way, but it is rather a round-about way from Chicago, I think.

Q. What are the Texas points that you mean? Where would the Southern Pacific pick it up in Texas?

A. They might get it at a number of points; the Houston & Texas Central junctions with the Santa Fe; Rock Island-Frisco would be Fort Worth, Dallas, Sherman, and then of course further down in the state and some of the other crossings in there; I don't remember just the points.

Q. These points are in northern Texas?

A. These points are in northern Texas, yes.

2956 Q. And which way did Mr. Knight solicit his business?

A. Well, he wanted his either through Omaha or Kansas City, as a general thing, preferring the long route, naturally.

Q. How does your business to Portland move, Mr. Montgomery?

A. It is divided between most of the routes that can handle it; I should say the bulk of it, perhaps, would go over no one road. It would be divided between the Great Northern and Northern Pacific and O. R. & N.

Q. The O. R. & N., until recently, has been the Great Northern connection into Portland, too?

A. Yes. I was thinking, of course, of the farther east haul on it.

Q. I understand; but by the O. R. & N. you mean what connection east?

A. That would be the Union Pacific, perhaps, from Omaha.

Q. And the Oregon Short Line?

A. Yes. I was thinking of the Oregon Short Line instead of the O. R. & N.

Q. The O. R. & N. is the line from Huntington into Portland?

A. Yes, naturally.

Q. Has that business been solicited by these different lines?

A. Why, I should think it is continually being solicited; yes, sir.

Q. Always has been?

A. Always has been.

Q. In case of shipments to the Orient through these various ports on the coast, are shipments solicited by the steamship lines directly or by their rail connections?

A. Principally by the rail connections, I think. Not very much of the Oriental business goes through the Pacific. Rates are rather better through the Atlantic—we find them so.

Q. How was that six or eight years ago?

A. I think to a considerable extent that has always been true.

2957 Q. What places in the Orient do you ship to by the Pacific coast, or have you shipped? I mean what countries.

A. We ship some stuff into Japan and China and Siberia; not very heavy into any of them.

Q. Do you recall the fact of the agencies of the Union Pacific and Southern Pacific being consolidated?

A. I remember that that did take place; yes, sir.

Q. Are you visited by their soliciting agents?

A. Now?

Q. Yes.

A. Personally I see very few of them, but the company is visited by them. One of my assistants or the chief clerk sees them, generally.

Q. Since the amalgamation, which way, if you know, has that agency solicited Pacific coast traffic, chiefly.

A. I don't believe I could say positively on that subject. I should say they would solicit us generally any way they could get it, but perhaps without any special partiality, although I don't know much about that. As I say, I don't see many of them.

Q. You are not brought in immediate contact with them?

A. No, sir.

Q. Who is your chief clerk?

A. Mr. H. F. Hughes.

Q. He is the man that sees the solicitors?

A. He sees many of them, and Mr. A. G. Huckins, my assistant, sees a good many of them.

Q. In the old days was your business solicited by the D. & R. G.?

A. Yes, sir.

Q. And in connection with what lines did they work for coast business? What trans-continental lines from Ogden west?

A. Well, at that time there was only the one line to Southern California—San Francisco and south. That was the Central

2958 Pacific. And I think they worked with the Oregon Short Line in the other direction from there.

Q. Has there been any difference in the shipments over the D. & R. G. since the union of the Southern Pacific and the Union Pacific?

A. I could not say without examining the records, but I do not think so. We endeavor to divide our traffic with all the railroads.

Q. You try to do that yourself, of your own motion?

A. Oh, yes.

Q. As far as you can?

A. Yes, sir.

Q. Do you route all your own traffic?

A. Yes; at least we claim to control the routing of it. Some of it may be routed by some of our outside people. We usually recognize their requests when they are reasonable and if they have any special reason for it. But we hold the control in our own hands here.

Q. At what large points on the coast do you maintain distributing agencies?

A. Portland and San Francisco and, I believe, Los Angeles; I am not positive about that.

Cross-examination by Mr. LOVETT:

Q. Your Pacific coast business is solicited by a large number of lines and agents, is it not, Mr. Montgomery?

A. I should say all railroads that could handle any of it, yes, sir.

Q. That would include, of course, the North-Western, the St. Paul, the Burlington, the Rock Island, Missouri Pacific, the Atchison, the Union Pacific, the Southern Pacific, and all lines?

A. Yes, every railroad running west and southwest from Chicago, I should say.

2959 Q. Or northwest?

A. Or northwest.

Q. The North-Western lines do not solicit your California business, do they?

A. No, not California.

Q. Nothing south of Portland?

A. No.

Q. That has always been true, hasn't it? All of those lines have been active?

A. I think so, to a very great extent. I think at one time there was a steamship line that pretended to give some competition into Frisco from Portland, but I think it didn't amount to very much.

Q. When was that, do you know?

A. I don't remember the year, but some years ago.

Q. From where?

A. From Portland.

Q. From Portland to San Francisco?

A. Yes, sir.

Q. You don't remember what year that was?

A. No, I do not.

Q. It never amounted to anything?

A. I don't think it amounted to anything worth while.

Q. It did not make any impression on your business?

A. Ordinarily we do not ship our domestic business by water. It does not handle very well.

Q. You never used the water line from Portland down to San Francisco?

A. No, I should say not on any of the stuff.

Q. Such of your traffic for California as was ever secured by the Union Pacific had to move over the Southern Pacific from Ogden to destination, hadn't it?

A. Yes, I should say so.

Q. No other outlet for it?
A. No other outlet, in the old days at least.
Q. What do you mean by that?
A. I mean prior to the time the San Pedro route was built in there.
2960 Q. That was opened about 1905, wasn't it?
A. I would not venture the date.
Q. But prior to the opening of the San Pedro line?
A. There was but one route.
Q. There was but the one route. And that was also true of the business handled by the Denver & Rio Grande?
A. I think so.
Q. Traffic over the Burlington, the Rock Island, the Missouri Pacific and all of these western lines ultimately went over the Southern Pacific?
A. I think so.
Q. As to the solicitation of the agents of the Southern Pacific in the days when they were separate from the Union Pacific, your recollection is that they solicited the traffic by practically any route they could get it?
A. I think so; that is my recollection.
Q. You have no recollection of any specific solicitation by way of New Orleans at that time?
A. None at all, no, sir—not by the Southern Pacific people.
Q. The Illinois Central and other lines leading to New Orleans solicited that way?
A. Quite possible, quite likely.
Q. But you have no recollection of any solicitation by the Southern Pacific. The shipper is not interested in the division of the through rate as between the different carriers, is he?
A. I don't think so, no.
Q. The shipper is interested in the aggregate rate, but not in the division of it?
A. Exactly; not in the adjustment.
Q. I believe you stated that most of your Asiatic business moved eastwardly.
A. Through the Atlantic, yes, sir.
2961 Q. Such as moves out through the Pacific coast ports goes principally through San Francisco or Puget Sound?
A. I should say Puget Sound.
Q. Very little has ever moved by way of Portland?
A. By way of Portland?
Q. Yes, out through Portland?
A. I think right within the last several years none of it, perhaps; although that is not a positive statement, because I have not looked into it and I really don't know.
Q. Do you recall any moving that way in former years?
A. Yes, there has been some traffic moving through Portland.
Q. Any considerable quantity?
A. No.

Q. Very small?

A. No considerable quantity of it sent that way.

Mr. SEVERANCE. You mean by Pacific coast?

WITNESS. By the Pacific coast, yes.

Q. No considerable quantity went by the Pacific coast, and that which did go by the Pacific coast a very small portion moved by way of Portland, didn't it?

A. I would not make a positive statement on that without looking it up, but I think that is a safe statement, perhaps.

By Mr. SEVERANCE:

Q. In answer to Judge Lovett, you stated that the Southern Pacific solicited business all ways. Did you intend by that answer to modify your statement on direct examination that they solicited it preferably by the Texas points?

A. Oh, not at all. As I recall it, on the direct examination I stated that I think they would be glad to have it any way they could get it, but they prefer the long route and the long haul, naturally.

2962 By Mr. LOVETT:

Q. I did not quite understand you as Mr. Severance seems to. I did not understand you to testify they solicited preferentially by Texas gateways.

A. I think they would very naturally prefer the longest haul, the one out of which they could get the most revenue, and that would be through the Texas gateways, as I would understand it.

Q. Or New Orleans?

A. And it was specifically and repeatedly solicited through the Texas gateways. They were glad also to get it any way they could get it, naturally.

Q. You have no recollection of solicitation by way of New Orleans?

A. Not by the Southern Pacific people, no, sir.

Q. It has always been actively solicited by way of El Paso, has it?

A. I don't really know just what you mean by El Paso. Through the Rock Island and El Paso?

Q. Yes; the Texas & Pacific, for example.

A. That has been in recent years, when I have not been in touch with the soliciting so much.

Q. That which was secured by the Iron Mountain and other lines, the Missouri, Kansas & Texas, would move out through El Paso?

A. Yes. To El Paso it would probably have to go through the Texas junctions and through the Texas & Pacific or the Southern Pacific lines, and Houston & Texas Central and out that way; all moving through El Paso, however.

Q. The Gould lines and the lines like the Missouri, Kansas & Texas and other lines reaching to the southwest, connecting with the Texas and Pacific, would be the short lines, wouldn't they?

A. I don't know the arrangements between the Gould lines
2963 and the Southern Pacific; so I would not know what their junctions were, where they would deliver it to the Southern Pacific.

Q. But you know that the only connections between the Texas & Pacific and the Southern Pacific are at New Orleans and El Paso?

A. Yes, I think so. However, they do cross the Houston & Texas Central, which is generally attributed as Southern Pacific property, at several points. So I don't know what junction points they would deliver to them.

Mr. SEVERANCE. And credibly attributed.

Q. The long haul for the Gould line would be over the Texas & Pacific to El Paso?

A. Undoubtedly.

Q. If they turned it over to the Houston & Texas Central it would be back-hauling it to some extent, wouldn't it?

A. No, I should say not. It would be diverting it from the most direct route, probably, because the H. & T. C. would then have to haul it south to the main line of the Southern Pacific, I presume.

Q. Southeasterly, in fact?

A. Southeasterly?

Q. Yes.

A. Well, the maps are usually drawn in straight lines—these railroad maps.

Q. The Gould lines, even before the opening of the Rock Island, were soliciting from this territory for California, weren't they?

A. Oh, yes, I should say so.

Q. That would naturally move to El Paso?

A. Well, I say I don't know what the junction points were, but if they could they would take it there undoubtedly, yes.

Q. That meant the long haul for them?

A. Yes.

2964 By Mr. SEVERANCE:

Q. The solicitation by the Southern Pacific organization was not to give the long haul to the Gould lines but the long haul to the Southern Pacific?

A. Why, I should think so. That would be what they were employed for, I should think.

Q. Before the amalgamation of these agencies, when Mr. Knight represented the Union Pacific and Mr. Neimyer represented the Southern Pacific, what would you say as to whether those two agencies were competing with each other for coast business?

A. I should think so, yes. They did, I should say positively.

By Mr. LOVETT:

Q. They were competing in the sense that whatever business Mr. Knight got for the Union Pacific would have to go over the Southern Pacific also, wouldn't it, Mr. Montgomery?

A. I think they had no other route for it.

Q. So that Mr. Knight in working for the Union Pacific was also working somewhat for the Southern Pacific, wasn't he?

A. Well, that is something between the Union and the Southern. Whether they paid any of his salary or not I don't know.

Q. What I mean is, that whatever freight Mr. Knight succeeded in getting away from the Atchison or any other line would necessarily inure ultimately to the Southern Pacific?

A. I would say it would move over the Southern Pacific, or the Central Pacific I believe it was generally called at that time.

Q. So, when you testified, in answer to Mr. Severance, with reference to competition between those two agencies, I suppose you meant competition in the sense that such business as Mr. Knight got would move over the Union Pacific to Ogden and then
2965 over the Southern Pacific, and such business as Mr. Neimyer and his agents got might move that way, or it might move through the Texas junctions, El Paso or the various gateways?

A. I don't think Mr. Knight was worrying much about the Southern Pacific through Ogden at that time. I imagine he was interested more in the Union Pacific. Of course he appreciated if he got any California traffic, or San Francisco or Southern California traffic, it would have to go through Ogden and the Southern Pacific.

Q. No, I don't suppose he was worrying about the Southern Pacific or the Southern Pacific was worrying about him—

A. Quite likely.

Q. Because whatever he got went over the Southern Pacific.

A. Undoubtedly, I should say.

Q. But such competition as there was between Mr. Knight and the agents of the Southern Pacific was of the kind that I have just described, wasn't it—that is, such business as Mr. Knight got went over the Union Pacific and the Southern Pacific?

A. Yes, I think that is correct.

Q. Such business as Mr. Neimyer got might move over the Union Pacific and Southern Pacific?

A. I think that is entirely correct.

Q. Or it might move through other gateways over the Southern Pacific?

A. I think that is quite likely.

By Mr. SEVERANCE:

Q. As to business moving over the Southern Pacific from Ogden to California, you wouldn't say that Mr. Neimyer was competing with Mr. Knight, his connection, would you, but the
2966 competition was between the southern line of the Southern Pacific and the Union Pacific?

A. I should say that would be my judgment on it, yes; exactly.

By Mr. LOVETT:

Q. That was competition between the Atchison, rather, wasn't it,—the Atchison on the one hand, and the lines made up by the Union Pacific and Southern Pacific on the other, and by the Sunset line on the other?

A. I think there were the three lines there, but I don't know how I can tell it very differently from what it has been told.

Q. I am pressing this, Mr. Montgomery, because Mr. Severance and I disagree so as to the question of terms. He insists on designat-

ing this as competition between the Southern Pacific and the Union Pacific, and I am trying to develop the fact, as I understand it, that the competition was between several lines, and that the Union Pacific could not compete except in connection with the Southern Pacific for California business. Isn't that true? It had no other outlet, had it?

A. No; I think it had no other outlet that it could work at all. Of course it had a junction perhaps with the Santa Fe at Denver, but probably it was not working that route at all.

Q. You never heard of anything moving that way, did you?

A. No, I did not.

Q. The Union Pacific had a line of, say, a thousand miles from the Missouri River to Ogden?

A. Yes.

Q. And the Southern Pacific had a line from Ogden to the Pacific coast of, say, 850 miles with various branches, and it was in the interest of that line that Mr. Knight was working, wasn't it?

2967 That is the line made up of the Union Pacific and the Southern Pacific?

A. The Union Pacific and the Southern Pacific. Yes, I should say so. He was soliciting entirely for that route, that combined route, through route.

Q. And such competition as existed from this territory for California business was by these various lines, one line made up of the Atchison and its connections, one line made up by the Union Pacific and the Southern Pacific, by way of Ogden, and their connections, and another line made up by the Southern Pacific by way of El Paso and its connections? Those were the lines competing for California business, weren't they?

A. Those were the three general routes, yes.

Q. The only routes, weren't they, for California business?

A. Yes.

2968 OSCAR F. BELL.

being duly sworn as a witness on behalf of the Complainant, testified as follows:

Direct examination by Mr. SEVERANCE:

Q. Mr. Bell, where do you live?

A. My residence is in Highland Park, Illinois.

Q. And your business?

A. In Chicago as traffic manager of Crane Company.

Q. What is the business of the Crane Company?

A. They are manufacturers of steam fitting goods, fittings and valves, iron and brass, and also jobbers, dealers in plumbing and heating goods.

Q. It is a fact, isn't it, Mr. Bell—although I suppose your modesty will disincline you to say it—that the Crane Company is the largest concern in the country manufacturing these steam fitting materials?

A. I think that is right.
Q. You will admit that?
A. Yes, sir.
Q. What is your connection with the Crane Company?
A. Traffic manager.
Q. For how many years?
A. For over 16 years.
Q. Where are their plants located?
A. They have manufacturing plants in Chicago and they have also at Bridgeport, Connecticut. They have also a plant at Pittsburg which is not as yet in operation.
Q. But have you always had shipments from Pittsburg and Cincinnati to the coast?
A. Yes, sir.
2969 Q. In large volume?
A. Quite large volume; yes, sir.
Q. And over what lines has that moved?
A. Practically all lines to the coast.
Q. And your business from Chicago has moved over practically all lines.
A. All lines.
Q. You know Mr. Neimyer, don't you?
A. Yes, sir.
Q. And did you know Mr. Knight when he represented the Union Pacific here?
A. Yes, sir; I knew him.
Q. Take your business originating in Pittsburg or Cincinnati. Was that business solicited by these gentlemen for the coast?
A. Yes, sir.
Q. And which way did Mr. Neimyer endeavor to route his business from Cincinnati and Pittsburg?
A. When?
Q. Previous to the amalgamation of the agency.
A. By New Orleans—via the Southern Pacific at any rate.
Q. Via the Southern Pacific. And Mr. Knight of course entirely by the Missouri river?
A. The Missouri river.
Q. I believe you told me that Mr. Neimyer didn't try to route business out of Chicago by New Orleans.
A. No, he did not solicit business that way from this territory; that is, with us.
Q. Of you, yes.
A. Yes.
Q. But did solicit the business from these other points?
A. Yes, sir.
Q. Now, was Mr. Neimyer active in that solicitation?
A. For business by the southern route?
Q. Yes.
A. Yes, sir.

Q. And Mr. Knight likewise?
A. Yes, sir.
Q. Did any of your traffic for the coast ever move by way
2970 of New Orleans from Chicago?
A. There might some very small portion of it move that way, but I have no recollection of sending any business that way.
Q. What Southern Pacific routes did it take from here?
A. It moved out via Ogden—Southern Pacific from Ogden, the old Central Pacific.
Q. And did any of it move by the Texas junction points?
A. Some small portion of the business may have gone by the way of Texas junction points.
Q. Did you ship any considerable volume by New Orleans from Cincinnati and Pittsburg territory?
A. Well, quite a considerable tonnage has moved that way.
Q. But from this point you sent it by the Union Pacific?
A. Yes, sir.
Q. From Chicago to San Francisco which was the quicker line—by New Orleans or by Omaha?
A. What is the question?
Q. Which was the shorter in time—from here by Omaha to San Francisco, or through New Orleans?
A. By Omaha and Ogden.
Q. And how did the time from here by Texas junction points and by Omaha compare?
A. For San Francisco business the line via Omaha and Ogden was the shorter and gave the best service.
Q. Do you know whether it was shorter in point of time or only shorter in point of distance?
A. Well, our business was routed via Omaha and Ogden because of the quicker service and better service.
Q. That is what I was getting at. Do you manufacture elevators?
A. No, sir.
Q. That is a different Crane company?
2971 A. No, the Crane Company originated the elevator business, and elevators were made by the Crane Brothers Manufacturing Company, whose business started here in 1855. They afterward segregated the elevator business and formed the Crane Elevator Company, and sold that business out afterward, as I understand it, to the Otis Elevator Company.
Q. You remember the fact of the Union Pacific and the Southern Pacific agencies being consolidated?
A. Yes.
Q. And have you had to do with that agency since? Do they solicit your business since that time—Mr. Neimyer's agency?
A. Did I what?
Q. I say did you have to do with them since?
A. Yes, sir.
Q. Has Mr. Neimyer solicited your business since?

A. Yes, sir.

Q. In soliciting coast business since that time, what route, if either, has he favored from any of these points from which you ship, either from Pittsburg, Cincinnati, or Chicago?

A. Why, I don't know that he has favored either route. He solicits us for business either way—either via Omaha and Union Pacific, via Ogden, or via El Paso.

Q. That is, his attitude is neutral as between the two lines?

A. The two routes, yes, sir.

Q. Does any of your business to the coast move over the San Pedro?

A. Yes, sir; to lower California.

Q. And over what route does that move from the Missouri river?

A. It moves over the Union Pacific or the Burlington, or the Rock Island, or the Missouri Pacific in connection with the Colorado & Midland and the Denver & Rio Grande.

2972 Q. Do you endeavor to distribute your traffic among the different lines?

A. Yes, sir. It is our aim to divide the tonnage with the lines as fairly and equitably as we can.

Q. How does your traffic to north Pacific coast points move?

A. It moves by all lines—by the St. Paul, the Great Northern, the Northern Pacific, the Canadian Pacific, and Missouri river crossings, the Rock Island, the Burlington, the D. & R. G., the Short Line and the O. R. & N.

Q. Prior to the time that Mr. Neimyer became the joint agent of the two lines, how did he solicit business, if at all, into Portland for the Southern Pacific?

A. My recollection is that he solicited that business from this territory, at least, via Ogden, the Shasta Route.

Q. That is the only way that the Southern Pacific could get any share of that haul, isn't it?

A. That is all.

Q. And in which way did Mr. Knight endeavor to route that business to Portland?

A. When the O. R. & N. was not a portion of the Union Pacific system, he solicited in connection with the Shasta Route, the route via Ogden and the Southern Pacific.

Q. When the O. R. & N. was *not?*

A. Yes, sir.

Q. You say the time the O. R. & N. was *not?*

A. Yes.

Q. Well, after it became part of the system?

A. He solicited in connection with the Short Line and O. R & N.

Q. Have you shipped anything to the coast by water lines?

A. Yes, sir.

Q. What routes?

A. The American-Hawaiian Steamship Company; we have used clipper ships around the Horn from New York and Philadelphia, and

later the American-Hawaiian Steamship Company and also the Panama Railroad & Steamship line.

2973 Q. From what territory did you ship by the Panama route?

A. Mostly from Atlantic seaboard territory.

Q. You have a factory in Bridgeport?

A. Bridgeport.

Q. Does any of your traffic move to the Pacific coast from that territory by the Morgan line and Southern Pacific?

A. Yes, sir.

Q. A large volume or small volume?

A. No, not a large volume.

Q. Does traffic also move from that territory by the all-rail lines?

A. Yes, sir.

Q. Now, you have charge, as I understand it, of the traffic of the entire company——

A. Yes, sir.

Q. ——wherever the plants may be located?

A. That is right.

Q. Did the Union Pacific organization, when they were separate here, solicit that traffic from the Atlantic seaboard—the all-rail traffic?

A. Always; yes, sir.

Q. Always did?

A. Yes, sir.

Q. And did Mr. Neimyer represent the Morgan line in that competition?

A. He did.

Q. And solicited traffic that way?

A. He solicited traffic by the Morgan line and the Sunset Route of the Southern Pacific.

Q. Do you remember a time when the Canadian Pacific had a differential rate into San Francisco?

A. Yes, sir.

Q. Did you use that line?

A. As I recall it, that was prior to my going with Crane Company.

Q. What year did you go with the Crane Company?

A. 1892.

Q. Before and after then, I guess. You don't remember of using it?

A. I don't remember, no.

2974 Cross-examination by Mr. LOVETT:

Q. With reference to your business that originates on the Atlantic seaboard, Mr. Bell, I think you said it was formerly solicited by the Union Pacific and also by the Southern Pacific prior to the amalgamation of agencies. That business was also solicited by a great many lines, was it not?

A. Yes, sir.

Q. And always has been?

A. Yes, sir.

Q. Solicited by the so-called trunk lines—New York Central, Pennsylvania, Delaware, Lackawanna & Western, and all of the lines leading from that territory westwardly?

A. Practically all the lines from the Atlantic to the Pacific seaboard.

Q. They solicited that business?

A. Yes, east and west.

Q. They did that before the amalgamation of these agencies, and they have continued to do it since?

A. Always.

Q. And it still moves via all lines, doesn't it—various lines, rather?

A. Yes, sir.

Q. By all, perhaps; by a large number of the lines?

A. Well, practically all of them. Each one of them, perhaps, gets some share of the traffic.

Q. Would you think it too much to say that probably from 25 to 50 lines solicit that business?

A. Well, it is not any too small.

Q. And there are from 25 to 50 routes open for it?

A. Open for it; yes, sir.

Q. I believe you testified that some of your plants were located at Cincinnati and Pittsburg.

A. We have a branch house at Cincinnati and we have
2975 branch houses all over the United States, practically, but we have a manufacturing plant at Bridgeport, Connecticut, and most of our plants are in Chicago. We also have a plant at Pittsburg, but that has recently been organized and it is not in operation yet.

Q. You testified on your direct examination, as I understood you, that business for the Pacific coast from these points outside of Chicargo moved via all lines. Does some of it go by way of New Orleans?

A. New Orleans; yes, sir.

Q. And some by the all-rail lines?

A. Yes, sir.

Q. That is, the short rail-lines.

A. Yes, sir.

Q. That has always been true, has it?

A. Yes, sir.

Q. Your business from this territory, from Chicago, is solicited by all lines, I believe, to the Pacific coast, as the other is?

A. Yes, sir.

Q. But that, I think you said, moves over the short rail-lines, and not by way of New Orleans?

A. Not by way of what?

Q. New Orleans.

A. New Orleans, no; very little of it by New Orleans.

Q. I understood you also to testify that when the agencies of the Union Pacific and the Southern Pacific were separate, that Mr. Neimyer solicited business from the Ohio river points and east-

wardly by way of New Orleans, but he did not solicit business from Chicago territory by way of New Orleans; is that correct?

A. That is true.

Q. That business he sought to secure how—by way of Ogden or El Paso?

A. Yes, in connection with the lines leading to the Missouri river from this territory.

Q. All of the lines leading to the Missouri river from this
2976 territory actively solicit that business, don't they?

A. Always.

Q. And such of it as is secured by the North-Western and St. Paul, the Burlington, the Rock Island, the Missouri Pacific moved over the Southern Pacific from Ogden, did it not?

A. Well, that which does not go in connection with the Santa Fe to California.

Q. I mean lines other than the Santa Fe. For instance, the North-Western would turn its business over to the Union Pacific?

A. To the Union Pacific at Omaha.

Q. And so would the St. Paul?

A. The St. Paul might deliver it to the Santa Fe at Kansas City.

Q. But it usually moves by way of the Union Pacific, doesn't it?

A. By way of the Union Pacific.

Q. The Rock Island and the Burlington would take theirs to Denver, wouldn't they?

A. Naturally, yes. They want the long haul.

Q. And then over the Denver & Rio Grande?

A. Yes.

Q. Or Union Pacific?

A. Or Union Pacific.

Q. To the Southern Pacific at Ogden?

A. Yes.

Q. So, all of those lines in soliciting this California business were a effect soliciting also for the Ogden route of the Southern Pacific?

A. Yes, sir, or for lower California, for the San Pedro route.

Q. Oh, yes. I was speaking of the conditions, however, before the amalgamation of the agencies and before the opening of the San Pedro route.

A. Oh!

2977 Q. Prior to the opening the San Pedro route, the competition for California business was by the lines made up of the Santa Fe and its connections, on the one hand, and the Union Pacific and Southern Pacific, by way of Ogden, and their connections, as one line, and then by the Sunset Route of the Southern Pacific as another, wasn't it? Those were the only routes to California, weren't they?

A. Those were practically all the rail lines to California.

Q. You never shipped anything to California by way of Portland and then by boat from Portland down to California?

A. No, sir, never did.

Q. I think you testified that Mr. Neimyer, during the time that the agencies were separate, solicited business for Portland, if he solicited it at all from this territory, by way of the Shasta Route?

A. Yes.

Q. That is, over the Southern Pacific, down by Sacramento or Roseville, and then up by rail to Portland? That is what you mean by the Shasta Route?

A. Yes.

Q. Did you ever ship any that way?

A. I think we have, yes.

Q. It was very unusual, wasn't it?

A. Yes. It was a long while ago too, and it has been a long while since any business has gone that way to Portland.

Q. Why, Mr. Bell?

A. It is not as good a route as via the Oregon Short Line, the O. R. & N., or by the Northern Pacific or the Great Northern in connection with the O. R. & N.

Q. It is quite an impracticable route as compared with them?

A. Yes. And since the Oregon Short Line and the O. R. & N. have become a part of the Union Pacific system of course the
2978 business has not been solicited that way.

Q. As a shipper, you are not interested in the division of the through rate between the different carriers, are you?

A. No, sir.

Q. As to whether the Southern Pacific gets more out of it by way of El Paso or Texas gateways or New Orleans gateways than it would get by way of Ogden would not be a matter of any concern to you, would it?

A. No, sir, not at all.

By Mr. SEVERANCE:

Q. It might be of some concern to you if you were a stockholder of the Southern Pacific Railroad, I suppose?

A. I am not a stockholder.

Mr. LOVETT. I object to that because this is not a stockholders' suit. They will take care of themselves. They have not asked the government to do that yet.

Q. Now, Mr. Bell, you say that latterly the business to Portland has not been solicited by the Shasta Route. Have you been advised of the fact that since the Southern Pacific has been controlled by the Union Pacific, the rates have been taken out that way so that business can not move by Sacramento and the Shasta Route?

A. I am aware of the fact that the rates have not——

Q. That is a very good reason why business does not move that way, isn't it, if it can not move that way under the common control of these two lines?

A. Yes, that is a good reason; but, outside of that, we would not want to send business to Portland that way when we had a direct

route by the Oregon Short Line and the O. R. & N., the shorter line.

2979 Q. But business does not always move by the shortest line, does it?

A. No; that is true.

Q. And it often happens that when two lines are competing with each other the long line gets the business?

A. Well, that happened in the days——

Mr. LOVETT. Used to happen?

WITNESS. It used to happen, yes, when the longer line could make a lower rate than the shorter line.

Q. Doesn't it still happen?

A. Well, it may occasionally, but not very frequently.

Q. Now let us see. Isn't the Morgan line, the Sunset Route from New York to San Francisco, a good deal longer than the all-rail line?

A. It may be longer as to point of distance but not in point of service. The time from New York to San Francisco via the Morgan line to New Orleans and thence by the Sunset Route is as good as the all-rail service, and perhaps better.

Q. Isn't there more difference in the length of the line from here to Los Angeles by some of these Texas junction points, on the one hand, and the Santa Fe on the other, than there is between the line from here to Portland, the short line one way, and the Shasta Route the other?

A. Well, there may be; I don't know exactly as to the mileage.

Q. And they compete actively, don't they?

A. Yes.

Q. And each gets business?

A. Yes.

Q. And delivers it with reasonable dispatch?

A. Yes.

Q. If two lines that have been competing are put under a common control, can you see any reason for the maintenance of

2980 the competition in the matter of the dispatch of business?

(No response.)

Q. For instance, suppose these Texas lines to the coast and the Santa Fe were put under an absolutely common control, as the Union Pacific and the Southern Pacific are, can you see any special reason why the difference in distance should be annihilated by the rapid movement of trains over the long line or the making up of quicker trains, or anything of that sort?

A. That is a question for the owners of the property to decide.

Q. Yes, that is it.

A. So far as the shipper is concerned, he would be influenced by the service he could get.

Q. Certainly. As a matter of fact, since the rates by all lines were made uniform, the movement of traffic is largely influenced by service, isn't it?

A. Yes, very largely.

Q. And is it also influenced by the personality of the gentleman in charge of the traffic?

A. Undoubtedly it is.

By Mr. LOVETT:

Q. Are you familiar with the condition of the roads west of the Missouri River? Have you been over them?

A. I have been over several of them; yes, sir.

Q. Has there been very much improvement in recent years, in the last ten years?

A. I think so; yes, sir.

Q. The Union Pacific and Southern Pacific line—that is, the line made up of the Union Pacific and the Southern Pacific to California—has been very much improved in the last seven or eight years, hasn't it?

A. Very much, sir.

2981 By Mr. SEVERANCE:

Q. So that the other lines won't be unhappy, I will ask you if the Santa Fe has not likewise been much improved?

A. It has.

Q. And isn't it a fact that the railroads all over the country have been much improved in the last few years?

A. I think that is true.

By Mr. LOVETT:

Q. Do you know of any road in the west that has improved more than the Union Pacific and Southern Pacific during that time?

Mr. SEVERANCE. Is Mr. Bell an expert on the condition of railroads?

Mr. LOVETT. No, but he has been over the line.

A. The only way I can answer that question is by telling you that I judge of the road by the service it gives, and I know that the Union Pacific and Southern Pacific give excellent service, of course, and that the Santa Fe does the same.

Q. They both give good service?

A. They both give good service.

2982 H. H. GINZ,

being duly sworn as a witness on behalf of the Complainant, testified as follows:

Direct examination by Mr. SEVERANCE:

Q. Where do you live, Mr. Ginz?

A. South Bend, Indiana.

Q. And what is your business?

A. In the retail agricultural implement business.

Q. How long have you been in that business?

A. A little over two years.

Q. Previous to that time what was your business?
A. Traffic manager of the South Bend Chilled Plow Company.
Q. Is the South Bend Chilled Plow Company a concern with a large output?
A. Yes, quite a large output.
Q. What do they manufacture—anything but plows?
A. Plows and harrows and cultivators.
Q. In what parts of the country do they sell their product?
A. They have trade in practically all parts.
Q. How long were you with them?
A. About ten years.
Q. In charge of their traffic?
A. I was in charge of traffic eight years.
Q. Beginning what year and ending what year?
A. Beginning in 1899 and ending in 1907.
Q. During the time you were with the Chilled Plow Company was your business to the Pacific coast solicited by different soliciting agencies?
A. Yes, sir.
Q. Do you recall when the Southern Pacific and the Union Pacific had separate soliciting agencies?
A. Yes, sir.
Q. Were you acquainted with the gentlemen in charge of
2983 those agencies, or with their representatives?
A. I was the better acquainted with the representatives than the men in charge of the agencies.
Q. Out of what points did those representatives come?
A. Chicago, I think.
Q. Who were they who visited you on behalf of the respective agencies?
A. There was a man, I think, whose name was Nethercott, I think that was the name.
Q. And which line did he represent?
A. He represented the Southern Pacific.
Q. And who represented the Union Pacific?
A. A man by the name of Houston; I think he headquartered in Grand Rapids.
Q. Haven't you got them turned around as to the companies they represented?
Mr. LOVETT. Yes, he has.
A. Mr. Houston was with the Southern Pacific. Isn't that what I said?
Q. I understood he was with the Union Pacific and the other gentleman with the Southern Pacific. You remember the two men, do you?
A. Yes, sir.
Q. Do you remember that one of them was with the Union Pacific and the other with the Southern Pacific?
A. Yes.

Mr. SEVERANCE. I think it is the other way.

Mr. LOVETT. The reverse.

Mr. SEVERANCE. That is what I thought.

Q. Now, did these gentlemen call on you frequently, soliciting your business to the coast?

A. During the seasons of the year when our business moved in that direction they came oftener than they did at other
2984 times; I should imagine during certain seasons of the year probably once every 30 days; and then during the time when there was no trade in that direction, probably every 60 or every 90 days.

Q. Which way did the Southern Pacific representative endeavor to route his business to the coast?

A. Via the Illinois Central to New Orleans and Southern Pacific from there to the coast.

Q. And which way did the Union Pacific representative endeavor to route his business?

A. Over any of the lines from Chicago to the Union Pacific—the Union Pacific to Ogden, and from Ogden over the Southern Pacific.

Q. How energetically did these gentlemen work for that business? Was it an active competition for the business, or otherwise?

A. They were very anxious to get all they could.

Q. By those respective routes?

A. Yes, sir.

Q. And what means did they take to get that business?

A. They used every effort they could to get it.

Q. What efforts—in what way?

A. I don't remember just what he did say, but at one time they were willing to pay for it.

Q. Those were in the old wicked days, were they?

A. Yes, sir.

Q. Outside of this time when they were willing to pay for it, what efforts did they make to get the business?

A. Well, they used different arguments, as to the time they could make, and after that time that is about the only inducement they could offer for business.

2985 Q. Is any special kind of equipment of advantage to you in shipping plows and your other products?

A. No; most any size car would carry plows.

Q. Did Mr. Knight or Mr. Neimyer personally come down there at times?

A. Yes, sir.

Q. To South Bend?

A. Yes, sir.

Q. Soliciting the business in the same way that you have stated?

A. Yes, sir.

Q. How did the business of the Plow Company move—in carloads or L. C. L.?

A. The coast business was practically all carload, and the Texas business.

Q. Previous to 1901 how did most of your business move? Did more of it move by New Orleans or more of it by Omaha?

A. We tried to divide it equally between the Southern Pacific at New Orleans and the Santa Fe, and the Union Pacific at Ogden—or Kansas City.

Q. Did you ship to the north Pacific coast points?

A. Yes, sir.

Q. Over what lines?

A. Northern Pacific and Great Northern.

Q. Did you ship to Portland?

A. Yes, sir.

Q. Everything moved over those two lines to Portland?

A. Yes, sir; everything for the north coast points went over either one of those two lines.

Q. What was the nature of the service that you had from South Bend by way of New Orleans to the coast prior to the consolidation of these agencies here?

2986 A. Why, there was a fast train from Chicago on the Illinois Central to New Orleans that used to pick up the South Bend cars at the junction of the I. I. & I. and the Illinois Central, and cars moving over that route made very good time to the coast.

Q. Do you remember the fact of the representation of the Southern Pacific and Union Pacific being consolidated here in Chicago? I do not mean the date; but do you remember the fact?

A. Yes, sir.

Q. Mr. Neimyer was put in charge of both companies?

A. Yes, sir.

Q. After that who, if anyone, called on you representing that agency?

A. Mr. Houston.

Q. And how did Mr. Houston solicit your Pacific coast business when he represented this joint agency?

A. Well, he preferred to have it by the Union Pacific.

Q. What representations, if any, did he make to you with reference to that fast service that you had enjoyed by New Orleans?

A. He claimed that there would be better time over the Union Pacific than there would be over the Southern Pacific. He said that that fast service on the Illinois Central had been abandoned.

Q. Was he the only solicitor who came down there from this joint agency after the consolidation of the agencies?

A. The only one that I recall.

Q. There wasn't anybody working for the southern route, then, after that?

A. Not that I remember of.

Q. You say that you endeavored in the old days to divide your business about equally among these three lines. Was the Santa Fe active in soliciting that business?

A. Yes, sir.

2987 Cross examination by Mr. LOVETT:

How many different lines solicited your business for California, Mr. Ginz?

A. Practically all the lines running west and southwest of Chicago, in addition to the Union Pacific and the Southern Pacific and the Santa Fe. The Santa Fe, of course, solicited clear through. But, then, practically all the intermediate lines between Chicago and the western junctions.

Q. That is, all lines lying westerly of your plant, connecting with the Union Pacific and Southern Pacific and Santa Fe, were actively soliciting that business, weren't they?

A. Yes, sir.

Q. A great many agents called on you?

A. Yes, sir.

Q. Were these two Union Pacific and Southern Pacific men the only two men that were willing to pay for it in the old days?

A. No, sir.

Q. Did the Union Pacific and Southern Pacific men ever call on you together, Mr. Ginz?

A. I think not.

Q. Did the Southern Pacific ever call with any other agent, or always alone?

A. I think the Southern Pacific man usually came with the man representing the Illinois Central.

Q. Did he ever work with any of the lines leading westerly?

A. I do not remember that he did; but in calling on us there, I think probably half the time that he came he came with the Illinois Central man.

Q. With the Illinois Central man?

A. Yes, sir.

Q. And what was the name of that Southern Pacific man?

2988 A. Nethercott, I think it was.

Q. Which Southern Pacific man was it who told you that the Illinois Central train 51 had been taken off?

A. Houston.

Q. When did he tell you that?

A. Why, I should imagine three or four years ago.

Q. Do you know whether the train has been taken off or not?

A. No, sir; I do not.

Q. You never inquired as to that?

A. No, sir.

Q. When did you stop shipping by way of New Orleans?

A. At the time that this man Houston came soliciting business for both roads—at that time we divided the business as nearly equally as possible between his lines and the Santa Fe; and whatever business I gave him I let him designate the way the car should move, and then looked to him to see that the movement and delivery was prompt.

Q. That is, you would give him the routing of the car, and he could send it either over the Union Pacific or Southern Pacific, as he preferred?

A. Yes, sir.

Q. Prior to that time you had divided it, you say, between the Santa Fe and the Union Pacific and the Southern Pacific?

A. Yes, sir.

Q. What about the Burlington and Rock Island, the Missouri Pacific and the Northwestern and the St. Paul? Did they get any of the business?

A. They got the Northwestern and St. Paul business for Minneapolis and St. Paul.

Q. But I mean for California?

A. I never paid very much attention to those roads on that
2989 business. They got the business that they were entitled to out of the Texas trade; that is, on the initial haul.

Q. The Northwestern, you mean, did?

A. No; the Burlington and the C. & A. and the St. Paul.

Q. Did the Burlington get the Texas business?

A. Well, it got the haul as far as Kansas City or to some of the other——

Q. How about the Denver & Rio Grande? Did it get any of your California business?

A. I do not believe they ever had a man call on me.

Q. Never had a man call on you?

A. Not that I remember of. He may have, but——

Q. Did the Rock Island ever get any of it by way of El Paso—California business?

A. I think probably some. Very few cars, though.

Q. Did the Missouri Pacific and Texas Pacific get any of it?

A. Possibly one or two cars, but no more. Some of our business, of course, came to us routed by the people who bought the goods. In a case of that kind, of course, we always respected their routing.

Q. You understood, did you not, that all business that the Union Pacific got from you for California passed over the Southern Pacific from Ogden west?

A. Yes, sir.

Q. And didn't any of those lines west of the Missouri Pacific get any of that business, except the Union Pacific?

A. I think not; unless it was something that was routed from the other end.

Q. Did the Illinois Central quit soliciting business for
2990 California, Mr. Ginz?

A. No, sir; I think not.

Q. They have always solicited by way of New Orleans, haven't they?

A. Yes, sir.

Q. Was not their solicitation just as active and earnest after the amalgamation of the Southern Pacific agencies as before?

A. I think just about that time the solicitor that worked South Bend out of Chicago—his territory was either increased, or he was removed entirely, because when the Southern Pacific man called the

Illinois Central man was very often with him; but from that time on, or about that time, possibly it may have been a difference of a year, the commercial agent from Chicago called on us, and he did not call very often.

Q. Let me see if I understand just what you mean about that. Do you mean that the Illinois Central does not solicit that business as actively as formerly?

A. I think not.

Q. When did the change occur?

A. Possibly three years ago.

Q. Three years ago. Didn't that Illinois Central man tell you that the train was still on?

A. I don't know as I took it up with him. After that we gave the Illinois Central some other business.

Q. Your regard, then, so far as the California business was concerned, was entirely for the Union Pacific and Southern Pacific agent and for the Atchison, without reference to the intermediate lines?

A. Yes, sir.

Q. Why?

2991 A. Because the Southern Pacific and the Union Pacific—that business was practically all that we had that they could handle. As to the other lines, the intermediate lines, there was a good deal of business outside of the coast business that they could get a haul on, which the through lines running through to the coast could not haul.

Q. And your purpose was to divide your business among all lines?

A. Yes, sir.

Redirect examination by Mr. SEVERANCE:

Q. You said in answer to Judge Lovett that Mr. Houston, when he represented these two lines, was given the right by you to route the business that you gave him?

A. Yes, sir.

Q. And he routed it by Omaha, or Missouri River, did he?

A. I think he did.

Q. That is the reason why your business ceased to move by the New Orleans gateway?

A. Yes, sir.

2992 CHARLES L. MILLHOUSE,

being duly sworn as a witness on behalf of the Complainant, testified as follows:

Direct examination by Mr. SEVERANCE:

Q. Mr. Millhouse, where do you live?

A. South Bend.

Q. What is your business at present?

A. I am in the manufacturing business; manufacturing asphalt roofing.

Q. How long have you been in that business?
A. About eight years.
Q. Previous to that what was your business?
A. I was traffic manager for the Studebaker Manufacturing Company.
Q. For how long?
A. A little over three years.
Q. And previous to that what was your business?
A. Commercial agent for the Santa Fe Company, at Peoria.
Q. How long were you with the Santa Fe?
A. I was with the Santa Fe Company for about eleven years, in one capacity or another.
Q. How long were you at Peoria?
A. Eleven years.
Q. Oh, eleven years at Peoria?
A. Yes, sir.
Q. And in what capacity—or what capacities rather?
A. For the last three years as commercial agent, commercial freight agent. For two years prior to that, as traveling freight agent. Prior to that, as rate clerk.
Q. When you were working with the Santa Fe at Peoria as a soliciting agent, or commercial agent, what territory did you cover?
A. Northern Indiana and northern Illinois; the northern half of each state.
2993 Q. Were you working coast business?
A. Yes, sir.
Q. Was the Southern Pacific represented in that territory at that time?
A. Yes, sir.
Q. Working coast business too?
A. Yes, sir.
Q. Which way were they trying to work it?
A. My remembrance is that they attempted to get the long haul as much as they could on the business via New Orleans.
Q. Was the Union Pacific represented in that territory?
A. Yes, sir.
Q. And how were they trying to work the business?
A. So far as I know, via Omaha and Ogden.
Q. What class of freight was there moving to and from that territory that was the subject of the solicitation of your agency and that of the Southern Pacific and Union Pacific?
A. Well, there was agricultural implements, largely; furniture.
Q. That was going west?
A. That was going west. And eastbound there were canned goods and dried fruits largely; and oranges.
Q. And oranges?
A. Green fruits; yes, sir.
Q. Where was that eastbound traffic controlled—that is, the dried fruit and canned goods and that sort of thing?

A. It was very often controlled in the east, in this territory.

Q. Very often controlled in the east?

A. Yes, sir.

Q. And was that the subject of this solicitation that you have spoken of?

A. Yes, sir.

2994 Q. Do you know of shipments coming east of Illinois points, northern Illinois points, in those days, by way of New Orleans and Southern Pacific?

A. I remember some dried fruits, or canned goods—I don't know which—which I think came that way.

Q. Does your company ship to the Pacific coast?

A. No. sir.

Q. So you have not been acquainted with that traffic for quite a number of years?

A. Not for eight years.

Cross-examination by Mr. LOVETT:

Q. Isn't it true, Mr. Millhouse, that the only lines of railroad extending from the Pacific Ocean and California eastwardly, at the time that you were connected with the Santa Fe, were the Santa Fe and its connections eastwardly, the Southern Pacific, by way of El Paso and its connections easterly, and the Central Pacific, by way of Ogden and its connections?

A. Yes, sir.

Q. That is true, is it?

A. Yes, sir.

Q. The competition at that time was between those lines and their connections, for California business?

A. Yes, sir.

Q. The Southern Pacific was soliciting traffic preferentially by the Sunset Route, wasn't it?

A. I presume, yes, sir. Yes, sir.

Q. That is where it could get the long haul out of it?

A. Yes, sir.

Q. Well, the Southern Pacific and Union Pacific were working together in competition with the Santa Fe, by way of Ogden, weren't they?

2995 A. I wish you would please state that question again.

Q. I say, the Southern Pacific and Union Pacific were working together the Ogden route in competition with the Santa Fe, weren't they?

A. Yes, sir.

Q. Was not that line your principal competitor?

A. Yes, sir.

Q. That is the Ogden line made up by the Union Pacific and Southern Pacific?

A. Yes, sir.

Redirect examination by Mr. SEVERANCE:

Q. The Union Pacific solicitor was the man who worked for the business by that route, wasn't he?

A. Yes, sir.

Q. By the Ogden route. And the Southern Pacific solicitor worked the business by the Sunset Route?

A. Yes, sir.

Q. And you worked the business by the Santa Fe route?

A. Yes, sir.

Q. And all three of you were competing with each other for business?

A. Yes, sir.

Q. East and westbound?

A. Yes, sir.

Recross examination by Mr. LOVETT:

Q. Did not the Southern Pacific agents attempt to work with the Union Pacific as against you, Mr. Millhouse? That is, if they could not get the business by way of the Sunset Route didn't they attempt to get it by way of Ogden?

A. I could not say as to that.

Q. You could not say as to that?

A. No, sir.

Q. You don't know whether they did or not?

A. No, sir.

2996 Q. Didn't you know of any solicitation by the Southern Pacific by way of Ogden?

A. Yes; I know that a great deal of business went that way.

Q. I say solicitation. Don't you know of any solicitation on behalf of the Southern Pacific by way of Ogden, during that time?

(No answer.)

Q. What was Mr. Neimyer doing?

A. Yes; I think I remember of business being solicited that way.

Q. Wasn't Mr. Neimyer actively working business by way of Ogden?

A. I presume he was.

Q. I am not asking about the presumption, Mr. Millhouse. Do you or not know whether he was?

A. He was, so far as I know.

Q. Did you understand that was what he was in Chicago for?

A. That is what I understood he was here for; yes, sir.

Q. To work business by way of the Ogden route?

A. Yes, sir.

Q. Or whichever way they could get the longest haul out of it?

A. Yes, sir; that is my understanding of it.

Q. Supposing you had been working for the Southern Pacific, looking out for its interests in California business, and earning your pay as best you could; if you could not get business for it by way of New Orleans, or by way of Texas gateways, and you could get it

by way of Ogden, wouldn't you strive very hard to get it that way rather than have it go to the Atchison?

A. I certainly would; yes, sir.

Q. You would conceive that to be your duty, wouldn't you,
2997 if you were employed?

A. I certainly would.

Q. Mr. Severance asked you about these three lines competing. The lines made up, as I first described, of the Southern Pacific Sunset Route and its connections, the Atchison and its connections, and the Southern Pacific's Ogden route and the Union Pacific, were the three lines, weren't they?

A. Yes, sir.

Q. The Union Pacific could not get to California except over the Southern Pacific, could it, at that time?

A. No, sir.

By Mr. SEVERANCE:

Q. Did you know Mr. Neimyer?

A. Yes, sir.

Q. Was he out there in that field more or less, soliciting business?

A. I didn't know Mr. Neimyer personally until 1898, when I went with the Studebaker Company, except that I knew him by reputation.

Q. But in those old days you did not know him personally?

A. Not personally; no, sir.

Q. Who was his agent in the field out there in northern Illinois and northern Indiana, do you remember?

A. There was a man by the name of Nethercott. Just what time he was there, though, I do not remember now. He was the only Southern Pacific traveling freight agent that I knew.

Q. He was the man who was soliciting business by New Orleans?

A. I do not know whether he was the man that solicited business by New Orleans. I simply know that some representative of the Southern Pacific Road solicited business by New Orleans.

2998 Q. Then your suggestion about Mr. Neimyer working business by Ogden did not apply to the time that you were in the field for the Santa Fe? You did not run across him at that time?

A. No, sir.

2999 F. M. HOLDERNESS

being duly sworn as a witness on behalf of the Complainant, testified as follows:

Direct examination by Mr. SEVERANCE:

Q. Where do you live, Mr. Holderness?

A. In Kenosha, Wisconsin.

Q. And what is your business?

A. Shipping clerk.

Q. For whom?
A. For the Bain Wagon Company.
Q. How long have you been with the Bain Wagon Company?
A. Sixteen years.
Q. To what parts of the country do you ship your product?
A. West of the Mississippi River.
Q. All over?
A. In the United States, west of the Mississippi River.
Q. What are your immediate connections out of Kenosha?
A. We are local to the Northwestern.
Q. You ship to the Pacific coast?
A. Yes, sir.
Q. And over what route does most of your business go?
A. Over the Santa Fe and the Union Pacific and Southern Pacific.
Q. And by the Southern Pacific you mean west of Ogden?
A. By the Ogden gateway.
Q. By the Ogden gateway?
A. Yes, sir.
Q. Do you remember when the Union Pacific and the Southern Pacific were separately represented?
A. Yes, sir.
Q. Did their representatives call on you in those days?
A. The Union Pacific representative did; but I do not
3000 remember whether the Southern Pacific did or not.
Q. Was there anyone who called on you then soliciting business by the New Orleans gateway?
A. The Illinois Central man.
Q. Does he come now?
A. He calls, but he does not solicit via New Orleans.
Q. Does not solicit coast business?
A. No.
Q. How long ago did he quit soliciting coast business?
A. Well, some time ago; I couldn't say exactly.
Q. Did you ever send traffic by New Orleans in the old days?
A. Very little.
Q. But you sent some?
A. Some.
Q. Were the rates equal?
A. At that time.
Q. They were at that time?
A. I think so.
Q. Are they now?
A. I don't know. We do not ship that route at all.
Q. Are you called on now by any representative of the Union Pacific and Southern Pacific agency here—the consolidated agency?
A. Yes, sir.
Q. And which way does he solicit your business to the coast?
A. By the Ogden gateway.

Q. Via Omaha?

A. Via Omaha.

Q. And exclusively?

A. Well, yes.

Q. How does your business move to the north Pacific coast, Portland and further north?

A. Via St. Paul and the Northern Pacific and Great Northern and Canadian Pacific.

Q. And into Portland?

A. Into Portland at the present time by the Union Pacific, O. S. L., O. R. & N.

3001 Q. Who routes your shipments—the consignee or consignor?

A. We sell our goods f. o. b. Kenosha; and the consignee routes most all the business.

Q. How long has that been the case?

A. Ever since I have been with the concern.

Q. Then in speaking of these shipments by way of New Orleans, you do not know how those were secured? They were secured from the consignee, were they?

A. No. When business was brisk and we were short of equipment, could not get cars to go Northwestern or Union Pacific, we would take any car we could get a hold of, and occasionally we would fall on an Illinois Central and route it via New Orleans.

Q. Who was the Union Pacific man who called on you in those days?

A. Mr. Davis.

Q. Does any of your traffic move by the Salt Lake route?

A. Yes, sir; to Los Angeles.

Q. Who solicits that business, if anyone?

A. The Salt Lake representative—the Salt Lake route representative.

Q. What is his name?

A. I don't recall.

Q. Does any of your business move to Los Angeles by the Southern Pacific west of Ogden, now?

A. Not since the Salt Lake route has been put in.

Q. Does any of your business move via El Paso?

A. Occasionally a car.

Q. Who secures that routing? Is that done by the consignee or by you?

A. The equipment controls that.

Q. Do you have to have a special kind of equipment?

A. Yes, sir.

3002 Q. What kind?

A. If we have a Rock Island car, we are supposed to give the Rock Island the haul.

Q. Yes; but I mean do you have to have any particular size of car for anything you load?

A. We prefer forty or fifty foot cars.

Q. Do you in loading get any better load?

A. Yes, sir.

Q. Does the size of the equipment that the line is able to furnish have anything to do with getting your business? For instance, if one line can give you a fifty foot car and another line can give you a small car, does that make any difference in routing the traffic?

A. We can get most of our business into forty foot cars, and if we do not have a forty foot car and can get a fifty, we will use a fifty.

Q. Yes; but is it or is it not a fact that the different lines that are endeavoring to secure your business use, as one of the inducements, that they can give you satisfactory equipment?

A. Yes, sir.

Q. And is that a means of getting business?

A. To a certain extent.

Cross-examination by Mr. LOVETT:

Q. I understood you to testify, Mr. Holderness, that you never were solicited by the Southern Pacific for California business by way of New Orleans; is that correct?

A. I cannot recall that we were.

Q. But you testified that you did send some shipments by way of New Orleans to California?

A. That was more through the solicitation of the Illinois
3003 Central representative.

Q. Are you quite positive that you ever sent any that way, Mr. Holderness?

A. Yes, sir.

Q. The reason why I ask that question in that way is that I am informed that no rates ever applied that way.

A. Well, previous to the merger, I say, we have shipped that way.

Q. But I understand that previous to the merger no rates ever applied that way from your point. That is the reason why I am pressing that question as to whether or not you are positive about it.

A. I am positive we did ship that way.

Q. That you did ship by way of New Orleans?

A. But, as I say, very seldom.

Q. Your shipments to California, other than Southern California, have been over the Northwestern and the Union Pacific and Southern Pacific, by way of Ogden?

A. Most all of them.

Q. And your shipments, to Southern California since the opening of the San Pedro line have been the same way, as far as Ogden, and then over the San Pedro?

A. Yes, sir.

3004 EDWARD L. WRATTEN,

being duly sworn as a witness on behalf of the Complainant, testified as follows:

Direct examination by Mr. SEVERANCE:

Q. Mr. Wratten, where do you live?
A. Racine, Wisconsin.
Q. And what is your business?
A. Traffic manager for the J. I. Case Threshing Machine Company.
Q. That is the largest threshing machine company, is it not?
A. I understand so; yes, sir.
Q. Do you ship to the Pacific coast—California points?
A. Yes, sir.
Q. How long have you been shipping there?
A. Probably for the last five years.
Q. Previous to that you did not?
A. No, sir.
Q. How does your traffic move?
A. Via Omaha.
Q. Altogether?
A. And Kansas City, Santa Fe.
Q. Between what lines is it divided?
A. What do you mean—in Racine?
Q. What transcontinental lines get it? You say "by the Santa Fe, by Kansas City."
A. The Union Pacific and the Southern Pacific.
Q. It is divided between those two?
A. Yes, sir.
Q. To what points in California do you ship?
A. Mostly to Oakland. We have a branch house there.
Q. You have a branch house at Oakland?
A. Yes, sir.
Q. And distribute locally there, do you?
A. Yes, sir.

3005 Q. Then your traffic moves by the Ogden gateway of the Union Pacific?
A. Yes, sir.
Q. Or by the Santa Fe?
A. Yes, sir.
Q. Is your traffic solicited by any representative of the joint Union Pacific and Southern Pacific agency?
A. Yes, sir.
Q. Who is it?
A. Mr. Davis.
Q. Does anybody call on you and solicit business by the Texas gateways?
A. No, sir.

Q. Which way does Mr. Davis solicit your business? By Omaha?
A. He never asks me. When he comes in he wants to know if we have got any business going to such and such points, and wants to know if he is going to get it.
Q. Well, if he gets it, how does it move? Via Omaha?
A. Via Omaha, yes, sir.
Q. There is no effort made on the part of anybody that you know of to send California business by the southern route?
A. No, sir.
Q. Are your shipments to California rather large or small?
A. I should say probably ten or fifteen carloads a year.
Q. How is it to the north Pacific coast points? Do you ship there?
A. Yes, sir.
Q. Which way does your traffic move to Portland?
A. Northern Pacific, Great Northern, and Union Pacific and Oregon Short line.
Q. How long have you been shipping to the north Pacific coast points?
A. Ever since I have been there.
Q. A long time?
A. Since——
Q. You have only recently gone into the California business?
3006 A. Just recently, yes, sir.
Q. Do you have a distributing agency at Portland?
A. Yes, sir.
Q. Do you have any other on the north coast points?
A. Portland. We have one at Spokane.
Q. You have one at Spokane?
A. Yes, sir.
Q. But you have no other on the north coast?
A. No, sir.
Q. Except Portland?
A. That is all.
Q. And into what region do you distribute from Portland?
A. To Oregon and some parts of Washington.
Q. Eastern and western Washington, do you say?
A. Washington and Oregon.
Q. Does the shipment of threshing machines require any particular kind of equipment?
A. It requires a flat car.
Q. It is all shipped on flat cars?
A. Yes, sir; except repairs.
Q. But the machines themselves are all set up on flat cars, aren't they?
A. Yes, sir.

Cross-examination by Mr. LOVETT:

Q. I believe you testified that your business never had been solicited by way of the Southern Pacific, Mr. Wratten?

A. No, sir.

Mr. SEVERANCE. He says they did not go to California.

A. Did not go to California before there was joint agency here.

Q. There are no rates in by way of New Orleans or Texas gateways from your point to California, are there?

3007 A. I do not believe so; no, sir.

Q. You are located on the tracks of the St. Paul?

A. The St. Paul and Northwestern.

Q. You never shipped anything to Portland by way of the Shasta route, did you?

A. No, sir.

Q. Did you ever ship anything to California by way of Portland and the boat line down?

A. No, sir.

The EXAMINER. The Examiner is informed that the funeral services for Mr. Winston, a late member of the Chicago bar, will be held early this afternoon; and in order to give counsel an opportunity to attend those services, we will take a recess until three o'clock; but the session this afternoon will be extended to a correspondingly later hour, in order to examine as many of the witnesses who are present as possible. The witnesses will return at three o'clock this afternoon.

(Recess until 3 o'clock p. m.)

3008 W. H. KNIGHT,

being duly sworn as a witness on behalf of the Complainant, testified as follows:

Direct examination by Mr. SEVERANCE:

Q. Where do you live, Mr. Knight?

A. Hinsdale, Illinois.

Q. You were formerly in the railroad service, were you not?

A. I was, yes, sir.

Q. With what companies and in what capacities?

A. From the start?

Q. Yes.

A. I commenced with the Buffalo & Erie, in Buffalo. I then went to Des Moines, Iowa, and worked for the Rock Island railroad, in 1871 and 1872. I then came to Chicago, the 13th day of March, 1873, and worked for the Lake Shore for a short time, and went to work for the Michigan Central and worked for them until the 16th day of April, 1876.

Q. In what capacity?

A. As a clerk. I then went to the Chicago, Danville & Vincennes and worked for them until 1881 as a clerk, and afterward as a contracting agent, and then as general agent. The 1st of February, 1881, I went to work for the Missouri Pacific as the general agent here in Chicago, and staid with them until the consolidation in 1882, when I

became contracting agent for the Wabash and Missouri Pacific, until the 1st day of March, 1883, when I went to Detroit as division freight and passenger agent of the Wabash. I staid there until the 1st day of July, 1887, when I went to St. Louis as assistant general freight agent of the Wabash. And on the 1st day of December, 1888,
3009 I went to work for the Union Pacific railroad in Chicago, as general agent, in charge of freight and passenger business, where I remained until the 1st day of September, 1901—I believe that is the year.

Q. Since then you have not been in the railroad business?

A. Well, I worked for the Santa Fe a short time at soliciting business on the street, until I took my present position.

Q. When you were with the Union Pacific here in Chicago did you represent them both as to freight and passenger business all the time, or only part of the time?

A. No, sir; only part of the time.

Q. What time, as to freight?

A. All the time as to freight, and part of the time in charge of both departments. There was a little interim between the time that I commenced and the time I left when there was another man in charge of the passenger business.

Q. How far east did your territory extend?

A. About Erie, Pennsylvania—just the other side of Erie; and it went south to the line of the Fort Wayne road, if I remember correctly, and extended west to where we struck the C. C. C. & I. out of Cleveland, and there extended along the C. C. C. & I. through Indianapolis to the line of the Indianapolis—well, that old line runs from Indianapolis through Decatur, and then the line of the Wabash railroad to Hannibal, and then the east bank of the Mississippi river clear north to the north line of the United States. Now, the entire territory north of that was my territory.

Q. Now, take the territory in Ohio and Indiana that you had. I am assuming you were trying to send all the business
3010 you could by the Union Pacific.

A. Yes.

Q. Coast business. My questions refer first only to coast business.

A. Yes.

Q. And did you in that territory meet the representatives of the Southern Pacific?

A. We were doing business in competition with the Southern Pacific, yes, sir.

Q. And who was the agent of the Southern Pacific who had charge of that territory?

A. Mr. Neimyer had charge of it, because the man at Cincinnati who nominally looked after that territory was under Mr. Neimyer's jurisdiction.

Q. Was the traffic from that territory to the coast substantial in amount?

A. Yes, sir, it was quite substantial.

Q. Was the competition for it active or otherwise?

A. It was active.

Q. In which way did the Southern Pacific people endeavor to move that traffic in competition with you?

A. When you got south of the territory that I had direct control of they tried to work it by the way of the southern gateways; but north of that line, or in the territory that I actually controlled, they worked the larger part of it in connection with us.

Q. By Ogden?

A. By Ogden.

Q. That is, up north?

A. Yes, sir.

Q. Take Indianapolis, for instance.

A. Yes, sir.

Q. That was worked in which way by the Southern Pacific?

A. That was a matter of service. Wherever service was required the Southern Pacific used the Ogden gateway. Where it was
3011 a class of business that would stand longer service they would take it by their longer haul.

Q. Where they used the Ogden gateway did they work exclusively with you, or with others?

A. Oh, they worked with all the lines. I think that we were the closest connection that they had.

Q. You had the most direct route?

A. We had the most direct route and could give them the best service.

Q. To what other lines did they work on that business as against you, by the Ogden gateway?

A. They would work with the Rock Island and the Burlington and the Missouri Pacific. Those different lines would haul to Denver and then turn it over to the R. G. & W. or the R. G. and R. G. & W. and Colorado Midland.

Q. In those days did the Denver & Rio Grande have representatives in this territory?

A. They did.

Q. And were they actively working that business?

A. They were actively working; but on a strict maintenance of rates. They were not a strong line.

Q. Because of being longer and having the mountains to go over?

A. Yes, sir.

Q. You were speaking about the matter of service. If you know, how was the transcontinental freight service from Chicago by way of the Omaha and Ogden gateways? How was the service during the days that you speak of?

A. We had very excellent service. We have taken certain classes of freight out of here and, of course, with effort to make time, put it to the dock in San Francisco in five days. But six and seven days was pretty regular service for us.

3012 Q. From Chicago?

A. From Chicago.

Q. And what was the time that you were able to make on through shipments from New York, by rail, in those days?

A. Well, they had a special freight schedule which, as I remember, was about eight days.

Mr. LOVETT. What days are you inquiring about, Mr. Severance?

Mr. SEVERANCE. When he represented the Union Pacific here.

Mr. LOVETT. From 1888 to 1902.

Mr. SEVERANCE. I will make the question apply to the days prior to the purchase of the Southern Pacific control by the Union Pacific.

Q. Those were the days when you represented the Union Pacific here?

A. Yes, sir.

Q. I am not speaking now of east-bound freight service, but west-bound traffic, which you say you would lay down on the dock in San Francisco in about six days from Chicago. About how long would that be from New York?

A. Their service at that time was about four days. Of course conditions have materially changed since that time with all the railroads. The time from New York to Chicago is not as good today as it was when I was connected with the Union Pacific. They have all gone crazy on the tonnage proposition.

Q. How is the time between here and the coast, compared with what it was then?

A. It is not as good, by any means, by any of the lines.

Q. That is, you cannot lay traffic down at Oakland from Chicago as quickly now as you could previous to this amalgamation?

A. Why——

3013 Q. I mean they don't do it?

A. They don't do it, no. But that is a condition that obtains with all lines and in all directions.

Q. You say they have gone crazy on tonnage; I believe that was your expression?

A. Yes.

Q. What do you mean by that, Mr. Knight?

A. Why, over all divisions of different railroads they have got the engines rated as to the amount of tonnage they should haul, and as a rule they do not allow trains to go out except with the scheduled amount of tonnage for each engine, and they do not care about how fast they move it as long as they get it over the road.

Q. During the time that you were with the Union Pacific did you work business into Portland and Oregon points?

A. Yes, sir.

Q. And out of there?

A. Yes, sir.

Q. Did you participate in the hop business?

A. Yes; sir.

Q. As a representative of the Union Pacific how did you move hops?

A. The principal hop distributing point was Sacramento.

Q. Going south?

A. It went south, but there were a great many of them from Eugene and Ashland, or north of Ashland that came out by the way of Portland, and I believe that we were the preferred connection of the Southern Pacific. They always treated us so that we were perfectly satisfied with the business that moved, that is with the share that they gave us.

Q. Did you in those days move any of the hops that you had to do with down from Portland by boat, Albany and Salem?

A. No, I don't know that any of them moved that way.

3014 Q. They moved all rail as far as you know?

A. Yes, sir.

Q. But that from the same territory moved the other way by the Southern Pacific?

A. Why, I don't know of it.

Q. You don't know of any hops moving by the Southern Pacific south from that district?

A. For this territory?

Q. Yes.

A. I never heard of any.

Q. I don't mean by the Sunset Route, but I mean south from the Siskiyou Mountains and down to Sacramento?

A. Yes, Sacramento.

Q. You spoke of Sacramento?

A. They went to the distributing point.

Q. When it got to Sacramento how did it move to the east?

A. Why, over the rail lines, as a rule, direct. Of course I had in my office at that time a report of the passings at Ogden; the Southern Pacific, even on the Atlantic coast business, sent the most of it all rail direct through Chicago.

Q. How would it move from Ogden—exclusively by the Union Pacific, or both ways?

A. Oh, both ways. They divided their tonnage.

Q. So, as I understand you, then, the hop movement, as far as you were brought in contact with it, was by the O. R. & N. and the Short Line out of Portland?

A. Yes.

Q. And by the Southern Pacific down to Sacramento and thence east?

A. Yes.

Q. And from Ogden over your line and by the D. & R. G.?

A. By the D. & R. G., yes, sir.

Q. Did the O. R. & N. in those days have a line of steamers from Portland to San Francisco?

A. Yes, sir.

3015 Q. From your own experience in the handling of traffic and dealing with railroad men, what would you say, Mr. Knight, as to whether the possession by the Union Pacific of the all-rail line to the coast, at Portland, and that boat line, was valuable to the Union Pacific in insuring to them fair divisions all-rail to the coast?

A. Well, it might be continued as a good means of requiring fair treatment, I suppose. But, of course, that is a matter of policy that was away above my department.

Q. Well, you were long-experienced in the service?

A. We could only draw conclusions from a proposition of that kind.

Q. I suppose that is all anybody can do——

A. Yes, sir.

Q. Giving an expert opinion?

A. Yes.

Q. What would be your opinion about that?

A. Why, that would seem to be a natural conclusion.

Q. How were the divisions between the Central Pacific line of the Southern Pacific and your line on coast business? What was the division in force?

A. It was 54 and 46, if I remember right. The old distance was 1034 miles from Omaha to Ogden and 850 miles from Ogden to Sacramento. I noticed, though, that that has been shortened up, of course, by the Lucin cutoff, and also by the cutoff at Sherman Hill and at Hanna and so on.

Q. Both pieces of track have been shortened?

A. Yes, have been shortened; so that I imagine those distances have been shortened considerably. Those used to be the old distances, as I remember them.

Q. Were those divisions maintained all the time you were with the Union Pacific?

A. Yes, sir.

3016 Q. Never any change?

A. No, sir.

Q. It has been testified in this case, in New York, by Mr. Morton, formerly of the Santa Fe, that, as far as he knew, divisions had always remained the same. Have you ever known of any change?

A. I never knew of any change.

Q. In connection with your business in Chicago did you have the solicitation of traffic controlled from Chicago but originating on the Atlantic seaboard?

A. Of course there were a great many agencies maintained here in Chicago of which the manufacturing or originating point was in the east; so in that way we would very frequently solicit business that would have an eastern shipping point.

Q. That is what I had in mind.

A. Yes.

Q. Mr. Bell, of the Crane Company, was on the stand here and spoke of having a factory in Bridgeport.

A. Yes, sir.

Q. And he controlled the traffic?

A. Yes, sir.

Q. What I wanted to get at is whether there was considerable of that?

A. There was a good deal of it; yes, sir.

Q. And was the solicitation of that business within your province?

A. Yes, sir.

Q. And as to that business were you competing with the Southern Pacific people?

A. Yes, I would say that we were.

Q. And in which way were they endeavoring to send that traffic?

A. I think if Mr. Neimyer had the say, as a rule he would have it go through this territory—through the Omaha gateway—Omaha or Kansas City.

Q. You think he would, even as to Atlantic seaboard shipments?

3017 A. Well, no; he might not as to Atlantic seaboard shipments.

Q. That is what I was speaking of.

A. There, of course, with the practical control (I guess) of the Morgan line by the Harriman interests, and the long line and the entire ownership from New Orleans, it meant 100 per cent as against 46 per cent. That is about the size of it. So he would naturally work for the 100 per cent route.

Q. In those days it was not the Harriman line, was it?

A. No.

Q. It was the Huntington line?

A. It was the Huntington line, yes.

Q. It was not really 100 per cent against 46 per cent, but it was 46 per cent of a portion of 100 per cent, wasn't it? 46 per cent of the rate from the Missouri river to the coast?

A. Yes.

Q. By Ogden?

A. Yes, that is right.

Q. Were there times in those days, on this competitive business, when rates were not maintained?

A. Oh, yes, a great deal; a great deal of the time they were not maintained.

Q. When rates are maintained what is the principal element in carrying on successful competition?

A. What is the what?

Q. The principal element that you are able to use in carrying on successful competition, when rates are maintained?

A. Service.

Q. Now, included in the word "service," Mr. Knight, what elements do you consider?

A. In the first place the convenience for delivery to the carrier; and then the time that is required by the carrier to take the commodity from the point of shipment to its destination.

3018 Q. Is it sometimes the matter of furnishing particular equipment?

A. Well, that would be an element also, yes, sir. But the Union Pacific in particular were very strong on equipment—they and their connections.

Q. In those days when you represented them, how did they compare with the Southern Pacific?

A. The Southern Pacific were always pretty well supplied with equipment.

Q. Wasn't it a pretty essential thing that roads competing for large business should be well supplied with equipment?

A. The strong lines could better afford to be well supplied with the various kinds of equipment than the weaker lines, and the consequence was that they built furniture cars and special cars—a very much larger number—so that they were always better supplied, always able to take care of the requirements.

Q. Do you remember the time the Canadian Pacific maintained a differential to San Francisco?

A. Yes, sir, very well.

Q. Did you meet that competition?

A. No, sir.

Q. How is that?

A. We couldn't. They not only maintained a differential, but something more in addition.

Q. That is, they would publish a differential and make rates to get the business?

A. Yes; and make rates to get the business. I think that was one of the reasons it became so unprofitable, or they regarded it too unprofitable to continue even at a nominal differential.

Q. Because that was not maintained?

A. It was not maintained, no, sir.

Q. Was there a considerable amount of business moving that way?

A. Yes, sir, a great deal of business moved that way.

Q. Do you know what their time was from here to San Francisco by that route?

3019 A. No; but I should judge it was in the neighborhood of 15 days or more. I know at one time I was in San Francisco on a visit and there was some hard wood lumber came in there that was consigned to a man—I think his name was Martin. I was very much interested in that lumber because my friend White, of San Francisco, was shipping direct and was complaining a good deal about the competition of Martin. We went down to see some of that lumber that came in. It had been very badly handled—very badly handled. It was cracked up a good deal and marred a good deal on the edges, from the transferring and so on on board ship, and throwing it around. So that they must have made a good deal better than a 10 per cent of the rate differential in order to take care of such a loss as there would be from damage.

Q. That was a shipment that you knew had come around that way?

A. Yes, sir.

Q. What classes of commodities took that rate?

A. As a rule the commodities that were usually transferred. They could not take anything in the way of bulky machinery. They took rolling freight, as it is called, more than anything else.

Q. What is that? Define it. That won't mean anything in the record.

A. Well, it would be sugar and pork, in barrels, and boxed stuff of all kinds.

Q. Do you remember of a differential rate in which the Union Pacific participated, from the Atlantic seaboard, New York?

A. By way of Savannah?

Q. Yes, sir.

A. I remember there was such a line, yes, sir.

Q. And did they also have a line by way of Newport News, or Norfolk?

A. Yes, sir, in connection with the Norfolk Despatch.

3020 Q. How did the rates on that compare with the differential in force over the Morgan line and the rail connections to Utah and common points, do you remember?

A. Well, now, I could not tell you about that. That was a New York-Omaha proposition, and it would not come under my jurisdiction. I only knew that there was such business moving, but without any knowledge——

Q. You did not have any personal contact with it?

A. No personal contact. I did not know anything about the details in connection with it.

Q. How did you route business to Portland?

A. By the way of Granger and up over the Oregon Short Line and the O. R. & N.

Q. Was there any change in that, if you remember, during the time that there was a receivership of the Oregon Short Line and the Union Pacific?

A. Oh, no. They were regarded as one interest, and that merely for legal requirements. A disintegration was made.

Q. But that was the Union Pacific line to Portland?

A. The Union Pacific line; and worked that way just as though there wasn't any separate receiverships. But of course about that time what is known as the Provo gateway was thrown open to the D. & R. G. connections, and, as a result, we had lots of competition up on the Short Line and O. R. & N. by our virtuous connections.

Q. Who were your virtuous connections?

A. Well, the Rock Island, the C. B. & Q., the Missouri Pacific, etc., etc. They got so they would go up there and load wool. They say that the wool buyers would sit down at Salt Lake and play poker and the railroad fellows would go up and load their wool for them and ship it out, and then pay them a rebate.

3021 Q. That was the competition between the lines east of Salt Lake?

A. Yes, sir. And that was the result of making competition for a certain territory and certain shippers.

Q. Where did that traffic originate?

A. Upon the Oregon Short Line and the O. R. & N.

Q. That was wool traffic?

A. It was wool traffic, principally, yes, sir.

Q. Do you remember anything about a time when the D. & R. G. were getting in pretty strong on the Oregon Short Line business, that the Union Pacific sent a lot of Portland stuff around by the Shasta Route?

A. I never knew of anything of that kind, no, sir.

Q. You didn't know of that?

A. No, sir.

Q. That was during the Union Pacific receivership?

A. I never knew of anything of that kind happening. There was no information of anything of that kind that came into our office.

Q. You didn't know of it?

A. No, sir.

Q. I understood you that most of the traffic from this immediate territory to California points moved, so far as the Southern Pacific participated in it, by Ogden?

A. Yes, sir.

Q. Did some of it move by New Orleans and Texas gateways?

A. Well, not that the Southern Pacific controlled. I never knew, during all the time, that I was with the Union Pacific, of the Southern Pacific taking a shipment out of this territory that they controlled by way of New Orleans or the Texas gateways.

Q. That is, Chicago territory?

A. That is Chicago territory, yes.

3022 Q. But that moved that way through the work of connections, did it?

A. No; there was a mistake in Mr. Neimyer's office. They had a lot of rail and Mr. Neimer expressed himself as being very sorry for it.

Q. Those are the rails that Mr. Morton spoke of?

A. I don't know; I presume they are.

Q. Mr. Neimyer apologized for those rails, did he?

A. He did, yes, sir.

Q. A lot of shippers have testified here that the Southern Pacific representatives solicited their traffic by the southern gateway.

A. I do not remember of that——

Q. The representative of the International Harvester Company spoke of it this morning.

Mr. LOVETT. No, Mr. Severance, he didn't testify to that.

Mr. SEVERANCE. Yes, he did, by the Texas gateway.

Mr. LOVETT. Oh, by the Texas gateway?

Mr. SEVERANCE. Yes, that is what I am asking about.

WITNESS. Well, if the Southern Pacific did anything of that kind, I am very much duller than I thought I was.

Q. They didn't let you know it?

A. They didn't let us know it, and we tried to keep track of all that was going on, and we generally did pretty well.

Q. But of course you have no means of knowing whether other mistakes were made in Mr. Neimyer's office than this rail shipment?

A. They couldn't do very much of that without our finding it out and demanding an explanation, and, of course, if it was intentional, it would lead to friction. But we had no cause for any friction of that kind. I am satisfied that Mr. Neimyer worked very squarely with me all the time that I was there with the Union Pacific.

Q. That is on the business from this immediate territory?

A. On the business from this immediate territory, yes, sir.

Q. The other business, as you have stated, was competitive?

A. Yes, sir.

Q. Further east?

A. Yes, sir.

3023 Q. And you didn't have any friction growing out of any such instance as that?

A. No, sir. We were very good friends and when I left the Union Pacific, when my time expired, I surprised Mr. Neimeyer by going into his office and working with him for nearly a month, without expecting any consideration, in order to post him fully on the affairs of the office.

Q. That was when he took charge of the joint office?

A. When he took charge of the joint office, yes, sir. So that if we had not been very good friends, why, I would not have done anything of that kind.

Q. Oh, you are both charming gentlemen; I have no doubt you are good friends; ought to be.

A. Yes. That was the gentlemanly thing to do.

Q. How did the business from here to Los Angeles move?

A. Well, of course, all that we could control, and I think that all the Southern Pacific could control, largely went through the Ogden and Sacramento gateway. The best service could be had that way.

Q. Did not they endeavor to work traffic by Texas gateways to Los Angeles, Mr. Knight?

A. I do not think to anything like the extent that they did through Ogden and Sacramento; because the Rock Island line was only completed about that time; and that cut-off of the Rock Island's to El Paso was not completed. So that the lines were through Fort Worth, which is a long line, and the service was not good. It was not anything like as good as it was through Ogden and Sacramento.

3024 Q. Did traffic move that way?

A. Through Ogden.

Q. Some traffic moved that way through Fort Worth?

A. Oh, I haven't any doubt of it, yes, sir. There was the M. K. & T. and their connections, of course. But the principal lines working out of here they worked through the Ogden gateway.

Q. Yes; I suppose that is true. The principal lines from here to the Missouri River were all feeding that line?

A. Yes, sir; were all feeding that gateway.

Q. What was the division of the through rate to Los Angeles from the Missouri River?

A. Well, it was just about the reverse of—that is, about fifty-four per cent. for the Southern Pacific and forty-six per cent. for the Union Pacific. That is my recollection.

Q. It was practically a mileage pro rate, wasn't it?

A. Yes, practically.

Q. Do you remember what time they used to make on fast freight from here to Los Angeles in those days?

A. Why, yes. We could put stuff from Chicago into Los Angeles in about eight days; eight or nine days.

Q. How does that compare with the present time?

A. I don't know.

Q. You went out of the railroad service before the San Pedro road was built?

A. Yes; they were just building that. It wasn't built but only just a short distance below Millford, Utah, at that time, when I quit.

Q. Mr. Knight, in the establishment—I mean in the local
3025 establishment of rates—do the general agents, such as you were here in Chicago, very often initiate the movement to make a new rate?

A. To make a new rate?

Q. Yes, sir; to bring it to the attention of the meetings, through your superior officers?

A. Yes, I would say so. But still I think that the interstate commerce law has been the means of wiping out, almost entirely, individual action of any of the intermediate officers, so-called.

Q. It leaves it all to the head officers, does it?

A. All to the head officers, yes, sir.

Q. What I was getting at is this: A general agent, such as you were here, is brought in personal contact with the manufacturers and shippers of various kinds—men who want to ship and want to open up new territories, and all that, if they can get satisfactory rates established.

A. Yes, sir.

Q. Is it, and was it, and has it been, during your day at least, part of the function of a general agent to bring that matter of changes of rates——

A. To make recommendations.

Q. To make recommendations?

A. Yes, sir.

Q. That is what I was getting at. And is it a fact, or was it a fact, that such recommendations often led to readjustments in rates?

A. Oh, they did as a rule.

Mr. LOVETT. I suggest that is leading, Brother Severance.

Mr. SEVERANCE. Yes, that is a little leading.

Q. Did that apply to coast business, as well as other classes?

A. Everywhere.

Q. It applied everywhere?

A. Yes, sir, in all directions.

3026 Q. How frequently? I don't suppose you could tell exactly by days or weeks, but was it a frequent or infrequent occurrence for you to make recommendations of that character to bring about changes in rates?

A. Well, those recommendations would usually come up—they would be made a file of, pending a meeting of the association. For instance, if it is a transcontinental proposition, why, the recommendations, together with all the necessary data, would be sent to the traffic manager, and he would put it in his file for the next transcontinental meeting; and there it would be presented to the meeting for action, and if it was a worthy proposition, why of course it carried. Some of those matters, too, were sometimes matters of classification, and then the recommendation and all the files would go to the chairman of the classification committee for action at the next meeting of the classification committee, which was tri-annually.

Q. Three times a year?

A. Twice a year. I mean bi-annually.

Q. Bi-annually?

A. Yes, sir.

Q. That is what I wanted to know. But what I asked you was, Mr. Knight, whether it was a frequent or an infrequent occurrence for you to have occasion to make such recommendations. Was that something that came up quite frequently?

A. Oh, with the growth of the West, with the new commodities and new manufacturing interests springing up, why, as they appeared, those things were required.

Q. Yes; that is what I supposed.

A. And of course as the country grows older it is less frequent, that is all.

3027 Cross-examination by Mr. LOVETT:

Q. Mr. Knight, if I understood you correctly you testified that you became general agent of the Union Pacific in Chicago on December 1, 1888, and continued in that position, at least so far as freight traffic is concerned, till September 1, 1902; is that correct?

A. Yes, 1901.

Q. 1901?

A. Yes, sir.

Q. During that time the only rail lines from California eastwardly were the Southern Pacific by way of El Paso and its connections, the Atchison and its connections, and the Southern Pacific's Ogden line, and the Union Pacific and their connections; was not that the situation?

A. Yes, sir.

Mr. SEVERANCE. I did not catch the first part of your question, Judge.

Mr. LOVETT. The first question was as to during the time that he represented this company—December 1, 1888, to September 1, 1901;

and that if during that time the only lines from the Pacific coast eastwardly were the Southern Pacific by way of El Paso, the Atchison, and the Southern Pacific Ogden line.

WITNESS. Yes, sir.

Q. The competition that Mr. Severance referred to frequently in his questions as having existed for business to and from California, was between those lines and their connections, was it not?

A. Yes; up to the Southern Pacific gateway.

Q. The Southern Pacific, with its Sunset Route by way of
3028 the Gulf and New York, trying to get business that way, wherever it could get the long haul, and the Atchison struggling for the business, and you (that is, the Union Pacific), and the Southern Pacific line from Ogden west, forming another line that was working for the business; that is correct, is it not?

A. Yes, sir.

Q. I understood you to testify that generally you and the Southern Pacific representative in this territory worked together for the Ogden route?

A. We did, yes, sir.

Q. Such competition as the Union Pacific engaged in for California business was as a connection of the Southern Pacific line from Ogden westward, was it not?

A. It was.

Q. Everything that you secured in the way of traffic to or from California had to pass necessarily over the Southern Pacific, had it not?

A. Yes, sir.

Q. You were asked about the boat line from Portland down to San Francisco, and as to the possibilities of that line. Did you ever attempt to move any freight that way, Mr. Knight?

A. No, sir.

Q. You never had any instructions to solicit or attempt to——

A. No, sir.

Q. During the whole period from 1888 to 1901?

A. No, sir.

Q. Whatever theoretical value that line might have had in the case supposed by Mr. Severance as an argument in a controversy over rates, there was never any occasion to use it, if it had any, while you were there?

A. No, sir.

Q. Wouldn't you consider, Mr. Knight, that any effort on
3029 the part of the Union Pacific to use that Portland route to work California business, in hostility to the Southern Pacific, would probably result in more loss to the Union Pacific than gain, in view of the fact that the Southern Pacific has another connection at Ogden through the Denver & Rio Grande, and another outlet.

A. I would answer that in this way: That outside of any antagonism to the Southern Pacific, the antagonism to their own patrons would be of such a character that they could not afford to do it.

Q. Without reference to what the Southern Pacific might do to it?

A. Yes, sir.

Q. The North-Western and the St. Paul, during the time that you were here, were actively working for the California business, weren't they?

A. Yes, sir.

Q. And the virtuous connections—the Burlington, the Rock Island and others—were also working for it?

A. Yes, sir.

Q. And all that they secured ultimately passed over the Southern Pacific, as a rule, to California, didn't it?

A. Yes, sir.

Q. That is, over it in connection with either the Union Pacific or the Denver & Rio Grande?

A. Yes, sir.

Q. And that solicitation by these various lines for that business has continued to the present, so far as you know, hasn't it—that is, by the Burlington and the Rock Island and——

A. I should imagine so.

Q. You know of no reason why it should have changed?

A. No, I know of no reason why it should have changed.

3030 Q. With reference to these reports and recommendations for the changes of rates: Isn't it the duty of general agents occupying the position that you were occupying, and soliciting agents generally, to keep their management informed of all developments of important bearing in the matter of traffic?

A. It is; yes, sir.

Q. You know of no reason why that should change since 1901, do you?

A. No, sir. Only it would be less frequent, that is all, I imagine.

Q. Because of the change in the condition of the country?

A. That is right; yes, sir.

Q. As the country becomes more settled there is perhaps less new development?

A. Less new development; yes, sir.

Q. On your direct examination you testified as to the service in the matter of the short time within which cars could be moved from Chicago to the docks in San Francisco?

A. Yes, sir.

Q. Was that during the whole period from 1888 to 1902, or during the latter part of that period?

A. During the latter part of that period. Of course there was a short time, about the time of the receivership, that they got a little balled up on service; but of course our best service was during the Burt administration, which was the last four or five years of my service with the company.

Q. The physical condition of the road had been very much improved?

A. Oh, very much improved, yes, sir; and of the Central Pacific, or Southern Pacific, also.

Q. I think you testified that in the matter of service
3031 on freight on the trunk lines between New York and Chicago, it was not as rapid as it was some years ago?

A. No, sir.

Q. And probably you said that also about the western lines?

A. Yes, sir.

Q. Mr. Severance then asked the question whether, since the amalgamation of the agencies of the Union Pacific and the Southern Pacific, the service was not worse than it was before, or something to that effect. You did not mean to indicate that had anything to do with the service, did you, Mr. Knight?

A. No. I did not suppose that I was personally responsible for the better service during my administration.

Q. And you did not mean to indicate that the amalgamation of the agencies had anything to do with the——

A. No; nor that Mr. Neimyer slowed up things at all.

Q. That is the reason I call your attention to it.

Mr. SEVERANCE. I merely asked the question that way to fix the date.

WITNESS. No—as I testified.

Mr. SEVERANCE. I heard Mr. Stubbs say yesterday that he was not to blame for that two months' service.

WITNESS. I wasn't to blame for the conditions.

Q. The service has not been peculiarly bad on the Union Pacific and Southern Pacific, has it?

A. Why, I should imagine that it is uniformly bad from all the reports I can get.

Q. Over all lines?

A. Yes, sir.

Q. But that they are not peculiar in the matter of bad service?

A. No; I would not imagine so.

3032 Q. As far as you know, they at least give as good service as the best in the West, do they not?

A. I should judge so.

Q. You have not been actively in the transportation business in recent years?

A. No, sir, I have not.

Q. This Canadian Pacific transportation, during the time when they were making their differential and better——

A. Yes, sir.

Q. Was that from this territory?

A. Yes, sir.

Q. How did the traffic move, Mr. Knight?

A. Why, it went through St. Paul over the various lines. I have known of their going to Kansas City and moving quite large shipments out of Kansas City up by the way of St. Paul, and then taking it up over the Soo line by way of Minot, and out over the Canadian Pacific and then down to San Francisco.

Q. By boat?

A. By boat, yes, sir.

Q. Isn't it your understanding that that was done without regard to the published rates?

A. Oh, there isn't any question about it. There isn't any question about it.

Redirect examination by Mr. SEVERANCE:

Q. Mr. Knight, did you get business from down south of Chicago here to Kansas City and Omaha gateways, that was in territory where the traffic sometimes moved by New Orleans to the Coast?

A. Why, yes, sir. For instance, points on the Eastern Illinois Road, like Hoopeston, a good deal of canned corn and that
3033 class of freight that moved out of there and moved by way of Chicago.

Mr. LOVETT. Read that question.

(Question read.)

WITNESS. I will have to change that. I did not fully understand that question. Now, you take the territory that I had south of here, and that business rarely moved by the way of the southern routes. Anything that was on the Illinois Central Road they would take a New Orleans haul on it if they could; but anything that was off the Illinois Central, it almost uniformly moved through Chicago and the Ogden gateway.

Q. What I was getting at was stuff that was along the line of the Illinois Central, south from Chicago.

A. Yes.

Q. That was worked both ways, wasn't it?

A. No. It could be worked both ways.

Q. That is what I mean.

A. And while the Illinois Central had a line by way of Omaha, they almost invariably hauled that stuff by way of New Orleans. It was their preferred line.

Q. And turned it over to the Southern Pacific?

A. Yes.

3034 JAMES T. MORRISON,

being duly sworn as a witness on behalf of the Complainant, testified as follows:

Direct examination by Mr. SEVERANCE:

Q. Where do you live, Mr. Morrison?

A. I live in Chicago now.

Q. And what is your business at present?

A. I am secretary of the National Association of implement and vehicle manufacturers.

Q. How long have you occupied that position?

A. Since November 18, 1908.

Q. Before that what was your business?

A. I was with the Racine Wagon & Carriage Company; in charge of the traffic. It has since been consolidated and is called the Racine Sattley Company, since 1903.

Q. And what time did you go to Racine?

A. July, 1900.

Q. And before that, what was your business?

A. Prior to July 1900, up to November 1895 I was chief rate clerk in the Milwaukee & St. Paul Railroad general office in Chicago. From 1895 to 1891 I was contracting freight agent of the Milwaukee & St. Paul at St. Louis.

Q. You were contracting freight agent of the St. Paul at St. Louis, you say, for four years?

A. For four years.

Q. 1891 to 1895. Were you working transcontinental business at that time?

A. Only north coast business. The Milwaukee and St. Paul
3035 had no working arrangement out of St. Louis for California.

Q. What roads did you work with for this north coast business? What were your connections?

A. With the Wabash out of St. Louis via Ottumwa, care of the Milwaukee & St. Paul at Mason City, via Minnesota Transfer; also C. P. & St. L., via Peoria, C. R. I. & P., via Minnesota Transfer, Chicago & Alton, via Chicago, and C. M. & St. P. at Chicago. Entirely via the Minnesota Transfer. We could not work by Omaha, on account of having no working arrangement through Omaha.

Q. Were the Union Pacific in that territory working north coast business?

A. They were.

Q. By what route were they working it?

A. Via Omaha, or Kansas City.

Q. And over the Short Line and O. R. & N.?

A. Over the Short Line and O. R. & N.

Q. When you were here in Chicago, in your later service, what road did the St. Paul work with for California business?

A. By all the lines at the Missouri River.

Q. Did you at that time meet the competition of the lines leading to the South, to California, through the southern gateways?

A. I presume so. We were in the field for California business, and we got it.

Q. Were they in the field for California business too—I mean by way of the southern gateway; that is what I am asking about.

A. Do you mean by New Orleans?

Q. New Orleans or Texas points.

3036 A. Via Texas points I can say they were. My work in the general freight office would not make known to me whether the lines were in the field for California business via New Orleans or not.

Q. But did you know they were for Texas?

A. I did know they were for Texas.

Q. At what junction points would the Southern Pacific get it from?

A. I would say Fort Worth and El Paso.

Q. Do you remember whether during that time the Union Pacific and Southern Pacific were separately represented here in Chicago?

A. I do.

Q. Did you know their representatives?

A. I did.

Q. Mr. Knight and Mr. Neimyer?

A. Mr. Knight represented the Union Pacific and Mr. Neimyer represented the Southern Pacific.

Q. Mr. Knight testified that he did not know of the Southern Pacific soliciting business for the coast by the southern gateway. He testified a few minutes ago. Several shippers testified that it was so solicited. What is your knowledge on the subject?

A. As to whether the Southern Pacific went to a shipper and asked them for business via El Paso or Fort Worth, I could not say.

Q. Well, you were not present, of course.

A. I was not. But I do know that they took business that way. If the Rock Island or the Missouri, Kansas & Texas, or the Iron Mountain & Southern, through influence or personality, secured business by their line through the St. Louis gateway, why, naturally, the Texas & Pacific got the haul to El Paso, and the
3037 Southern Pacific accepted the business.

Q. Or if it was turned over at Fort Worth?

A. Or at Fort Worth, the M. K. & T. or the St. Louis and San Francisco at that time, at Sherman, would deliver business to the Southern Pacific.

Q. When you were at Racine you were representing the Vehicle Company, you said. Traffic manager, weren't you?

A. I had charge of the traffic of the Racine Wagon & Carriage Company, which afterwards consolidated as the Racine Sattley Company, manufacturers of vehicles and farm wagons.

Q. Do you know Mr. Harmon?

A. Yes, sir.

Q. Who was he?

A. He represented the Southern Pacific Railroad.

Q. Did he ever call on you at Racine, soliciting your business?

A. He did.

Q. By what route?

A. Via the Southern Pacific; and, as I recall it, he was entirely agreeable to taking it by either Ogden or El Paso. I want to explain the peculiar situation at Racine, as regards my firm. We were located on the C. M. & St. P. Railroad, which supplied us with an adequate supply of large vehicle cars, and naturally insisted upon the long haul either to Omaha or Kansas City; therefore, our connections beyond Kansas City, consisting of the Rock Island or the M. K. & T. or the Frisco, could all take the business by El Paso, or, if I chose to let it go by Omaha it went by the Rock Island or the Burlington or the Union Pacific. But for a Southern Pacific representative
3038 to come to me and solicit business via any particular line I cannot recall that they asked me for the business at any particular gateway, either Omaha or El Paso or Fort Worth.

Q. That was Mr. Harmon——
A. That was——
Q. Who was Mr. Harmon working for? Mr. Neimyer?
A. Mr. Neimyer.
Q. When was he in the habit of coming up there?
A. Mr. Harmon came there during 1900 and 1901, and I cannot recall that his calls ceased immediately after 1901 or not.
Q. You do not recall that he expressed any preference as between the Ogden gateway and the El Paso gateway.
A. No, there was no preference expressed.
Q. He wanted to get some of the business?
A. He wanted the business.
Q. And the connecting lines running to El Paso, and the connecting lines running to Ogden, were soliciting the business?
A. Very actively.
(No cross-examination.)

3039 C. S. STEBBINS,

being duly sworn as a witness on behalf of the Complainant, testified as follows:

Direct examination by Mr. SEVERANCE:

Q. Mr. Stebbins, where do you live?
A. In Omaha.
Q. What is your business?
A. I am assistant to the General Auditor of the Union Pacific Railroad Company, Southern Pacific Company, and some of their affiliated companies.
Q. Just tell us what those affiliated companies are, Mr. Stebbins.
A. Well, I do not know that I can tell you all of them. The principal ones are the Oregon Short Line Railroad Company, the Oregon Railway & Navigation Company, the Pacific Mail Steamship Company, and there are some smaller roads—the Ilwaco Railway & Navigation Company——
Q. Well, we will not bother with them. You are assistant to the General Auditor of the Union Pacific, the Short Line, the O. R. & N., and of the Southern Pacific?
A. I am assistant to the General Auditor.
Q. That is what I understood—assistant to the General Auditor?
A. Yes.
Q. And of the Southern Pacific?
A. Yes.
Q. Does that include the Morgan line of boats, so-called—the Southern Pacific boats from New York to New Orleans and Galveston?
A. It does.

Q. And do you say of the Pacific Mail & Steamship Company?
A. The Pacific Mail & Steamship Company.
Q. And of the Portland & Asiatic Steamship Company?
A. Yes.
3040 Q. And of the Occidental & Oriental Steamship Company?
A. I think not.
Q. Well, are you sure?
A. Well, I think that the General Auditor has no official connection with that company.
Q. Who is the General Auditor of that company, do you know?
A. The secretary of the Company is in immediate charge of the accounts of the Company.
Q. Well, doesn't he make any reports to Mr. Young?
A. He makes certain reports to Mr. Young, yes.
Q. So that you have at least a bowing acquaintance with that functionary?
A. Yes, sir.
Q. Have you any relation whatever to the accounting of the Japanese Steamship line that runs in connection with the railroads at San Francisco?
A. None whatever.
Q. But you have connection with the traffic delivered to and received from that Japanese company by the Southern Pacific?
A. Well, only when it comes into the accounts of the Southern Pacific Company.
Q. Who is the General Auditor of these various railroads and steamship lines?
A. Erastus Young.
Q. He also lives at Omaha?
A. At Omaha, yes, sir.
Q. And he is your superior officer?
A. Yes, sir.
Papers marked "Complainant's Exhibits 119 to 126 (Stebbins).
Q. I show you Complainant's Exhibits 119 to 126 inclusive. They are all identified as compiled by Erastus Young, General Aud-
3041 itor, Union Pacific System, Southern Pacific Company. Who had charge of having those figures compiled?
A. I had immediate supervision of the work.
Q. So that Mr. Young did not personally have to do with it, but you did it?
A. I did it in his name; gave the instructions for the compilation of the statements in his name.
Q. These figures, Mr. Stebbins, with reference to the movement of traffic, cover what periods?
A. Statement Number 119 is freight traffic for October 1906.
Q. Well, it appears right on the face of each one, does it not?
A. Yes.

Q. Exhibits 119 and 120 are statistics of traffic for October, 1906; and Exhibits 121 and 122 are for April, 1907?

A. Freight traffic.

Q. What would be your opinion as to whether those two months are representative months in making up an estimate of a year's business—the month of October and the month of April?

A. The month of October is ordinarily the month of the heaviest traffic on these lines; and the month of April is a month of heavy traffic, but not as heavy as October or any one of the fall months, I think.

Q. Were these two months selected as representative months?

A. These two months were selected as representative months.

Q. Now, Mr. Stebbins, you remember, do you not, that at the time I requested the preparation of these statistics I also asked to have statistics prepared covering certain months of the years 1900 and 1901?

A. I do.

3042 Q. Will you state, so as to have it in the record, the reasons why it was impossible to prepare those statistics.

A. It was impossible to furnish the statements of statistics for the periods mentioned in 1900 and 1901 on account of the destruction of records. All of the records from which such statistics of the Southern Pacific Company would be compiled were destroyed in the San Francisco fire of April, 1906; and a considerable portion of the records of the Union Pacific Railroad Company, of freight business for those years, was destroyed by a fire in the record room at Omaha in I think December, 1906.

Q. And those fires made it impossible to compile the data for any of these early dates?

A. Yes, sir.

Q. So that the only figures you have as to Southern Pacific business covered by these exhibits is business transacted since the San Francisco fire?

A. Yes, sir.

Q. And the only complete Union Pacific records you have, covering the same class of business, are those since December, 1906?

A. Well, not all of the records of the Union Pacific prior to December, 1906, were destroyed.

Q. I say the only complete records you have?

A. Yes, the only complete.

Q. So that it would be impossible to make up a complete showing of this character for any specific date prior to December, 1906?

A. Yes.

Q. Complainant's Exhibits 123 and 124 are statements showing passenger business for the months of September, 1900, and December, 1900?

A. That is correct.

3043 Q. That covers the business on both the Southern Pacific and Union Pacific lines which was carried east of El Paso?

A. That covers the business of the Union Pacific lines, compiled from the records of the Omaha office. It covers the business of the lines east of El Paso, in which the Southern Pacific Company is interested; and that information was compiled by the auditor of the Galveston, Harrisburg & San Antonio Railroad at Houston. That covers, as I stated, only the business which was carried by the Southern Pacific lines—that is, the lines in which the Southern Pacific is interested—east of El Paso; but it covers their business. It covers the tonnage and revenue on that business through to San Francisco. It does not cover——

Mr. LOVETT. What is the number of that one he is talking about?

Q. This is Number 123 you are talking about now?

A. Yes. It does not cover the business which was carried east of El Paso by the Texas and Pacific and delivered to the Southern Pacific at El Paso.

Q. So that is an incomplete statement?

A. That is an incomplete statement.

Q. Would it have been possible to have made up a similar statement as to freight business?

A. It would not. The records were destroyed.

Q. This sub company of yours in Texas, what is the name of it?

Mr. LOVETT. I think he is mistaken about that.

3044 A. The Galveston, Harrisburg & San Antonio Railway.

Mr. LOVETT. I do not think he means that.

Q. I ask whether your other company—what do you call it?

A. The Galveston, Harrisburg & San Antonio Railroad Company.

Q. Would their records also enable you to make up a similar statement as to freight?

A. I think not.

Q. That is what I understood you to say. I understood that was the reason why you were unable to prepare it.

A. Yes.

Q. That you had the record of that only at San Francisco?

A. I think the correspondence shows that we could not get the freight from their records. We might have gotten it in one direction but not in the other.

Q. But Complainant's Exhibit 125 shows the passenger traffic over these various lines for September, 1906, and Complainant's Exhibit 126, for March, 1907. Are those representative, average months, taking the two lines together, Mr. Stebbins?

A. They were selected for the reason that September is the month in which the business is very heavy by the northern lines, and March is the month in which the business is heavy by the southern lines.

Q. So it was thought that they were fair representative months?

A. Yes.

Q. Does this revenue to the railway lines shown here include any revenue accruing to the steamship lines in which the railroads are interested, to and from China, Japan, the Philippines and Hawaii?

A. It does not.

3045 Q. This is only the rail lines' proportion of that business, is it?

A. This is only the rail lines' proportion; that is, the proportion accruing to the Union Pacific system lines or Southern Pacific Company lines.

Q. Turn back to Complainant's Exhibit 119. The Southern Pacific revenue in the first subdivision, "California," shows the revenue received through the Ogden gateway.

A. Received by the Southern Pacific Company through the Ogden gateway, on business through the Ogden gateway.

Mr. LOVETT. What table are you talking about now; which number?

Mr. SEVERANCE. Exhibit 119.

Q. The first figure is by way of Omaha, and the second subdivision, under the head of "Southern Pacific freight revenue," would be the revenue received on business taken up at Kansas City by the Union Pacific, passing through the Ogden gateway?

A. That would be the first division to the left of the second section is Kansas City.

Q. Now, what I want to ask you is this: Does this show revenue obtained by the Southern Pacific through the Ogden gateway on business exchanged with the Denver & Rio Grande?

A. It does not.

Q. It does not show that?

A. It does not.

Q. It only shows the business exchanged with the Union Pacific?

A. What was carried via Omaha—the Union Pacific from Omaha, or the Union Pacific from Kansas City. Unless it was carried over the Union Pacific to Denver, and then the Denver & Rio

3046 Grande to Ogden, and then Ogden to destination, over the Southern Pacific, it would be in that statement there; but it must have been carried by the Union Pacific from Omaha or Kansas City.

Q. So that these do not purport to show the revenue secured by the Southern Pacific and Ogden line on business delivered to them by the Denver & Rio Grande, unless that business was moved some distance over the Union Pacific line?

A. That is correct.

Q. Is some business routed, for instance, from Kansas City to Denver by the Union Pacific and then turned over to the Rio Grande?

A. There is a considerable amount of passenger business that is carried in that way; but I think not much freight. I have only a general knowledge of that.

Q. Can you state, Mr. Stebbins, what territory is embraced in the seventh subdivision on Complainant's Exhibit 120, which is denominated "southeastern territory"?

A. That embraces all the territory east of the Mississippi River, which is not covered by the other six subdivisions—the other six

A. No. The business of Nevada is small, at any rate.

3050 Q. There are wool shipments out of there, aren't there?

A. Yes.

Q. Well, I don't want to ask you, Mr. Stebbins, if you are not familiar with it.

A. No, I am not familiar with it.

Q. I assume it is out of your line a little. I did not know but you might know, having made up this table.

Mr. SEVERANCE. I offer in evidence, in connection with Mr. Stebbins' testimony, Complainant's Exhibits 119 to 126 (Stebbins) inclusive.

Complainant's Exhibits 119 to 126 (Stebbins) face this page.

Mr. SEVERANCE. Pursuant to the letter, Defendants' Exhibit 7, appearing on page 1883 of the record, additional statistics were made up and furnished by General Auditor Young, and I now introduce the same in evidence. They are as follows:

Complainant's Exhibit 120 A.—Statement of freight traffic to and from all points in California, points in Nevada, for which the rates are the same via the Central Pacific Railway and the Southern Pacific Railroad, and points in Oregon south of Portland, Oregon, except points on the Willamette River north of Harrisburg, inclusive, formerly reached by the Oregon Railroad & Navigation Company's boat lines, divided as shown on the exhibit, covering the traffic for the month of October, 1906.

Complainant's Exhibit 120 B.—Covering the same traffic, divided as shown upon the exhibit, including traffic for the month of April, 1907.

Complainant's Exhibit 120 C.—Statement compiled by General Auditor Young, covering freight traffic between Atlantic seaboard territory and Colorado common points and Utah common points, carried by Union Pacific system lines and Southern Pacific Company lines, stated separately, as shown on the exhibit, the same covering traffic moved for the month of October, 1906.

Complainant's Exhibit 120 D.—Covering the same classes of traffic moved for the month of April, 1907, divided in the same manner as shown on the exhibit.

Complainant's Exhibits 120 A, 120 B, 120 C, and 120 D face this page.

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WITNESS. You understand, I presume, that statement. Complainant's Exhibit 119 and Complainant's Exhibit 120 include precisely the same traffic?

Mr. SEVERANCE. Yes. I might just let you state that.

Q. Complainant's Exhibit 119 is a summary of the details shown on Complainant's Exhibit 120, is it not?

A. Exhibits 119 and 120 cover precisely the same traffic; but in Exhibit 119 the territory is subdivided on the west between California territory, Portland territory and the Orient. In Exhibit 120 the territory on the west is all grouped together, but the territory on the east is divided into seven subdivisions. In the same way Exhibits 121 and 122 cover the same traffic—one subdivided on the west and the other on the east.

Cross-examination by Mr. LOVETT:

(Papers marked Defendants' Exhibits 1 to 8, inclusive.)

3051 Mr. LOVETT. In connection with Complainant's Exhibits 119 to 126 inclusive, introduced by Complainant, and as explanatory of the purpose of such exhibits and the circumstances under which they were prepared, the Defendants introduce in evidence the following correspondence, which is marked Defendants' Exhibits 1 to 8 inclusive:

DEFENDANT'S EXHIBIT 1.

JUNE 27, 1908.

MESSRS. KELLOGG & SEVERANCE,
*St. Paul, Minn.*

GENTLEMEN: Referring to our interviews of some weeks ago in reference to the preparation of statistics and the furnishing of statements desired by you for use as evidence in the suit of United States *v.* Union Pacific Railroad Company et al now pending in the Circuit Court of the United States for the District of Utah and complying with Mr. Severance's request made the day before he sailed that I write you of the conclusion reached, I beg now to say that I have conferred with counsel associated with me in the litigation and we have concluded to advise the defendants Southern Pacific Co., Union Pacific Railroad Co., Oregon Short Line Railroad Co. and Oregon Railroad & Navigation Co. to compile and furnish such statistical data and statements as you will designate in writing, so far as the same can be compiled or obtained from their records.

3052 While Mr. Severance during our interview indicated in a general way what you desired, yet I did not undertake to charge my memory with the details; and for this reason and also to guard against any misunderstanding on my part or on the part of accounting officers as to what you wish written specification is required.

I am sending a copy of this letter to Mr. Kellogg at the Waldorf Astoria Hotel, in this city, where I understand he will be next Monday.

Yours truly, R. S. LOVETT.

DEFENDANT'S EXHIBIT 2.

DAVIS, KELLOGG & SEVERANCE,
ATTORNEYS AT LAW,
*Merchants' National Bank Building,*
*St. Paul, Minn.*

FRANK B. KELLOGG.
CORDENIO A. SEVERANCE.
ROBERT E. OLDS.

JULY 23, 1908.

*United States v. U. P. R. Co., et al.*

HON. ROBERT S. LOVETT,
*Counsel, Union Pacific Railroad Company,*
*120 Broadway, New York City.*

DEAR JUDGE: Answering your favor of the 27th of June, concerning the statistics which you are to prepare for use in evidence in the suit of the United States against the Union Pacific Railroad Co. and others, we suggest that there be prepared:

3053 (1) A statement of the business, both freight and passenger, for the year ended June 30, 1901, originating east of the Missouri River—

(*a*) Going through the Union Pacific gateways at Kansas City and Omaha (stated separately), and thence by the Oregon Short Line to Pacific Coast points or to Insular possessions or the Orient.

(*b*) A statement of similar business moving by the Union Pacific and Central Pacific, to Pacific Coast points or to Insular possessions or the Orient.

(*c*) A statement of similar business moving by the Southern Pacific, by way of New Orleans or Galveston, by boat or rail, or via El Paso by rail; and from such points to Pacific Coast points or to Insular possessions or the Orient; showing San Francisco and other California business separate from Portland and other points reached by the lines of the Oregon Railroad & Navigation Company.

(2) Total business originating on the Pacific Coast, or brought to the Coast from Insular possessions or the Orient, and thence forwarded to points east of the Missouri River—

(*a*) Via the Oregon Railroad & Navigation Co., the Oregon Short Line, and Union Pacific;

(*b*) Via the Central Pacific and Union Pacific;

(*c*) Via the Southern Pacific, boat lines and rail connections; divided so as to show the through business to the Atlantic seaboard and the business to the interior between the Missouri River and

3054 the Atlantic seaboard, with the destination at such interior points.

(3) Business originating in the Atlantic seaboard zone, moving to Colorado common points:

(*a*) By way of Southern Pacific steamship and rail lines and their connections:

(*b*) By way of the Union Pacific and its connections. By "Colorado common points" you understand we mean those points that are ordinarily designated by traffic men as "Colorado common points," whether they are actually in the State of Colorado or not.

(4) Similar statements covering the year ended June 30, 1907.

Very truly yours,

C. A. SEVERANCE.

3055 DEFENDANT'S EXHIBIT 3.

Subject: Statements of U. P. and S. P. traffic.

UNION PACIFIC RAILROAD COMPANY.
OREGON SHORT LINE RAILROAD COMPANY.
THE OREGON RAILROAD AND NAVIGATION COMPANY.
SOUTHERN PACIFIC COMPANY.

ERASTUS YOUNG,
*General Auditor.*

In your reply please refer to No. 1488 A

OFFICE OF GENERAL AUDITOR,
OMAHA, NEB.

OMAHA, NEBRASKA, *Aug. 12, 1908.*

R. S. LOVETT, Esq.,
*120 Broadway, New York City.*

DEAR SIR: Referring to your letter written at Salt Lake City July 31st, enclosing copy of letter from Mr. C. A. Severance dated July 23rd giving a statement of statistics which he desires for use in the case of United States vs. U. P. R. R. Co. et al., I give below information as to the statistics which we can furnish and those which owing to the loss of records we can not furnish.

Mr. Severance requests statements of both freight and passenger business. I do not understand that the statements of passenger traffic would be of any value or significance in connection with this suit, inasmuch as the volume of passenger traffic going to and from certain territories via various routes is not to any great extent within the control of the carriers themselves, but depends on business conditions in such territories, the choice of the passengers, etc. It
3056 seems to me that it would be sufficient to show by means of rate sheets, time tables, etc., that the Union and Southern Pacific Companies have not attempted by means of discrimination in rates or in facilities of transportation to influence the routing of passenger traffic which has any relation to this suit. The compilation of the passenger statistics requested would involve very considerable labor and expense which we should not be asked to incur unless the statistics are absolutely necessary in the case.

I will now consider Mr. Severance's request section by section.

1. A statement of the business, both freight and passenger, for the year ending June 30, 1901, originating east of the Missouri River.

(*a*) Going through the Union Pacific gateways at Kansas City and Omaha, stated separately, and thence by the O. S. L. to Pacific Coast points or to Insular Possessions or the Orient.

*1. Freight.*—This information can be furnished.

*2. Passenger.*—This information can be furnished.

I understand from the foregoing that the traffic from Kansas City and Omaha should not be included.

Is any separation desired in respect to the territory east of Omaha and Kansas City respectively, in which the traffic originated? If so, the exact territories the traffic from which is to be shown separately should be defined.

Should a separation be made in respect to the territory on the west to which the traffic is destined? If so, the territories should be defined.

(*b*) A statement of similar business moving by the Union Pacific and Central Pacific to Pacific Coast points, or to Insular Possessions or the Orient.

*1. Freight.*—

3057 Owing to the destruction of the records of the San Francisco office by the great fire of April 1906, and of a portion of the records of the Omaha office by a fire in December, 1906, we can furnish no information whatever in respect to the freight business called for under this head.

*2. Passenger.*—The passenger records for the first six months of 1901 were wholly or partially destroyed by the fire mentioned in the preceding paragraph. We can furnish the information in respect to passenger business for the last six months of 1900.

The same questions in respect to the separation of the business of various territories arise under this head as under the preceding head.

(*c*) A statement of similar business moving by the Southern Pacific by way of New Orleans or Galveston, by boat or rail, or via El Paso by rail; and from such points to Pacific Coast points, or to Insular Possessions or the Orient; showing San Francisco and other California business separate from Portland and other points reached by the lines of the O. R. & N. Co.

The records of the Southern Pacific Company in respect to this traffic were destroyed by fire. We can probably obtain all of this information from the offices of the Sunset Lines at New Orleans and Houston.

The same questions in respect to the separation of the business of various territories arise as under the preceding heads.

2. (*a*), (*b*) and (*c*).

3058 This section relates to eastbound business corresponding to the westbound business covered by Section 1. The comment upon each subdivision of Section 1 will apply to the corresponding subdivision of Section 2.

*3.* Business originating in the Atlantic seaboard zone, moving to Colorado common points—

(*a*) By way of Southern Pacific steamship and rail lines and their connections.

(*b*) By way of the Union Pacific and its connections.

This section is understood to relate to westbound business only.

*1. Freight.*—Owing to destruction of records as previously stated, this information can not be furnished.

*2. Passenger.*—For the same reason, the information in respect to passenger business can be furnished only for the last six months of 1900.

The "Atlantic seaboard zone" should be definitely described.

4. Similar statements covering the year ending June 30, 1907. This information can be furnished in full.

It is possible that owing to our inability to furnish certain of the required information as indicated by our comments thereon, other information requested will not be required.

For example, as we will be unable to furnish for the year ending June 30, 1901, any of the information in respect to freight traffic called for under Section 1 (*b*) and Section 2 (*b*), similar information for the year ending June 30, 1907, may not be required.

Also as we can not furnish information in respect to passenger traffic under Section 1 (*b*) and Section 2 (*b*) for the last six months of the year ending June 30, 1901, similar information for the last six months of the year ending June 30, 1907, may not be required.

My understanding is that the purpose for which these sta-
3059 tistics are to be used is to show a comparison between the business of the year ending June 30, 1901, and of the year ending June 30, 1907, by the various routes.

I assume that the information requested should in each case include the number of tons of freight carried or the number of passengers carried. I am in doubt, however, whether the revenue should be shown separately in each case for each of the following companies:

Union Pacific Railroad Company.

Oregon Short Line Railroad Company.

The Oregon Railroad & Navigation Company.

Southern Pacific Company—including this company's Atlantic Steamship Lines to New Orleans and Galveston, and the companies operating in Louisiana and Texas in which the S. P. Co. holds a controlling interest.

I estimate that it will require at least 90 days to compile the information, in case all of the information which we can furnish shall be required. This work can only be done by clerks of a fair degree of intelligence and experience. The regular forces of all our accounting departments are fully employed with their current work, and it is very difficult to obtain additional competent clerks for special work of this character.

Yours truly,

ERASTUS YOUNG,
*General Auditor.*

3060 DEFENDANT'S EXHIBIT 4.

(Copy.) ST. PAUL, MINN., *Aug. 24, 1908.*

Hon. R. S. LOVETT,
*Gen'l. Counsel U. P. Ry.,*
*120 Broadway, New York.*

DEAR SIR:—Your favor of August 21st is received, and we will answer it in detail.

1. As to business going through the Union Pacific gateways at Kansas City and Omaha, and thence by the O. S. L. to the Pacific Coast points or beyond, Mr. Young says that he understands that the traffic from Kansas City and Omaha should not be included. We did not desire to be so understood. We want the traffic originating at Kansas City and Omaha to be included.

2. As a separation of territory in which the traffic originates east of Omaha and Kansas City, we believe that this territory should be separated on some convenient lines to show generally the originating territory, so that we can see the rates that apply from such territory. It is rather difficult for us to say exactly what lines should be used. If it can be made without too much extra work, we suggest that it should be done by states, except that New England may be bunched as one territory. If the same rates apply from New York, New Jersey, Pennsylvania and Maryland, we should have no objection to those states being bunched. By the same rate, we mean the same rate through the Union Pacific gateway and by way of the Sunset Route. We should say, however, unless these states can be bunched in such a way as we suggest, that it be furnished by states separately.

3. Separation of the territory on the Pacific Coast. We think the same rule should apply there, to wit, that it be stated by states. We suggest also that the business going to Portland, San Francisco and Los Angeles, be stated separately as those are three of the largest distributing centers. The business destined to points across the Pacific need not be divided.

4. The next division as to which Mr. Young inquires is business moving by the Union Pacific and Central Pacific to Pacific Coast points or to insular possession or the Orient. We note that very little of this can be furnished owing to the fires. Such information as can be furnished, however, should be divided in the same way as that covering business through the Union Pacific gateways and thence to the Coast by the Oregon Short Line.

5. We note that notwithstanding that the records of the Southern Pacific Co. were destroyed, the information desired as to the Business moving via the Southern Pacific by way of New Orleans, Galveston or El Paso, can be obtained from the offices of the Sunset lines
3061 at New Orleans and Houston. This should be divided in the same way as the Union Pacific business.

The eastbound business will be governed by the same suggestions that we made as to the Union Pacific.

6. As to business originating in the Atlantic seaboard zone moving to Colorado common points, we note that you are unable to furnish all the statistics requested, and we will therefore ask you to let us have such information as can be prepared from the records in your possession. The Atlantic Seaboard zone covers all the territory lying east of a line drawn through Buffalo and Pittsburgh, including those places, from which the traffic moves both by rail, boat and rail, and all rail. You will recall the testimony with reference to that territory, which was given at the time of the investigation last year.

7. We would like similar statements for the year ending June 30, 1907, which we are advised can be furnished in full. The fact that we are unable to get complete information as to the earlier dates does not make it less desirable for us to have it for the year ending June 30, 1907. All the suggestions we have made as to divisions apply to our request for information for the latter year.

8. With reference to the division of the revenue: We do not think there is any advantage in dividing the revenue between the Union Pacific, Oregon Short Line, and Oregon Railroad & Navigation Co., but that for the purpose of this statement they may be treated as a continuous line, nor is there any need of dividing the revenue to the Southern Pacific Co., including that received from the Atlantic Steamship lines and the companies operating rail lines in Louisiana and Texas. That also may be considered as a single line.

9. In relation to the passenger business, we note what you say. We believe it is important to show the passenger business, as it must be a considerable business, especially during the winter season, when we understand the rates are the same via either route, and that there is a large business to and from California points traveling in both directions.

We are not disposed to make too much work for Mr. Young, and would suggest, as we are not familiar with the exact work which must be done to procure these statistics, and that variations from what we have asked might save a great deal of labor and still accomplish substantially the same purpose, that it might be well to have a conference with Mr. Young. Some general statements about the passenger traffic might be made, and some general divisions of territory as to the other business, which would relieve Mr. Young of a good deal of labor. If you can have Mr. Loomis or Mr. Rich represent you, we suggest that Mr. Severance might run down to Omaha and take this up in detail with Mr. Young, and agree on the details as to how the work shall be done. If, however, you would prefer to keep the matter in your personal charge, we would be glad to arrange it in the best way we can by correspondence or by personal interviews with you in New York.

Very truly yours,

DAVIS, KELLOGG & SEVERANCE.

If the suggestion as to an interview with Mr. Young meets with your approval please wire us.

3062

## DEFENDANT'S EXHIBIT 5.

DAVIS, KELLOGG & SEVERANCE.
ATTORNEYS AT LAW.
*Merchants National Bank Building.*
*St. Paul, Minn.*

FRANK B. KELLOGG
CORDENIO A. SEVERANCE
ROBERT E. OLDS

WALDORF-ASTORIA,
*New York, September 11, 1908.*

*United States v. Union Pacific Ry. Co. et al.*

Hon. R. S. LOVETT,
*120 Broadway, New York.*

MY DEAR SIR: Supplementing and modifying our letters of July 23 and August 24, and pursuant to our interview to-day, we suggest that the statements which are to be prepared under the direction of your auditing departments be made up and divided as shown upon the accompanying memorandum, which we think embodies the understanding we arrived at to-day.

We are satisfied to have the statements made up so as to show only the revenue from the traffic mentioned on the memorandum. We understood you to-day to say that you would prefer to have the statements also show the tonnage. We should be very glad to have the tonnage shown, in addition to the revenue, but do not feel that we ought to insist upon the additional work being put in which will be necessitated to show the tonnage, although we shall be very
3063 glad to have it shown if agreeable to you.

Yours truly,

C. A. SEVERANCE.

NEW YORK, *Sept. 11, 1908.*

*On the east:*

Divide up the business in the same way it is divided on the schedule of rates which we furnish herewith; except the southeastern territory, which will be bunched and shown separately.

*On the west:*

California terminal points need not be separated; all California business can be bunched. Include in California, Nevada points where the same rate applies, via northern and southern routes; and the business for Oregon south of Salem.

Make a separate statement of the business to and from Portland proper and the Willamette Valley, to and including Salem, or as far south as the boat lines formerly ran.

Make separate statements of business originating at or east of the Missouri River, destined to the Orient, or coming from the Orient to the Missouri River or points east, which shipments moved through the ports of Portland on the one hand or San Francisco on the other.

*Months to be taken:*

Passenger business: For the year ending June 30, 1901,
3064 take September and December, 1900. For the year ending June 30, 1907, take September, 1906, and March, 1907.

Freight business: Take October, 1906, and April, 1907.

*Division of passenger business:*

On the east: Passenger business need not be divided by divisions, as all rates are substantially the same.

On the west: Let the passenger business be divided the same as the freight.

DEFENDANT'S EXHIBIT 6.

Subject: United States vs. U. P. R. R. et al., statistics to be compiled for.

UNION PACIFIC RAILROAD COMPANY.
OREGON SHORT LINE RAILROAD COMPANY.
THE OREGON RAILROAD AND NAVIGATION COMPANY.
SOUTHERN PACIFIC COMPANY.

ERASTUS YOUNG,
*General Auditor.*

In your reply please refer to No. 1488 A.

OFFICE OF GENERAL AUDITOR,
OMAHA, NEB., *Dec. 18, 1908.*

Mr. R. S. LOVETT,
*Counsel, New York City.*

DEAR SIR: I send herewith for use in the suit of United States vs. U. P. R. R. Co. et al., three copies of statements of freight
3065 traffic carried by the Union Pacific System lines and Southern Pacific Company lines, prepared in accordance with the request contained in letter of Mr. C. A. Severance to yourself, September 11th, 1908, and the memorandum accompanying that letter:

FREIGHT TRAFFIC.

*October, 1906.*

1. Traffic between eastern territory as a whole and western territory, subdivided as stated below.

2. Traffic between eastern territory, subdivided as stated below, and western territory as a whole.

*April, 1907.*

3. Traffic between eastern territory as a whole and western territory, subdivided as stated below.

4. Traffic between eastern territory, subdivided as stated below, and western territory as a whole.

5. * September, 1900.
6. * December, 1900.
7. * October, 1906.
8. * March, 1907.

* Traffic between eastern territory as a whole and western territory, subdivided as stated below.

The subdivision of traffic on these statements conforms to that requested in the memorandum accompanying Mr. Severance's letter of September 11th, 1908.

Freight and passenger traffic are subdivided on the west as follows:

1. All points in California, points in Nevada for which the rates are the same via Central Pacific Railway and Southern
3066 Pacific Railroad, and points in Oregon and south of Portland, Oregon, except points on the Willamette River north of Harrisburg, inclusive, formerly reached by The Oregon Railroad & Navigation Company's Boat Lines.

2. Portland, Oregon, and points on the Willamette River north of Harrisburg, inclusive.

3. The Orient—China, Japan, the Philippines, and Hawaii.

Freight traffic is subdivided on the east as follows:

1. Missouri River and Common Points Territory (excluding points in Nebraska and Kansas west of Omaha or Kansas City, Kansas).
2. Mississippi River and Common Points.
3. Chicago and Common Points.
4. Cincinnati, Detroit and Common Points.
5. Pittsburg, Buffalo and Common Points.
6. New York, Boston and Common Points.
7. Southeastern Territory.

Passenger Traffic is not subdivided on the east.

It was necessary to have this information compiled partly in the Omaha office, partly in the San Francisco office, and partly in the Portland office, and, on account the destruction of records of the Southern Pacific Company—Pacific System, in the fire at San Francisco in April, 1906, it was necessary to have part of the information compiled by the auditor of The Galveston, Harrisburg & San Antonio Railway Company at Houston, Texas. Owing to the destruction of records, as stated above, the passenger reports for the months of
3067 September and December, 1900, include in traffic carried via El Paso, only that carried by the S. P. Co. west of El Paso, and carried east of El Paso by The Galveston, Harrisburg & San Antonio Railway Company, that is to say, traffic carried by the S. P. Co. west of El Paso which was carried east of El Paso by lines other than G., H. & S. A. Ry., is not included.

You will note that the enclosed statements cover the total traffic for each month, i. e., westbound and eastbound combined. Similar statements showing westbound and eastbound traffic separately will be forwarded probably next week.

I am sending one copy of each of the statements enclosed herewith to Mr. Stubbs, with a copy of this letter, for his information.

Please acknowledge receipt.

Yours, truly,

ERASTUS YOUNG,
*General Auditor.*

(Enclo. Copy to Mr. J. C. Stubbs with enclosures.)

DEFENDANT'S EXHIBIT 7.

HOTEL SINTON,
*Cincinnati, Ohio, Feby. 11, 1909.*

Mr. ROBERT S. LOVETT,
*New York City.*

MY DEAR MR. LOVETT: Referring to the statistics prepared
3068 by Mr. Young, I would suggest:

1. You will note that Mr. Young has given only the totals of business moving by the Southern route under the head of "Via El Paso." In the foot note he states that this revenue includes the revenue of the Southern Pacific Company Pacific System, and of the lines east of El Paso in which the Southern Pacific Company has an interest, including the Sunset-Central Lines (so-called) and the Southern Pacific Company's Atlantic Steamship lines. I assume that in arriving at these totals he must necessarily have had the detail. I should be glad if he could indicate separately, first, the Southern Pacific tonnage and revenue on traffic delivered to it by connecting lines other than the Southern Pacific System at El Paso and at points between El Paso and New Orleans; second, the traffic delivered to it at New Orleans by connecting lines; and, third, the revenue on traffic moving by the Morgan line of steamers and by rail from New Orleans and Galveston to the coast. Possibly the data from which these tables were made up is in such shape that he cannot give this separately, but will you kindly ask him whether he is in shape to separate them? In the detail you will see that under the sixth subdivision of the business via El Paso he gives the tonnage and revenue of business moving from New York and common points. This comprises much the largest item making up the total. Presumably all, or substantially all, of this business moved by the
Morgan Steamship line, in view of the evidence heretofore
3069 taken; but if he can give us such traffic separate from that moved all rail from New York and common points, I should be glad to have it.

2. You will observe that he has omitted any statistics as to the business moving to Colorado common points by the Missouri River gateways, and by the Southern route. These figures were asked for in my original letter, as you will see. If he can prepare these, will you kindly ask him also to make a table showing the business moving

to Utah common points by the respective lines covering the same classes of traffic requested as to Colorado business?

3. In the statement of October, 1906, he shows the total movement to the Orient by way of El Paso, aggregating 1634 tons, with a revenue of $26,474.17; and in a foot note states that of this 217 tons, with an aggregate revenue of $3,179.13, passed through Portland. The remainder moved via San Francisco. In the table for April, 1907, he makes no subdivision of this traffic as between San Francisco and Portland. Are we to understand from this that all of the traffic moved via San Francisco? Or did he inadvertently fail to subdivide it?

4. On Oriental business I assume that the figures given include only the proportion accruing to the railroads on such through business from some place in the United States to the Orient, or from the Orient to some point in competitive territory in the United States, and that the figures do not include the steamship proportion of this business. Kindly inquire of Mr. Young whether my understanding is correct?

3070 5. In making up the statistics on business to Colorado and Utah common points I understand you to suggest that it might be possible to get the figures as to business prior to the acquisition of the Southern Pacific stock by the Union Pacific, as those figures were in New Orleans and therefore not destroyed in the San Francisco fire. I should be glad if he could make up the figures as to that business, even though on account of the destruction of the Union Pacific books he may not be able to give the Union Pacific business for a similar period for the purposes of comparison.

From the study that I have been able to make of the tables up to this time I do not see anything else to suggest, but if anything further occurs to me later on I will promptly communicate with you.

Yours, truly,

C. A. SEVERANCE.
P.

COPY BOUND CL

DEFENDANT'S EXHIBIT 8.

Subject: U. S. vs. U. P. R. R. et al.—statistics to be compiled for

UNION PACIFIC RAILROAD COMPANY.
OREGON SHORT LINE RAILROAD COMPANY.
THE OREGON RAILROAD AND NAVIGATION COMPANY.
SOUTHERN PACIFIC COMPANY.

ERASTUS YOUNG,
*General Auditor.*

In your reply please refer to No. 2177 A.

OFFICE OF GENERAL AUDITOR,
OMAHA, NEB.,
*March 6, 1909.*

3071 Mr. R. S. LOVETT,
*Counsel, New York City.*

DEAR SIR: Referring to letter of Mr. C. A. Severance, addressed to yourself under date of February 11th, copy of which you handed to my Assistant, Mr. Stebbins, at your office in New York last week, relating to statistics furnished by this office for use in connection with the case of United States vs. U. P. R. R. Co. et al., and taking up Mr. Severance's inquiries in their order.

*1.* While the statistics of traffic via El Paso were made up in our office at San Francisco and in the office of the G. H. & S. A. Ry. Co. at Houston, I have no doubt that the separation desired by Mr. Severance can be made, although the work will require some time. The earlier portion of his first paragraph appears to indicate that he desires all traffic via El Paso separated under three heads:

1st. Traffic via Southern Pacific steamers.

2nd. Traffic via New Orleans and rail connections. (This will include traffic originating or terminating at New Orleans or other points in Louisiana on Sunset—Central Lines or points east thereof, other than traffic carried by Southern Pacific steamers).

3rd. Traffic via rail connections west of New Orleans. (This will include traffic received or delivered by the Sunset—Central Lines at points west of New Orleans, and traffic received or delivered
3072 by the Southern Pacific Company at El Paso which is not carried by the Sunset Route.)

The last portion of this paragraph, however, indicates that Mr. Severance is principally if not wholly concerned, with the traffic from (and to) New York, Boston and common points. Are we to understand that he desires only the traffic from and to New York, Boston and common points, separated under the three heads mentioned above, or whether he desires all traffic from each of the seven territories shown in statements Nos. 2 (October, 1906), and 4 (April, 1907) thus separated.

As we have not separated the passenger traffic by territories on the east, I understand that Mr. Severance's request for the separation of traffic via El Paso under the three heads refers only to freight traffic.

I understand also that this separation is desired for all traffic via El Paso as a whole, that we will not make this separation for each territory on the west, viz: California, etc., Portland, etc., and the Orient, as shown in statements Nos. 1 and 3.

CLOSE IN CENTER

2. Traffic of Colorado common points. It was my understanding that Mr. Severance's original request for statistics of traffic between the Atlantic seaboard zone and Colorado common points, embodied in his letter to you, July 23, 1908, was withdrawn at the conference between Mr. Severance, Mr. Kellogg, Mr. Stebbins and yourself at your office on September 11th, 1908, which understanding appears to be confirmed by Mr. Severance's letter and memorandum of that date; the memorandum containing no reference to the traffic of
3073 Colorado common points, and the letter stating:

"We are satisfied to have the statements made up so as to show only the revenue from the traffic mentioned on the memorandum."

It is true, however, that the sentence quoted was intended principally to emphasize the importance of revenue, rather than of tonnage, but the implication would certainly be that the memorandum covered all traffic of which statistics were to be furnished.

Owing to the destruction of records by fire, as stated in my letter of August 12, 1908, the freight traffic of Colorado common points via Union Pacific lines for the month finally selected in the year 1900 (September and December) cannot be furnished.

I have no doubt, however, that we can secure from the Houston office of the G. H. & S. A. Ry. Co. the information desired in respect to freight traffic via the Southern route for September and December, 1900. We can furnish the information in respect to freight traffic via all routes for October, 1906 and 1907, and for passenger traffic via all routes for these months and also for September and December, 1900, if desired.

Please advise whether statistics of passenger traffic are desired. Also advise whether the information in respect to traffic (freight or passenger, or both) via the Southern route should cover only traffic via Southern Pacific steamers, or should it also include traffic via New Orleans and rail connections east thereof. Presumably
3074 very little traffic between New York territory and Colorado common points is carried via rail lines east of New Orleans.

The same questions arise in respect to traffic of Utah common points, as to traffic of Colorado common points, and I will understand that your advice in respect to traffic of Colorado common points will also cover Utah common points traffic.

3. As shown on statements Nos. 1 and 2 for October, 1906, 217 tons of Oriental freight tonnage carried via El Paso passed through the port of Portland. All the rest of the Oriental tonnage during this month via El Paso moved via steamer from or to San Francisco. For the month of April, 1907, all Oriental tonnage via El Paso moved via San Francisco.

4. The revenue shown in the statements, accruing from Oriental business, does not in any case include the revenue accruing to steamship lines on the Pacific Ocean, but does include the revenue accruing to the Southern Pacific Company's steamship lines between New York and New Orleans and Galveston.

On receipt of advice from you stating exactly the additional information desired by Mr. Severance, we will proceed to compile it as expeditiously as practicable.

Yours, truly,

ERASTUS YOUNG,
*General Auditor, C. S. S.*

3075 Q. On Complainant's Exhibit 119, Mr. Stebbins, I observe that it appears that 3321 tons of freight, on which the Union Pacific realized revenue of $36,027.20, and the Southern Pacific a revenue of $14,002.70, is shown on the first line, and under the column headed "Via Union Pacific system lines, to or from Portland." Now, one might infer from that statement that that was traffic having origin or destination in California. Is that true or not; and if not, why? State what it is.

A. That is shown as traffic to or from California, etc.; that is, western territory, No. 1, is shown in the heading, which includes all points in California, points in Nevada to which the rates are the same by the Central Pacific Railway and Southern Pacific Railroad, and points in Oregon south of Portland, Oregon, except points on the Willamette River, north of Harrisburg, inclusive, formerly reached by the Oregon Railroad & Navigation Company's boat lines. We were requested to compile the statements by showing business to and from all of that territory under one heading. As a matter of fact, none of that freight either originated at or was destined to points in California—of that particular freight.

Q. But it had origin or destination on the Southern Pacific line in Oregon south of Portland?

A. That is correct.

Mr. SEVERANCE. Well, between certain points in Oregon.

Mr. LOVETT. Points not reached by the boat line.

Mr. SEVERANCE. Between Harrisburg and Ashland.

WITNESS. There might be some to points north of Harrisburg which was not on the river.

3076 Q. None of that traffic, then, had origin or destination in California, but all of it in Oregon?

A. All of it in Oregon.

Q. Moving between origin and destination, by way of Portland?

A. That is correct.

Q. That is, either having origin or destination east of the Missouri River and moving from the Missouri River to origin or destination on the Southern Pacific, south of Portland, by way of Portland?

A. By way of Omaha and Portland.

Q. Counsel for the Government designated that first classification in giving the instructions for making up these figures, didn't they?

A. Yes. That is covered by memorandum that was drawn up by Mr. Severance, in New York, on September 11th.

Q. And also by the territory designated in conference there by pointing it out on the map too, wasn't it?

A. Yes.

Q. I don't know whether it was covered fully by the correspondence or not, but it was understood that was the designation they made of that territory.

A. That was the understanding.

Q. The territories as grouped in these statements, and the basis upon which these statistics were compiled, were specified by counsel for the Government in this suit, weren't they?

A. They were.

Q. On direct examination you spoke about months being selected—October and April—representative months. By whom were they selected?

3077 A. They were selected by the counsel for the Government, or in conference between the counsel for the Government and the counsel for the companies.

Q. Your instructions were to take those months——

A. They were.

Q. Either in conference, or by letter?

A. We have a written memorandum.

Mr. SEVERANCE. Oh, they were agreed to, as I understand it.

WITNESS. They were agreed to. A memorandum was given us.

Q. There was a general discussion as to what would be representative months, and as the result of that these months were named?

A. Yes.

Q. Did you mean to convey the impression that you selected them as being in your opinion the representative months of the year?

A. No. They were selected and a memorandum was drawn up, furnished by the counsel for the Government, with a letter—a memorandum specifying these months and specifying the territory which was to be shown in the statements.

Q. I am not asking these questions to raise any doubt as to whether they are representative months or not, but only because I am not sure myself. Your answer to Mr. Severance stated that October was probably the largest month in the year for freight traffic, and that April was a large month, but not the largest. That was the answer, but I did not know whether you meant to indicate that there were other months when the business was smaller, or whether you have any views on that subject, or any opinion, rather, or information.

3078 A. Well, as I remember the designation between counsel, it was to the effect that certain kinds of traffic would move at one time in the year and certain kinds in another, and by taking two months at different seasons of the year it would cover all kinds of traffic moving during the year.

Q. You do not know whether April is the smallest month in the year or not, do you?

A. I know that it is not the smallest month. It is a large month on the northern lines; but not so large as the fall months.

Mr. LOVETT. I mention this only so as not to be understood as cutting myself off, if hereafter I should want to show, by traffic men or others who have more information on the subject than I have,

that there is some other month. I do not know that it is of any importance.

Mr. SEVERANCE. Well, I understood that we got together on these months, Mr. Stebbins, as months which, taken together, would show a fair average of the year's business. Wasn't that so?

WITNESS. That is what I understood.

Mr. SEVERANCE. That is what we intended to do.

WITNESS. That is what I understood at the time.

Mr. LOVETT. That is what I understood at the time. I understood——

Mr. SEVERANCE. I understood in our conference there that April was a small month and October a large month.

Mr. LOVETT. That is what I supposed we were trying to get at, but I did not quite understand his answer.

Mr. SEVERANCE. You understood perfectly, Mr. Stebbins, that those two months were agreed upon by counsel for the respective parties as months that would show a fair average?

WITNESS. That, taken together, would be fair representa-
3079 tive months for the traffic of the entire year.

Mr. LOVETT. I do not know as it is of the slightest importance, but I do not want to be understood as having agreed to anything about it, because that was not my intention at any time. You were to designate what you wanted and I was to have it gotten up, and there was a general discussion as to getting representative months, and I——

Mr. SEVERANCE. I supposed that we had agreed that those would be representative months. I think Mr. Stebbins so understood it.

Mr. LOVETT. I think that we all believed that they were representative months, but I was not intending to make any agreement about it one way or the other.

Mr. SEVERANCE. I don't think any of us ever went under oath that they were representative months. We all agreed that those would be fair months to take. That is the way you understood it, isn't it, Mr. Stebbins?

WITNESS. Yes.

Mr. LOVETT. Well, I didn't, so far as I am concerned. I want that understood now. I wasn't making any agreement about it. My opinion was that it was a fair month, but it was not a matter for me to agree about. You were designating what you wanted, and I was going to have it gotten up for you; and we had the discussion about it, and I had supposed up to this time that they were representative months. But the only point I am making is that I do not want to be understood as agreeing to anything about it, because I never agreed to do anything except to get up the information.

3080 Mr. SEVERANCE. Let me ask if this is not a fair statement of the situation: We met in your office. Mr. Stebbins was present, you were present, and, if I remember rightly, some other counsel in the case; at any rate you and I were there with Mr. Stebbins.

Mr. LOVETT. Yes.

Mr. SEVERANCE. And we discussed with him and with each other as to what months would be fairly representative, so as to avoid the necessity of getting up a whole year's statement. We thought we could get at a fair average by taking two months—one small month, and one large month—instead of putting him to the trouble of getting up a statement for the full year, which would have been much more expensive and difficult; and we finally concluded—I would not say agreed—but we each concluded that these months would be fairly representative months, and having arrived at that conclusion I wrote the memorandum which you transmitted to Mr. Stebbins.

Mr. LOVETT. That is correct, with this modification: That I arranged for this meeting with Mr. Stebbins, to discuss it and find out. You suggested, I believe, that in conference we might, by talking with Mr. Stebbins, find out something that would serve your purpose as well, without involving too much work.

Mr. SEVERANCE. That is right.

Mr. LOVETT. We had this conference, and there was discussion about representative months, and those months were finally designated by you. But I never supposed for a moment that I was
3081 designating a month. My attitude with respect to this all along has been that you designate what you want and we will get it up for you, if we can. I never was agreeing to any month or agreeing to anything except to get it up.

Mr. SEVERANCE. Well, you certainly led me to believe that you felt at that time that these would be representative months.

Mr. LOVETT. I did think so.

Mr. SEVERANCE. You so stated.

Mr. LOVETT. And I have thought so up to this time.

Mr. SEVERANCE. So did I. There is nothing between us.

Mr. LOVETT. I don't think there is, but I don't want to——

Mr. SEVERANCE. I am not bound by the suggestion, I suppose, strictly, that these are representative months, except they are probably fairly representative months.

Mr. LOVETT. I mentioned the matter only because it is possible, but not at all probable, that I might conceive it important to show that there was some other month.

Mr. SEVERANCE. All right.

Mr. LOVETT. I want no misunderstanding about that.

Mr. SEVERANCE. Oh, no; you are not precluded from doing that, of course.

Mr. LOVETT. That is why I raised the question about agreeing that those were representative months.

Q. The southeastern territory referred to in the statements was designated how in the instructions to you, do you recall?

A. Designated as embracing all the territory east of the Mis-
3082 sissippi River which was not covered by the other territories which were specified.

Q. In the tariffs?

A. Yes.

Q. With reference to the Southern Pacific records, you testified, I think, that all those from which these statistics would be compiled prior to the San Francisco earthquake fire were destroyed in that fire, but that you got the figures for these statistics of the Southern Pacific traffic shown on these exhibits for the year 1900 from the office of the Galveston, Harrisburg & San Antonio at Houston?

A. Yes.

Q. But those figures relate only to the passenger business?

A. Only to the passenger business, and only to the passenger business that went via the Galveston, Harrisburg & San Antonio Railroad and the other Southern Pacific lines east of El Paso.

Q. Did the G., H. & S. A. have no records of the freight business during that period?

A. I think they would have the records of eastbound business; but the westbound business, my recollection is that they could not furnish the information.

Q. What about the Morgan company? Haven't they got those records at New Orleans?

A. I have forgotten the details of that. I could refresh my memory by going to the correspondence. But I know that it was impossible to secure a complete statement of that business.

Q. Either from the New Orleans office or the——

A. Yes, either from New Orleans or from Houston. That is my recollection of it.

3083 Q. Well, ordinarily those records should be in the Morgan company office, shouldn't they—I mean of the business of the Southern Pacific, the Sunset Route?

A. Why, ordinarily there would be a record in the office of each road over which the business was carried—a complete record.

Q. Wasn't this the situation with respect to that: That the Union Pacific freight records for that date in 1900 were destroyed, and that then the request for the Sunset records was withdrawn?

A. Yes; I believe that is the situation.

Q. Because comparison was impossible?

A. Because comparison was impossible, we concluded not to have the record of the Southern Pacific business.

3084 MARTIN VAN PERSYN,

being duly sworn as a witness on behalf of the Complainant, testified as follows:

Direct examination by Mr. SEVERANCE:

Q. Mr. Van Persyn, what is your business?

A. Manager of the shipping department of Sprague, Warner & Company.

Q. What is the business of Sprague, Warner & Company?

A. Wholesale groceries.

Q. How old a concern is that?
A. It has been established since the sixties.
Q. One of the largest in the country, isn't it?
A. Yes, sir.
Q. Where are they located?
A. Their warehouse is on Erie and Robey streets now.
Q. In Chicago?
A. In Chicago; yes, sir.
Q. How long have you been with Sprague, Warner & Company?
A. 25 years.
Q. And all the time connected with their traffic?
A. With the exception of about two years.
Q. Have you had charge of the routing of their traffic?
A. For the past 10 or 15 years: that is, certain portions of it.
Q. Have you for a good many years shipped more or less to the Pacific coast?
A. Comparatively little to the Pacific coast.
Q. But some?
A. Some.
Q. And have you shipped from the Pacific coast eastbound?
3085 A. Yes, sir.
Q. What do you ship eastbound?
A. Oranges, canned goods, dried fruits, raisins, prunes.
Q. Did you know Mr. Neimyer?
A. Yes, sir.
Q. Or do you know him?
A. Yes, sir.
Q. And did you know Mr. Knight?
A. Slightly.
Q. Was your coast business solicited by their agencies when they were separate?
A. Yes, sir.
Q. By these gentlemen personally, or by their soliciting agents?
A. Usually by their soliciting agents; occasionally they would come in the office themselves, but usually the solicitation was made by their agents.
Q. Do you know of any solicitation of the business by the representatives or soliciting agents of Mr. Neimyer prior to the consolidation of the offices, by way of New Orleans—coast business?
A. Yes, sir.
Q. What class of goods?
A. Oranges, principally.
Q. Do you remember any arguments or suggestions made to you to get the business that way?
A. Well, claiming the service was just as good as via the road we were patronizing more particularly.
Q. Which road were you patronizing?
A. The Santa Fe.

Q. What was the connection of the Southern Pacific into Chicago for that route?

A. The Illinois Central.

Q. What representations, if any, did the Southern Pacific agent make to you with reference to the service over the Illinois Central and their connection with them in order to get the business?

3086 A. Just in a general way that their time was extremely good that way, that they had practically through service.

Q. Mr. Knight's agents solicited business which way?

A. By Pueblo or Omaha, frequently—well, not very frequently, but whenever they did.

Q. You mean Kansas City, don't you? You said Pueblo.

A. I said Pueblo, because they knew that we were favorable to the Santa Fe and they preferred to get the haul west of Pueblo.

Q. Oh, I see. You recall the fact of these agencies being consolidated?

A. Yes, sir.

Q. Since the consolidation has any representative of Mr. Neimyer called on you?

A. Yes, sir.

Q. Who?

A. Mr. Harmon and Mr. Farmer.

Q. Which way, if any, have they solicited your business since that time as between the Southern Pacific and the Union Pacific?

A. I don't believe that the coast business has been brought up at all since the consolidation. They knew the way our freight was going, and they may have mentioned it incidentally, asking if we would not give them some of that business; but I don't think that any particular gateway was mentioned unless it was, as I say, that solicitation via Pueblo may have been made since the consolidation—shortly after the consolidation.

Q. You ship chiefly by the Santa Fe, do you?

A. Yes, sir.

Q. Have you any special reason for shipments by the Santa Fe?

A. Well, service is one reason.

Q. You think they give better service that way than by the other route?

A. We can get better track of our cars. If we want a record

3087 of a car coming in transit we are always able to get it through the Santa Fe office, the passing at Kansas City and also at—well, the passing at Kansas City anyway; we always can get that, so that we know when we can look for our freight.

Q. Do you make shipments to or from Oregon points?

A. Yes, sir.

Q. How does that traffic move?

A. The westbound traffic usually moves Union Pacific care of the Oregon Short Line to Portland.

Q. How does the eastbound traffic move?

A. Most of it originates a little further north and comes in over the Northern Pacific.

Q. That is fruit, is it?

A. That is prunes and salmon.

Cross-examination by Mr. LOVETT:

Q. You mentioned one reason for preferring generally the Santa Fe. That is also largely because of some business connection between those interested in your firm and the Santa Fe? It is more of a personal nature, isn't it, Mr. Van Persyn?

A. It is to a considerable extent of a personal nature, yes, sir.

Q. Not anything that involves any reflection on the Union Pacific or Southern Pacific, or anybody, I suppose?

A. No, we don't want to cast any reflection on anybody, as far as that is concerned. We are well disposed towards the Union Pacific, only there are——

Q. But there are special reasons why you prefer the Santa Fe?

A. Yes, sir.

Q. I don't mean to ask what the reasons are.

A. No.

3088 Q. I suppose it is legitimate and proper. The shipments that you say were solicited formerly by the Southern Pacific from California were oranges, I understood you to say?

A. Yes, sir.

Q. Were they carload or less than carload?

A. Carload.

Q. Did you ever ship any that way?

A. No, sir, I don't think we ever did.

Q. Now, don't you think you are mistaken, that they solicited carload shipments of oranges by way of New Orleans? Wasn't it by way of El Paso and Texas gate-ways?

A. I think not.

Q. Did you ever know of a car of oranges moving from California to Chicago over the Southern Pacific by way of New Orleans?

A. As I say, on our own shipments we patronize the Santa Fe, and the only time that we gave that freight to the Southern Pacific was when there was a shortage of cars on the Santa Fe, and we had to load the Southern Pacific car and bring it in over the Southern Pacific, to get the equipment.

Q. Yes, but that did not come by way of New Orleans?

A. That did not come by way of New Orleans.

Mr. SEVERANCE. I presumed it was delivered to the Santa Fe at Pueblo.

Q. Well, that did not go over the Southern Pacific at all, did it?

A. Why, yes, it came in as far as Ogden, I guess, over that road. Would it not?

Q. A California shipment?

A. Yes, sir.

Q. For Chicago?

A. Yes, sir.

Q. Come over the Southern Pacific to Pueblo and then over
3089 the Santa Fe?

A. Yes, sir. Over the Southern Pacific, I believe, to Ogden, and then the D. & R. G. to Pueblo. If I am not mistaken, that is the route that we formerly used.

Q. I hadn't supposed any of it moved that way. It is very unusual, I suppose?

A. Yes, it is.

Q. You never shipped any over the Union Pacific?

A. I don't recall any coming in that way. There might have been, but I don't recall any coming that way.

Q. Would you mean to be positive that the Southern Pacific formerly solicited orange shipments from California to Chicago by way of New Orleans or by the Texas gateways?

A. Yes, sir; that is, I am positive in my own mind that is the case.

Q. Solicited by New Orleans?

A. Yes, sir.

Q. But you never shipped it that way?

A. Never shipped it that way.

Q. So, your shipments having been exclusively by the Santa Fe, you really don't know very much about the service afforded by the Union Pacific and Southern Pacific by Ogden, do you?

A. Only such cars as we shipped that way.

Q. And they were very rare?

A. They were very rare.

Q. And in cases of exceptional congestion, when the Santa Fe was not able to give you the service?

A. Why, not on account of congestion on the Santa Fe, but on account of lack of equipment in California.

Q. And you thought the Union Pacific and Southern Pacific line would be in a little better condition in that respect?

A. Yes, sir. Sometimes we found we were mistaken.

Q. That was hardly a fair comparison, was it,—to compare
3090 the Southern Pacific, in times of congestion, with the Santa Fe, when the Santa Fe could not handle it at all?

A. Well, I don't know as it would be exactly comparison as to service.

Q. How is that?

A. I should hardly consider it a comparison of service, because it was simply moved that way on account of the conditions in California; and I know at times it would have been better to have waited until we could have gotten equipment than to have had it come that way.

Q. It amounts to this, then: that as a rule, for business reasons, your firm ships its California business via the Santa Fe?

A. Yes, sir.

Q. When it does not do that it is on account of some exceptional condition, or something?

A. Yes, sir.

Q. Do you ship sometimes for delivery down in Tennessee and that region?

A. To Memphis, yes, sir.

Q. Freight moves that way?

A. Mostly canned goods—not fruit.

Q. Do you ship over the Southern Pacific to that point?

A. Southern Pacific, care of the Illinois Central at New Orleans. We shipped a car that way this year.

Mr. SEVERANCE. Where was its destination—Memphis?

WITNESS. Memphis, Tennessee, yes, sir.

(An adjournment was here taken until the morning of Thursday, March 18, 1909, at 10.30 o'clock.)

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Volume V.

(EVIDENCE FOR COMPLAINANT.)

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# TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1911

No. [illegible] 446

THE UNITED STATES OF AMERICA, APPELLANT,

vs.

THE UNION PACIFIC RAILROAD COMPANY ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF UTAH.

FILED OCTOBER [illegible], 1912.

(22896)

No. 993—In Equity.

IN THE

# Circuit Court of the United States

FOR THE DISTRICT OF UTAH.

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THE UNITED STATES OF AMERICA,
*Complainant,*

*v.*

THE UNION PACIFIC RAILROAD COMPANY; THE OREGON SHORT LINE RAILROAD COMPANY; THE OREGON RAILROAD & NAVIGATION COMPANY; THE SAN PEDRO, LOS ANGELES & SALT LAKE RAILROAD COMPANY; THE ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY; THE SOUTHERN PACIFIC COMPANY; NORTHERN PACIFIC RAILWAY COMPANY; GREAT NORTHERN RAILWAY COMPANY; FARMERS' LOAN & TRUST COMPANY; EDWARD H. HARRIMAN, JACOB H. SCHIFF, OTTO H. KAHN, JAMES STILLMAN, HENRY H. ROGERS, HENRY C. FRICK, and WILLIAM A. CLARK,
*Defendants.*

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## EVIDENCE AND PROCEEDINGS BEFORE THE SPECIAL EXAMINER.

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## Volume V.—Complainant.

WITH LIST OF WITNESSES AND EXHIBITS.

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| " " 145 | | 3232 | 1985 |
| " " 146 | | 3233 | 1985 |
| " " 147 | | 3235 | 1986 |
| " " 148 | | 3236 | 1987 |
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| " " 150 | | 3333 | 2043 |

3091 653 FEDERAL BUILDING, CHICAGO, ILL.
*Thursday, March 18, 1909—10.30 a. m.*

The hearing was resumed before the Special Examiner, the Hon. Sylvester G. Williams, at the above time and place.

Present: On behalf of the Complainant, Mr. C. A. Severance and Mr. G. E. Husted; on behalf of the Defendants, Mr. R. S. Lovett.

## WILLIAM H. CRIBBEN,

being duly sworn as a witness on behalf of the Complainant, testified as follows:

Direct examination by Mr. SEVERANCE:

Q. Where do you live, Mr. Cribben?
A. I live in Oak Park.
Q. And do business in Chicago?
A. Yes, sir.
Q. What is your business?
A. Cribben & Sexton Company, stove manufacturers.
Q. How long have you been in business here?
A. 38 years.
Q. To what parts of the country do you ship your product?
A. All over the country, west and south of New York.
Q. You ship to the Pacific coast, do you?
A. Yes, sir.
Q. How long have you been shipping to the Pacific coast?
A. About 25 years.
Q. And over what routes do you ship?
A. Over all of them, I guess—the Santa Fe, the Union Pacific and Southern Pacific.
Q. By Rock Island and Missouri Pacific?
A. Yes.
Q. Did you ever ship by boat?
A. No, sir.
Q. Never shipped around?
A. I shipped a carload of hollowware, a good many years
3092 ago, around the Horn—from here to New York and around the Horn.
Q. How does your traffic to Portland move?
A. It goes up over the Short Line, part of it; part of it Northern Pacific, and part of it Great Northern.
Q. Do you have branch houses on the coast?
A. San Francisco and Portland.
Q. Are you acquainted with Mr. Neimyer?
A. Yes, sir.

Q. How long have you known him?
A. Oh, I should say offhand, 20 or 25 years.
Q. Do you know Mr. Knight?
A. Yes, sir.
Q. Do you remember when they respectively represented the Southern and Union Pacific here?
A. Yes, sir.
Q. At that time was your traffic to the coast solicited by their solicitors?
A. Yes, both of them.
Q. By the solicitors of both of these agencies?
A. Yes.
Q. And which way was your traffic solicited by the Southern Pacific solicitors?
A. I don't know that they ever made any distinct request to have it go either way. The solicitation used to come from their office and also the connecting line. I think on two or three occasions they preferred the New Orleans or Texas on account of the long haul.
Q. And the Union Pacific, I suppose, solicited it by their only route?
A. The only line they have.
Q. Was your Portland business ever solicited by the Shasta Route?
A. On one occasion Mr. Neimyer requested that I make a shipment down to Sacramento and then up to Portland.
Q. Do you know how that happened?
A. I am of the impression now they were having some little
3093 difficulty with the Short Line or the Navigation Company; I don't remember which it was.
Q. Do you remember the existence of a boat line from Portland to San Francisco?
A. Yes, sir.
Q. Was your traffic ever solicited by that line?
A. Not from this end of the haul; it was from the San Francisco end, but we never shipped anything that way. Our representative there wrote us about it and they made a rate, but we can not afford to have our goods transferred, you know.
Q. That is, they made you a rate by——
A. By water, from Portland down.
Q. And by rail from Omaha to Portland?
A. Yes, from here to Portland.
Q. But on account of not standing the water you declined it?
A. We did not take it into consideration at all.
Q. Do you remember when that was?
A. To the best of my recollection it was along in 1893 or 1894, somewhere along there.
Q. How was the solicitation of business when these two offices were maintained? Was it frequent and active, or otherwise?
A. Oh, yes, they had solicitors out all the time for business.
Q. You remember of the offices being consolidated, don't you?

A. Yes, sir.

Q. And how has it been since then?

A. Well, I don't think it is quite so active now. We occasionally have a solicitor in, but not as frequently as we used to have.

Q. Which way, if either way, does he solicit your business
3094 now?

A. Anything we ship goes now Union Pacific or, rather, some times we ship it to Ogden over the Rio Grande; it goes out that way.

Q. That is what I wanted to get at. Is this agency soliciting the business——

A. Nothing has been said about going through the southern route at all.

Q. Since the consolidation of the agencies?

A. Yes.

Q. You have a rather large output from your establishment?

A. For our line of business, yes.

Q. That is what I mean. It is one of the large stove munufacturing concerns?

A. It is one of the largest there is in the West.

Cross-examination by Mr. LOVETT:

Q. During the time that Mr. Knight and Mr. Neimyer were both acting here, Mr. Knight was working for the Union Pacific, was he?

A. Yes, sir.

Q. And he was endeavoring to secure business for California over the Union Pacific and the Southern Pacific by way of Ogden?

A. Yes.

Q. And Mr. Neimyer, I believe you testified, or Mr. Neimyer's assistants, solicited business generally for the Southern Pacific, but you are not able to state whether they solicited preferentially for any particular route; is that true?

A. Well, I think on a few occasions Mr. Neimyer expressed a preference for the southern routes; and still it is barely possible that I may have got him mixed with some of the other solicitors.
3095 You understand that all connecting lines were also soliciting that business from here to the river and from here south.

Q. Mr. Neimyer was very glad to get the business either by way of the southern route or by way of Ogden?

A. Oh, yes, he was always perfectly satisfied.

Q. He co-operated with Mr. Knight in soliciting for the Ogden route?

A. Well, whether it happened to be Knight or any of the other lines we frequently gave it to the C. B. & Q. and the Denver & Rio Grande at Ogden, or some other line from here to the river you understand.

Q. And he would work by any of those lines by way of Ogden?

A. Always, yes.

Q. For business that way?

A. Yes.

Q. Such competition as may have existed in the matter of solicitation between Mr. Neimyer and his agents on the one hand and Mr. Knight and his on the other was as by the Union Pacific-Southern Pacific line by way of Ogden and the other lines of the Southern Pacific?

A. I don't quite get that.

Q. Mr. Severance asked you something about some competitive solicitation between Mr. Knight and Mr. Neimyer. They were both working for the Ogden route.

Mr. SEVERANCE. That is not what he said.

Mr. LOVETT. Isn't that what he said?

Mr. SEVERANCE. You misunderstood him. I thought you were endeavoring to repeat what he had said.

Mr. LOVETT. I am repeating what I understood you to say. You asked about competitive solicitation between Mr. Knight and Mr. Neimyer, as I understood.

3096 WITNESS. Why, they both were frequently soliciting for the same business, in fact most all of the time.

Q. To get it for the line by way of Ogden, and Mr. Neimyer by the southern routes?

A. Mr. Neimyer was not particular of course from this territory. Mr. Neimyer wanted it for the Southern Pacific.

Q. Either by way of Ogden or the southern?

A. Yes, either way.

Q. Yes, that is the point. The three lines for California business at that time in the west were the Santa Fe, the Southern Pacific line by way of El Paso and New Orleans, and the Southern Pacific-Union Pacific line by way of Ogden?

A. Yes.

Q. With reference to this shipment to Portland by way of the Shasta route: did you ever ship more than once that way?

A. Oh, I didn't ship that time.

Q. You didn't ship that time?

A. No.

Q. You never shipped at all to Portland?

A. No. Mr. Neimyer happened to be in there, my recollection is, on some change that was to take place, or that we wanted to occur in the trans-continental tariff, and during the conversation he wanted to know if I could not give him some Portland business by the Shasta Route—Sacramento; but we never shipped any that way.

Q. And while you were quoted a rate once by boat line from Portland down to San Francisco you never shipped any that way?

A. We didn't ship any that way; could not transfer our goods at all.

3097 By Mr. SEVERANCE:

Q. By your statement, in answer to Judge Lovett, that Mr. Neimyer was not particular whether the traffic moved by Ogden or the south, you did not intend to withdraw your statement made on

direct examination that he solicited your business by the south to get the long haul, did you?

A. Oh, no.

Q. What you meant was, that if he did not get the long haul he was glad to get the short haul?

A. He was glad to get it for the Southern Pacific.

By Mr. LOVETT:

Q. Now wait a moment; let us understand that. Did you mean to testify that Mr. Neimyer was soliciting by the southern roads as against the Ogden route?

A. Well, I don't know how you would term that.

Q. I didn't understand you to state it quite as strongly on your direct examination as you did in answer to the question just now.

A. He expressed a preference for taking the goods by the southern route, because it would give the Southern Pacific a longer haul—on some occasions.

Q. But he solicited business by way of Ogden also, didn't he?

A. He was always ready to take it any way.

Q. He solicited generally for the Southern Pacific?

A. Yes.

Q. And if he could get the longer haul, he preferred that; if not, he would take the shorter haul?

A. Sure.

By Mr. SEVERANCE:

Q. And since the consolidation of the agencies there has been no effort made to send it by the southern route, has there?

3098 A. No. I always understood it was solicitation on the part of the Union Pacific as well as the other.

By Mr. LOVETT:

Q. There has been no objection raised to it going that way by the Southern Pacific?

A. No.

Q. You are not interested in the division of the rates between the different carriers, are you?

A. Not the slightest.

Q. As to whether the Southern Pacific or the Union Pacific get the most revenue out of it is of no concern to you? That is true, isn't it?

A. Yes, sir.

3099 J. E. RYAN.

being duly sworn as a witness on behalf of the complainant, testified as follows:

Direct examination by Mr. SEVERANCE:

Q. Mr. Ryan, what is your business?

A. Shipping clerk for the Union Wire Mattress Company.
Q. How long have you held that position?
A. About 20 years.
Q. Where is the factory of the Union Wire Mattress Company?
A. It was located at 73–83 East Erie street up till three years ago, and it is now up on Blackhawk and Cherry avenue, on Goose Island, as they call it, on the St. Paul tracks.
Q. Is the company an old concern?
A. Yes, sir.
Q. Do you happen to know how old it is?
A. About 30 odd years in business in Chicago.
Q. You have been with them 20 years?
A. Yes, sir.
Q. Have they a large output in their line of business?
A. Well, there are larger. They have a pretty good output there.
Q. It is one of the large companies of that kind, isn't it?
A. Yes, sir, one of the large ones.
Q. To what parts of the country do you ship?
A. All parts.
Q. Including the Pacific coast?
A. Yes, sir.
Q. And have you been shipping to the coast ever since you have been with them?
A. About 15 years.
Q. How does your traffic now move to the coast?
A. Well, it goes over all lines—St. Paul, some of it by Omaha, Union Pacific; some by Kansas City and the Santa Fe; some
3100 by Rock Island, El Paso, and on account of the nature of the cars, of the equipment, on the Santa Fe, up until a little while ago, we were compelled to use the El Paso route.
Q. I wanted to ask you about that. Why were you compelled to use the El Paso route?
A. Because the Santa Fe had 40-foot furniture cars and were so high and the eaves so wide that they claimed they could not take them through the snowsheds on the Southern Pacific, and the Santa Fe claimed they could not get them through their tunnel at Raton, I think it was.
Q. The Raton tunnel?
A. Yes. Consequently we are compelled when we get a car like that, to ship by El Paso, to avoid the tunnel.
Q. Up to what time was that?
A. Well, I think it was just a couple of months ago, when they sent out notice that they could handle them the other way: it isn't very long.
Q. How do your shipments to Portland move?
A. Northern Pacific and Great Northern.
Q. Did you know Mr. Neimyer and Mr. Knight?
A. Yes, sir.

Q. What soliciting agents working for Mr. Neimyer called on you for business, if any one?

A. Well, that is quite a long while. Do you mean before the merger?

Q. Yes, sir.

A. McMeans, I think his name was, or something similar to that.

Q. Do you know Mr. Arthur?

A. I do.

Q. Did he ever solicit your business?

A. No, sir.

Q. He never did?

A. No, sir.

Q. Do you know Mr. Knight?

A. Yes, sir.

Q. Was your business solicited by his agents?

A. It was.

3101 Q. And also by Mr. Neimyer's?

A. Yes, sir.

Q. Which way did Mr. Neimyer's agency solicit your business?

A. They solicited for the Southern Pacific. They would come in and if I had California business I would tell them I would give it to them. They wanted to know how I was going to give it to them. Sometimes I would give it by the Rock Island to Denver, or the Colorado Midland or the D. & R. G., and sometimes to the Union Pacific at Omaha, and they seemed perfectly satisfied whichever way I told them.

Q. If it went that way, of course they would get the same haul anyway, wouldn't they?

A. They would get the same haul.

Q. Was your business ever solicited by the southern route, by New Orleans or El Paso, in those days?

A. I don't believe it was ever solicited by any of Mr. Neimyer's people.

Q. Was it by any one?

A. I think it was solicited by the Illinois Central representative.

Q. Were you able to send any that way?

A. No, their equipment would not allow me. They did not have the large furniture cars, and consequently I did not take a chance of running short on my minimum, and I did not consider it.

Q. But your recollection is that it was the Illinois Central solicitors——

A. Yes, sir.

Q. Rather than the Southern Pacific solicitors that sought the business that way?

A. Yes, sir, Illinois Central.

Q. Do you remember the time that the Canadian Pacific had a differential rate in to San Francisco?

A. By way of Vancouver?

Q. Yes, sir.

A. Yes, sir.

Q. Did any of your traffic move that way?

A. It did.

3102 Q. Any considerable amount?

A. Oh, not very much; I think it was four or five cars.

Q. And was that spread over a considerable period of time?

A. It might have been five or six months; it may have been a little longer or a little less.

Q. Did you know about a boat line from Portland to San Francisco?

A. Yes, we have shipped that way.

Q. You have shipped that way, have you?

A. Yes.

Q. By rail to Portland and then to San Francisco by boat?

A. By rail to Portland and boat from Portland to Frisco.

Q. You are familiar with what is known as the Shasta route?

A. Yes, sir.

Q. Up north?

A. From Frisco to Portland?

Q. Yes.

A. Yes, sir.

Q. Was your business ever solicited by that route—your Portland business—by Mr. Neimyer's agency?

A. Not that I can remember. I don't remember of any of it going that way.

Q. No; I asked if it was ever solicited that way; I didn't ask if you ever shipped it that way.

A. No; I don't remember of ever having shipped that way. On the line of goods we were shipping up there at that time, which was folding beds, the rates were cheaper to Portland than they were to San Francisco, and we shipped by the direct route.

Q. So, as I understand you, Mr. Neimyer and his solicitors never asked for your business by the Shasta route?

A. I don't remember of them doing so. I would not say that they ever did. I don't remember of their soliciting that way.

Q. I had a note that they had, and that is the reason I asked you the question.

A. Well, I——

3103 Q. Well, that is all; I simply wanted to know whether you recalled anything of the kind. Are you called on by the joint agency now?

A. Yes, sir.

Q. Is your business solicited?

A. Yes, sir.

Q. By what route is it solicited to the coast?

A. It is solicited by Omaha, part of it, over the Southern Pacific: and our Los Angeles business generally moves over the San Pedro or Salt Lake route.

Q. Omaha to Salt Lake, and thence to Los Angeles?

A. Yes, sir.

Q. Who solicits your Los Angeles business, if anyone, by the Salt Lake route?

A. The Salt Lake man; I can't just think of his name. Their solicitor comes in.

Q. Does he come with the Union Pacific man, or by himself?

A. He comes alone.

Q. What?

A. He comes by himself.

Cross examination by Mr. LOVETT:

Q. During the time when Mr. Knight was representing the Union Pacific separately, I believe you testified that Mr. Neimyer and his assistants also solicited for the west, that is, for the Ogden route, by any lines leading to the west. That is correct, is it?

A. I don't know whether they solicited that way, but, as I said, they were satisfied no matter what route they got it so long as they got it at Ogden.

Q. They had no preference?

A. They had no preference.

Q. You have no recollection of solicitation by the southern routes especially as against the western routes?

A. No, sir.

Q. Your business is solicited by the various lines leading
3104 from your plant to the west, is it not?

A. Yes, sir.

Q. Solicited for lines leading toward El Paso—the Rock Island?

A. Yes, sir.

Q. Your business is solicited by all of these lines leading out to the west connected with the Southern Pacific at El Paso or with the Southern Pacific at Ogden, is it not?

A. Yes, sir.

Q. You are not interested in the division of the through rate between the different carriers that participate in the haul, are you?

A. No, sir.

Q. You testified about having made some shipments by Portland, the boat line. Under what circumstances were those shipments made, and why?

A. They were made to get our goods in there, to get a better rate than we were getting to San Francisco.

Q. How was the rate made up, do you know?

A. If I remember right, the rate to San Francisco on folding beds was third class, new furniture $2.20 a hundred, and we were limited to a 40-foot car. The rate to Portland on beds, value not to exceed $12, was $1.25 a hundred, 20,000 pounds minimum, and you could use any size of a car, use a 50-foot car. We could ship to Portland for $1.25, and from Portland to San Francisco by boat for 25 cents a hundred.

Q. It was a combination of the locals, then, through Portland, that made the rate to San Francisco, which you used?

A. Yes, sir; the commodity rate to Portland and the local down.

Q. By combining the locals you were able to get a better rate than the through rate?

A. Yes, sir.

Q. And were you also able to avoid the restriction in reference to minimum weights, etc.?

3105 A. No; the minimum was 20,000 pounds, but we could get so much more goods in a 50-foot car; according to the nature or construction of the car, being a little higher, we could pile them in more compactly.

Q. How long did that condition continue?

A. Oh, about seven or eight months.

Q. And when was that?

A. I could not now say the year; about ten or eleven years ago.

Q. Wasn't it longer than that—back about 1893 or 1894?

A. It may have been. I have no records to show just what years it was in.

Q. That was a condition which existed temporarily, and during its existence you had the opportunity to ship in that way?

A. Yes, sir.

Q. You haven't shipped any since in that way, have you?

A. Well, we shipped down there, and what stopped it down there was that there was one car went down there that did not go on the regular boat that I had been used to shipping on before; it went down, I think, on a Southern Pacific boat, and they got it down to San Francisco and set the rate up to $2.20 a hundred.

Q. And you paid it, did you?

A. We paid it, and put in a claim for the difference.

Q. Did you get it back?

A. We did—after two years.

Q. When was that?

A. That was about that time, maybe twelve years ago, maybe a little longer than that. I would not be in a position to state the exact year.

Q. So, after all it went into the hands of the Southern Pacific?

A. That is the way I sized it up.

Q. When the shipments went over the Union Pacific to Cali-

3106 fornia they had to pass over the Southern Pacific too, hadn't they?

A. Yes, sir.

Q. How long since you shipped anything to San Francisco by way of Portland and boat line?

A. 10 or 12 years.

Q. Not since the time that you mention?

A. Well, after they set that up at Portland, as I said, I shipped four or five cars via the Canadian Pacific after that, over by way of Vancouver.

Q. That shipment did not go by way of Portland?

A. No.

Q. I was asking particularly about the Portland line?
A. Yes. That was the last of it.
Q. That was 10 or 12 years ago?
A. Yes.
Q. You are not able to fix the exact date?
A. I could not say just what year it was.
Q. And after that you made some shipments by the Canadian Pacific?
A. Yes, sir.
Q. To Puget Sound and thence down by boat?
A. Yes, sir.
Q. How long did that condition continue?
A. Oh, about four or five months.
Q. And during what year was that, do you remember?
A. That was the same year; it was all in one year.
Q. All in one year?
A. Yes, sir.
Q. And that was during some period of demoralization of rates, wasn't it?
A. No, there was no demoralization of rates. I think it was a regular published tariff into Portland, but the San Francisco had no commodity on folding beds.
Q. But during the time you shipped by the Canadian Pacific there was a differential in, wasn't there?
A. Yes, sir.
3107 Q. And your freight moved how from here?
A. It moved over the North-Western to St. Paul, via St. Paul to Winnipeg, and the Canadian Pacific.
Q. To Seattle?
A. To Vancouver.
Q. To Vancouver, and then by boat down?
A. By boat down to San Francisco.
Q. That was by differential?
A. Yes, sir.

3108 BUELL B. DUTTON.

being duly sworn as a witness on behalf of the Complainant, testified as follows:

Direct examination by Mr. SEVERANCE:

Q. Mr. Dutton, where do you live?
A. Oak Park.
Q. What is your business?
A. I am with the Chicago Iron Store.
Q. What is their business?
A. Heavy hardware.
Q. What is your connection with them?

A. I look after their freight matters.
Q. How long have you been with that company?
A. Since we were incorporated, the 1st of July, 1908.
Q. Previous to that what was your business?
A. I occupied the same position with Kelley Maus & Company.
Q. How long had you held that position?
A. I went to work for Kelley Maus in 1883.
Q. And continued until 1908?
A. With the exception of one year, in 1884, I think, when I was up at Racine with the Goodrich Transportation Company; I came back in 1885.
Q. Did Kelley Maus & Company, during the time you were with them, ship to the Pacific coast?
A. Yes, sir.
Q. Over what routes, if you remember?
A. The Santa Fe, the Rock Island, and the Burlington.
Q. Did you ship any freight to California by New Orleans?
A. I won't say positively, but I have a recollection of shipping at one time three cars of iron that way. But I can't prove it.
3109 Q. You can't place the date?
A. No, sir.
Q. How did your business to Portland move?
A. We generally gave it to the "Q," and then took it up over the Short Line.
Q. Had you special reasons at that time when you were with Kelley Maus for shipping over the C., B. & Q.?
A. Our principal reason for shipping over the "Q" was that our lumber yard was out on their tracks and they always treated us right in switching matters and accommodated us, and we worked with them because they worked with us.
Q. Did you give more or less business to the D. & R. G.?
A. Yes; in fact, it was my intention that most of the business which went out over the "Q" should go to the D. & R. G.—the Denver, Rio Grande & Western.
Q. What was the reason for that, if anything?
A. Because the general agent here was a personal friend of mine.
Q. In your experience in the shipment of traffic does not that element control a good deal of traffic—the matter of the personal relations between the agencies and the shippers?
A. Well, it does more or less. If a certain agent is a personal friend of yours and he can get the goods to destination, you would naturally give him the benefit of it—at least I do. All things being equal, you understand—rates and everything else.
Q. I am speaking about when business is solicited at equal rates.
A. Yes, sir.
Q. Did you know Mr. Knight?
A. Yes, sir.
Q. And Mr. Neimyer?
A. Yes, sir.

Q. What soliciting agents representing these gentlemen
3110 called on you for business previous to the amalgamation of the agencies?

A. Mr. Harmon, of the Southern Pacific, and Mr. Needham, of the U. P., used to call on me.

Q. How was carload business solicited to the coast by the Southern Pacific at that time?

A. I don't know as there was any special routing. They were after the business, and I would frankly tell them it was going out Santa Fe, or going out Rock Island, or going out over the "Q" and the D. & R. G., as the case may be; and, as I stated before, I don't remember of but once that ever I was asked to ship via New Orleans.

Q. Oh, you shipped that way in response to solicitation, at that time?

A. Yes, once; that is my recollection of it.

Q. You don't recall that Mr. Neimyer's agency solicited the business that way except that one instance?

A. That is all.

Q. Did any of Kelley Maus' business move to the coast from points in the east without coming to Chicago?

A. We used to ship iron from Pittsburg by New York and around the Horn.

Q. Around the Horn?

A. Yes, sir.

Q. Did any of that ever move by the Morgan line?

A. I think that was the boat line we used, yes.

Q. Well, that would not be around the Horn; that would be by the Gulf.

A. No, the Mallory—which was it?

Q. The Mallory Line and the Morgan line are both Gulf lines to Texas, and then by rail.

A. Well, the stuff used to move around the Horn; I won't say which line.

Q. It moved around the Horn, did it?

A. Yes, sir.

Q. All the way by water?

A. Yes, sir.

Q. Do you remember whether you ever shipped any by Panama?

A. No, sir, not that I know anything about.

3111 Q. Since the consolidation of the Union Pacific and the Southern Pacific agencies, does the agent or solicitor of the joint agency call on you, soliciting business?

A. Oh, occasionally he comes in.

Q. Is there any difference in the activity of that solicitation from what it used to be when they had two agencies?

A. Oh, I can't say as to that.

Q. I am speaking about the time when you were with Kelley Maus Company.

A. I don't think that they are quite as active now as they were then.

Q. Which way did they solicit your business after the agency was consolidated?

A. I couldn't say.

Q. You had been sending all the business you could, as I believe you said, by the Burlington and the D. & R. G.?

A. Yes, sir.

Q. And did you continue to do that just the same after that consolidation as before?

A. Yes, sir.

Q. And was that known to Mr. Neimyer's and Mr. Knight's agencies?

A. I presume it was.

Cross-examination by Mr. LOVETT:

Q. I believe you testified, Mr. Dutton, that you recall only one instance where they solicited business by way of New Orleans?

A. Yes, sir.

Q. You are not entirely certain of that?

A. I am not certain of that, no, sir.

Q. They would come in and ask for business and be glad to get it either way they could?

A. Yes, sir.

3112 Q. I am speaking of the time when Mr. Neimyer was representing the Southern Pacific and Mr. Knight the Union Pacific.

A. Yes, sir.

Q. You say you do not think the solicitation by the joint agency is quite as active since 1901 as the solicitation by both was before?

A. No, sir, I do not.

Q. How do the shipments of the house that you are with now, to the Pacific coast, compare with the shipments of Kelley Maus & Company?

A. We don't do anything in California now at all.

Q. Well, there isn't as much occasion for them to call on you now as before?

A. No, sir.

Q. How long have you been with the present house?

A. You mean the Chicago Iron Store?

Q. Yes.

A. Since they were incorporated, the 1st of July, 1908.

Q. Were you with Kelley Maus & Company up to that time?

A. Yes, sir.

Q. Your California business was solicited by all the lines leading west and southwesterly, wasn't it?

A. Yes, sir.

Q. Were you ever solicited by the Illinois Central for business for California by way of New Orleans?

A. I couldn't say, sir; I don't remember.

Q. Can you be positive whether this solicitation by New Orleans that you recall was by a Southern Pacific man or an Illinois Central man?

A. I can't be absolutely positive, no, sir.

Q. Did you ever ship any to California by way of El Paso?

A. I didn't pay particular attention to it. If we gave it
3113 to the Rock Island I let the Rock Island take it any way they wanted to.

Q. And you did give some to the Rock Island?

A. Yes, sir.

Q. You are not interested in the division of the through rate between the carriers participating in the haul, are you?

A. No, sir.

By Mr. SEVERANCE:

Q. Just one question to refresh your recollection. Have you any recollection of Mr. Neimyer, or his soliciting agents, soliciting your carload business by way of New Orleans, stating in that connection that they did not care for less than carload business that way?

A. No, I can't say that.

Q. You don't remember that?

A. No, sir.

3114 DAVID N. BARKER,

being duly sworn as a witness on behalf of the Complainant, testified as follows.

Direct examination by Mr. SEVERANCE:

Q. Mr. Barker, where do you live?

A. Evanston.

Q. What is your business?

A. I am the manager of the Chicago house of Jones & Laughlin Steel Company.

Q. That is the Jones & Laughlin Steel Company of Pittsburg?

A. Yes, sir.

Q. Are you acquainted with Mr. Ogden, of Pittsburg?

A. Yes, sir.

Q. He testified in this case, and said he was the traffic manager of the Jones & Laughlin Company. He is the man I mean. You are acquainted with him, are you?

A. Yes, sir.

Q. How long did you say you had been the manager of the Chicago branch?

A. Between 14 and 15 years.

Q. Previous to that time were you connected with Jones & Laughlin?

A. Yes, sir.

Q. Whereabouts?

A. Chicago.

Q. In what capacity?

A. I commenced with them the 1st of January, 1875, as a salesman, and have been with them ever since in various capacities.

Q. That company ships to the Pacific coast both from Pittsburg and from Chicago?

A. Generally from Pittsburg; occasionally from Chicago.

Q. Did you know Mr. Knight and Mr. Neimyer?

A. Yes, sir.

Q. When they represented the Union Pacific and the Southern Pacific railroads here?

A. Yes, sir.

3115 Q. Did those gentlemen or their representatives solicit coast business from you?

A. Yes, sir, years ago.

Q. That is what I mean; when the offices were separate?

A. Yes, sir.

Q. And which way did Mr. Neimyer or his agency (I don't know whether it was he personally or his soliciting agency) solicit the traffic for the Southern Pacific?

A. It was usually, according to my recollection, by way of El Paso.

Q. Did they solicit it by Ogden?

A. I think not.

Q. And the Union Pacific by the Missouri river, I suppose?

A. Yes, sir.

Q. How does your traffic move to the coast from Chicago?

A. Well, there are various lines—by the Santa Fe, by the Southern Pacific by way of El Paso, or by way of Omaha and Ogden.

Q. How does your business to Portland move, if you have shipments to Portland?

A. Usually by the northern routes—Great Northern and Northern Pacific, and sometimes over the Union Pacific and Short Line.

Q. Did you know Mr. Dickinson?

A. I know several Mr. Dickinsons.

Q. I mean do you know Mr. Dickinson who is connected with Mr. Neimyer's agency.

A. Yes, sir. Mr. Dickinson was formerly with the Union Pacific, and afterward, I think, represented Mr. Neimyer's office.

Q. After Mr. Neimyer took charge of both offices?

A. Yes, sir.

Q. Did Mr. Dickinson, after the consolidation of the agencies call on you, soliciting business?

A. Yes.

3116 Q. And what did he say then as to the way he wanted to route it?

A. I understood that it made no difference to him which way it was routed.

Q. So long as it went over their line?

A. So long as it went over the Southern Pacific line or the Union Pacific.

Cross-examination by Mr. LOVETT:

Q. Mr. Barker, did I understand you to testify that Mr. Neimyer solicited business for California by way of El Paso and not by way of Ogden?

A. I have no recollection of his ever soliciting any business by way of Ogden. I ought to explain, perhaps, in connection with that, that the Chicago house never had charge of San Francisco business from the mill; we did have Southern California, and the business that went that way was solicited by the southern route.

Q. By way of El Paso?

A. Yes, sir.

Q. But you have no recollection of any solicitation for San Francisco business by Mr. Neimyer?

A. No, sir.

Q. Isn't all of the California business of your firm routed from Pittsburg?

A. It is now, and has been for nearly ten years.

Q. It has not been routed from Chicago?

A. Not from the Chicago office, no, sir.

Q. There has been very little solicitation of you in connection with that business, then, in recent years?

A. For any of the mills direct.

Q. Now, what kind of business is it that you ship to California from here? You have no mill here, have you?

3117 A. No, sir. It is the same class of goods. We have a warehouse stock here.

Q. But shipments of that kind from here to California are very small, aren't they?

A. Very light in proportion to the mill business.

Q. You understood, I presume, when Mr. Knight was soliciting business for California for the Union Pacific, that that business would also pass over the Southern Pacific from Ogden in order to get to destination?

A. No, I don't understand that Mr. Knight solicited for the Southern Pacific.

Q. For the Union Pacific?

A. Oh, yes, for the Union Pacific, yes, sir. I understand that, yes, sir.

Q. No other way for the Union Pacific to get to California except over the Southern Pacific?

A. No.

Q. Is your business solicited by all the lines leading to the west?

A. Yes, sir.

Q. And it would go either of the three ways; either over the Southern Pacific by way of Ogden and the connections of the South-

ern Pacific east, or over the Southern Pacific by way of El Paso, or over the Atchison?

A. Yes, sir.

Q. Those are the three lines over which it would go to Califarnia?

A. Yes.

Q. And all the connections of those lines extending easterly solicit your business?

A. Yes, sir.

3118 C. V. GALLAGHER,

being duly sworn as a witness on behalf of the Complainant, testified as follows:

Direct examination by Mr. SEVERANCE:

Q. Where do you live, Mr. Gallagher?

A. Chicago.

Q. What is your business?

A. Contracting freight agent of the Soo Line and Canadian Pacific Railroad.

Q. How long have you been in that position?

A. Four years.

Q. In Chicago?

A. Yes, sir.

Q. Previous to that what was your business?

A. I was connected with the Union and Southern Pacific at Kansas City.

Q. What was your position at Kansas City?

A. Chief clerk in the general freight office.

Q. Who was your superior officer there?

A. H. G. Kaill.

Q. And how long were you there?

A. Four years.

Q. Did that office have charge of the business out of Kansas City, of the Union Pacific?

A. Yes, sir.

Q. That took you back to what year? You say four years here and four years there. That would be eight years ago you went there?

A. I think I was there pretty near five years. In 1900 or 1901 I went there.

Q. With the Union Pacific?

A. With the Union Pacific, yes, sir.

Q. Was it originally the Union Pacific when you first went there?

A. Yes, sir.

Q. And was the office consolidated with the Southern Pacific while you were there?

A. Yes, sir.

Q. Do you remember how long you had been there before the
3119 consolidation?

A. Not very long—a year or a year and a half, or probably two years. I haven't got the dates fixed in my mind exactly.

Q. Who represented the Southern Pacific in Kansas City prior to the consolidation?

A. Mr. Cary.

Q. What was his title, if you remember?

A. I think he was commercial agent.

Q. Does Pacific coast business move out of Kansas City?

A. Yes, sir, some.

Q. Business that is controlled there?

A. Yes, sir.

Q. Previous to the consolidation or joint control of the Union Pacific and Southern Pacific, were your office and Mr. Cary's office both seeking that business?

A. Yes.

Q. And which way was the Southern Pacific endeavoring to send that business to the coast—to California points?

A. I don't know just how they endeavored to send it. I know what we were doing, that is all.

Q. Well, do you know how they did send it?

A. No, sir, I don't.

Q. You don't know how Southern Pacific business moved?

A. No, sir, not exactly.

Q. You didn't see it move, I understand, but from your knowledge of the traffic situation in Kansas City, you knew, didn't you, how traffic was moving over the Southern Pacific to California?

A. Well, I didn't pay a great deal of attention to it, no, I couldn't say that I knew very much about it.

Q. I will ask you direct. Did traffic move over the Southern Pacific by way of their Texas junction points, from Kansas
3120 City?

A. Well, I suppose it did. I didn't see it move. I had reports that it did, that is all.

Q. That is what I wanted to know. That came to your knowledge in the course of your business as a railroad man there, didn't it?

A. Yes, sir.

Q. How far was their nearest Texas junction point from Kansas City—the Southern Pacific?

A. Well, they had Sherman, Dennison—those were the northern Texas junctions.

Q. Over what line did the traffic move from Kansas City to be picked up by the Southern Pacific at Sherman or Dennison?

A. Frisco and M. K. & T.

Q. Can you give an estimate of about how far that is from Kansas City?

A. Oh, I don't know; it might be 600 miles.

Q. How were you endeavoring to send California business from Kansas City—your office?

A. When I was with the Union Pacific?

Q. Yes, sir.

A. Via Ogden.

Q. After the consolidation of the agency there at Kansas City, how did that joint agency endeavor to work California business?

A. Well, first, preferentially, over the 100 per cent route from Kansas City via Ogden, Union Pacific and Southern Pacific.

Q. That is, you mean 100 per cent of your two lines together?

A. Yes, sir.

Q. Treating it as one line?

A. Yes, sir.

Q. What class of traffic moved from Kansas City to the coast?

A. Manufactured products and meat—such as furniture, and things like that.

3121 Q. How large an agency did the Union Pacific maintain there before the consolidation?

A. They had three traveling men and two city contracting freight agents—soliciting freight agents.

Q. How large an agency did the Southern Pacific maintain there?

A. They had two men.

Q. Was the D. & R. G. represented in that territory?

A. Yes, sir.

Q. Were they working coast business too?

A. I presume they were.

Q. In connection with what lines?

A. You mean what terminal lines or delivering lines?

Q. What initial lines out of Kansas City?

A. They generally preferred the Missouri Pacific and the Rock Island.

Q. To Denver?

A. And Santa Fe, yes; to Colorado junctions, Pueblo and——

Q. In addition to westbound traffic from Kansas City to the coast was there any eastbound California traffic controlled there?

A. Oh, there was some, but not a great deal.

Q. What class of traffic?

A. Dried fruit, I imagine, is about all there was controlled there.

Q. Previous to being in Kansas City, Mr. Gallagher, what railroad experience, if any, did you have?

A. I was with the Union Pacific in Omaha, in the traffic manager's office.

Q. Whose office?

A. J. A. Munroe.

Q. What was your position in Mr. Munroe's office?

A. I worked up from junior clerk to chief rate clerk.

Q. How many years were you there?

A. About eight years.

Q. That would be from what year to what year?

3122 A. From 1893 to 1900.

Q. I asked Mr. Knight about a matter yesterday. I don't know whether it ever came to your knowledge or not. He didn't remember anything about it. Do you remember of any time during the receivership of the Union Pacific and Oregon Short Line that the D. & R. G. was working Portland business in connection with the Short Line as against the U. P. in connection with the Southern Pacific by Sacramento, the Shasta Route?

A. There were tariffs in effect that way. I suppose they worked it both ways.

Q. There were tariffs in effect that way?

A. I don't know. I wouldn't say positively. The Shasta Route occasionally had shipments by the Union Pacific and Ogden.

Q. Do you remember during this time that I was speaking of, during the time of the receivership, of rather active competition and controversy existing where the D. & R. G. were working in connection with the Oregon Short Line (which had a separate receiver from the Union Pacific) on Portland business as against the Southern Pacific Sacramento line, or Roseville Junction, and the Union Pacific?

A. There was competition, yes.

Q. At that time there was quite a spirited competition for a while, of that character, wasn't there?

Mr. LOVETT. Don't be quite so leading, Mr. Severance.

Mr. SEVERANCE. Yes, that is rather leading.

Q. What was the nature of that competition? Was it active or otherwise, if you know?

A. All I know is that business moved via Ogden and the Shasta Route to Portland.

3123 Q. Well, was it at the time I speak of, when the D. & R. G. were working with the Oregon Short Line?

A. You are getting back pretty far when you are talking about the receivership of the Short Line. I was only a young fellow then, 18 or 20 years old probably.

Q. Well, you said you were the chief rate clerk when you left——

A. Probably not at the time you speak of.

Q. I know, but in 1900 you said you were chief rate clerk.

A. Yes, sir. When was the receivership of the Short Line?

Mr. SEVERANCE. The receivership was wound up in 1897, wasn't it?

Mr. LOVETT. It commenced in 1893 and wound up in March, 1896, I think.

Mr. SEVERANCE. I tried to get Mr. Gallagher's recollection because he was there in Mr. Munroe's office.

Q. You don't remember much about it except what you have stated, that there was competition, and that the business moved that way?

A. I know that some business moved that way. It is pretty long ago. That is 13 or 14 years ago.

Q. Yes. I suppose you have thought about a few things since then.

A. Probably.

Q. Do you have any recollection of the D. & R. G. figuring in that competition in connection with the Oregon Short Line at that time?

A. I remember when the receivership came on that the Union Pacific did have some trouble with the Short Line on account of the opening of the Provo and Ogden gateway.

Q. Well, I think we are getting warm now. That is what I was trying to get at. I don't want to lead you, Mr. Gallagher, but I want to develop this fact, if it is a fact. When that
3124 trouble came on——

Mr. LOVETT. If he knows anything about it let him tell it, but don't help him too much.

Q. As Judge Lovett suggests, just tell your recollection, if you have any, of that trouble and what was done by all parties, as best you can recollect.

A. I remember that they put on a special train, called the Portland Special, on account of trying to whip the Short Line into giving better divisions, I think, or taking away their divisions. They put a train on and handled quite a few cars daily, via the Shasta Route to Portland.

Q. How long did that keep up, if you remember?

A. I don't know.

Q. Have you any recollection on the subject?

A. No. It may have been a day, it might have been a month. I don't know how long it kept up. I just remember it as one of the sensations of that period, that is all.

Q. Would it be your best judgment that it lasted more than a day?

A. Why, yes. I don't think it lasted very long.

Mr. LOVETT. Evidently he has no distinct recollection about it. You ought not to press it.

Mr. SEVERANCE. I asked Mr. Knight yesterday and he could not remember about it, and I thought maybe Mr. Gallagher would as he was there in the office.

Mr. LOVETT. Mr. Gallagher was a much younger man then than he is now.

Mr. SEVERANCE. Well, they have better memories.

Mr. LOVETT. Not for those things though.

3125 Q. Mr. Gallagher, when you were with the Union Pacific, (I don't know that you know anything about this either, but we will see) did you know anything about the movement of lumber to the east from Coos Bay region to California?

A. Not very much, no.

Q. Well, how much?

A. When you are working in an office you see correspondence and hear people talk, and those things come about. You don't know whether they are true or not. Sometimes it is gossip and sometimes it isn't.

Q. I am not asking you about any idle gossip. I want to know whether or not you learned that lumber moved that way and, if so, how it moved.

A. As a rate clerk I knew that lumber was moving out of Coos Bay via San Francisco and steamboat and I knew they got 10 cents That is as much as I knew about it. I knew the division of the rate that was in.

Q. That was lumber that came east over the Central and Union Pacific?

A. Yes, sir.

Mr. LOVETT. Why not say Southern?

Mr. SEVERANCE. Yes, I will call it Southern Pacific.

WITNESS. Southern.

Mr. SEVERANCE. Over the Union Pacific and Southern Pacific.

Q. That is, lumber came out of Coos Bay to San Francisco by boat and then east over the rail lines?

A. I don't know whether it did. I know the rates were in.

Q. The rates were in?

A. Yes.

Q. That is what I wanted to find out. And the boat line got ten cents a hundred?

A. I think that was the proportion.

Mr. SEVERANCE. That develops, you see, Judge, why you
3126 bought the Coos Bay steamboat.

Mr. LOVETT. I see. I never knew before.

Mr. SEVERANCE. I had a hunch there was something of that kind, and I thought I would find out.

Q. Do you know whether the Santa Fe had those rates in too, in connection with these boats up to Coos Bay?

A. I don't know that, no.

Q. How long ago was it that you knew about that rate? Was that when you were at Omaha as rate clerk?

A. Yes, sir.

Mr. LOVETT. I guess that was another one of the sensations.

Mr. SEVERANCE. No, that is not big enough to make a sensation.

Q. Now, Mr. Gallagher, you said you were rate clerk quite a long time. From whom did you get your instructions in putting in, arranging, or whatever you had to do with putting in transcontinental rates?

A. We didn't have anything to do with that in our office at all.

Q. Where did that come from? That is what I want to get at.

A. That was committee work, done by Mr. Munroe and Mr. Wood and Mr. Garrett, trans-continental association freight bureau. I didn't have anything to do with that. I simply quoted the rates as they came to me.

Q. What was Mr. Munroe's office?

A. Freight traffic manager.

Q. And what was Mr. Wood?

A. General freight agent.

Q. And what was the other gentleman's name?

A. Assistant general freight agent.

Q. At Omaha?

A. Yes, sir.

3127 Q. And they were a committee, you say, to take up——

A. A committee?

Q. You said it was committee work?

A. Yes, sir.

Q. I say those gentlemen made up the committee on behalf of the Union Pacific, did they?

A. At different meetings, one or the other would attend the meeting as a representative of the Union Pacific.

Q. At that time how were the trans-continental rates made? Were they made by conference?

A. I imagine they were, yes.

Q. In those meetings that you say these gentlemen attended?

A. I know they went there; I didn't know they attended.

Q. There is a matter I was examining Mr. Knight about yesterday, which is the question of making changes in rates. Did the matter of proposed changes in rates to be submitted to these meetings come under your observation at times?

A. Occasionally, yes.

Q. Now, if some man wanted to establish an industry or get a rate by which he could move a product, we will say, to the coast, and the matter was one in which the Union Pacific was interested, what would be the course that the matter would take in the natural order of things in order to get a rate in to this man—any change made, a change in classification, or anything of that sort?

A. You mean if some individual required a rate?

Q. Yes, on some class of traffic. What is the natural course taken in putting in the rate, or changing the rate, or changing the classification?

A. The most usual way, the customary way, was that the party interested in the rate went to the Union Pacific and asked to have a rate put in; he probably canvassed all the trans-continental lines and tried to get them favorable to the change, and when it came up in the trans-continental meeting they all voted on it. That was the report we had.

Q. The published trans-continental rates, of course, were the same by all routes?

A. Supposed to be, yes, sir.

Q. Well, they are as a matter of fact. And changes in rates were brought about in about that way, as you state?

A. That was the customary way, yes.

Q. And that might be initiated by any of the trans-continental lines, I suppose?

A. Yes.

Q. Is that right?

A. Yes, sir.

3128 Q. Mr. Gallagher, what do you know about a differential over the Union Pacific and its eastern connections by the Old Dominion Line of steamers from New York, or the line down to

Savannah, into Colorado and Utah common points, through Kansas City?

A. Oh, I know there was such a differential. I saw published tariffs and quoted from them. That is all I know about it.

Q. Whatever business moved over that would not be controlled in Kansas City, when you were there?

A. No.

Q. It would be controlled where—in New York, or the destination?

A. Probably be controlled in Colorado, Utah, or the originating point.

Q. But that was something that you would have nothing to do with?

A. No, sir.

Q. As a rate clerk your duties extended to the whole of the Union Pacific system, didn't they?

A. Yes, sir.

Q. And you recall those rates being in?

A. Yes, sir.

Q. Do you remember whether those rates were the same as the differential rate in force over the Morgan line and Southern Pacific and its connections?

A. I don't know that they were the same, exactly.

Q. Do you know whether they were substantially the same?

A. I imagine they were; yes.

Q. Is that your recollection?

A. Yes.

Q. And was that differential tariff in force during all the time that you were in the rate department?

A. Yes, sir.

Q. Did you know anything about the movement of traffic that way at all?

3129 A. No, sir. I do not ever remember of a shipment. That is, it never came under my personal observation.

Q. Never came under your personal observation?

Mr. LOVETT. What shipment is that?

Mr. SEVERANCE. By this differential line. He said it was controlled at either Denver or New York, when he was in Kansas City.

Cross-examination by Mr. LOVETT:

Q. To what time did you refer in testifying about these differential rates, Mr. Gallagher? When was that?

A. I don't know what years. I just remember that the tariffs were in.

Q. Can't you approximate the years?

A. Oh, I presume from 1894 to 1900, some time in there; some part of that period.

Q. Do you know whether they were ever taken out or not?

A. I don't remember that they were. I just have a general recollection that those tariffs were in, that is all.

Q. That recollection is very vague, is it not?

A. No. I can see the tariffs in my own mind right now—the way they were stamped and everything.

Q. Do you remember what the differential was?

A. No, I don't.

Q. Do you remember what the differential was by the Gulf route, via New Orleans and Galveston?

A. No, I don't know exactly what it was; no, sir.

Q. You don't remember the width of the difference between them, do you?

A. No, sir, I don't exactly.

3130 Q. You referred just now to rates being made, or there being some committee on rates, and you having to do only with the quoting of the rates after they were fixed. You mean, I suppose, that joint rates are made in conference by the lines participating in the joint rate, don't you?

A. I understood they were made that way. I don't know. I wasn't at the meetings.

Q. That is, the Union Pacific was merely an intermediate carrier, was it not, having the line from the Missouri River to Ogden?

A. Intermediate carrier on transcontinental traffic, yes, sir.

Q. Yes; on transcontinental traffic. And it had to confer with its connections in order to make transcontinental rates, hadn't it?

A. Naturally, yes.

Q. How many men did you say the Union Pacific had at Kansas City before the amalgamation of the agencies?

A. The Union Pacific?

Q. Yes. I understood you to say five.

A. Oh, do you mean soliciting men?

Q. Yes.

A. Yes, that is right.

Q. And the Southern Pacific had two, you say. Did you mean two soliciting men?

A. Yes; that is all they had in their office.

Q. That included their office man and the soliciting man?

A. Well, they worked in dual capacities. Part of the time they were in the office, and other times they were soliciting business.

3131 Q. And, as you understand, they were soliciting business for California by way of the Texas junctions?

A. I understood they were, yes.

Q. What other lines were soliciting business by way of El Paso and Texas junctions for California?

A. Well, the Missouri Pacific and the Rock Island.

Q. The Missouri, Kansas & Texas and the Frisco?

A. The Frisco, yes.

Q. And that which the Missouri Pacific controlled, and much of that controlled by the others, went over the Texas Pacific to El Paso, didn't it?

A. Yes, sir.

Q. That was the short line for California by way of El Paso, wasn't it?

A. Yes, sir.

Q. The Texas Pacific to El Paso?

A. Yes, sir.

Q. The Southern Pacific never had any line north of Denison and Fort Worth, Texas, so far as you knew, had it?

A. No, sir.

Q. At that time there were three lines, and only three lines, from California, weren't there—the Southern Pacific line by way of El Paso, the Atchison, and then the Southern Pacific line up to Ogden and the connections east?

A. Where to? What territory?

Q. I mean lines leading from California eastwardly.

A. Yes, sir, that is all. You mean railroad lines?

Q. Yes.

A. Yes, sir.

Q. The Union Pacific, the office that you were connected with, was working California business exclusively by Ogden, was it not?

A. That is, up to the time of the merger.

3132 Q. Yes, up to the time of the merger; they were working California business exclusively by way of Ogden?

A. Yes, sir.

Q. Everything that you secured for California through the Kansas City office, while you worked in the Kansas City office, passed over the Southern Pacific from Ogden to destination, did it not?

A. Yes, sir.

Q. There were a good many other lines soliciting freight in that same direction, weren't there—that is, for California by way of Ogden?

A. Yes, sir.

Q. If some of them got it the Union Pacific would not get it; isn't that true?

A. Yes, sir.

Q. Such business as the Denver & Rio Grande would get would not pass over the Union Pacific ordinarily, would it?

A. Not ordinarily; no.

Q. Such business as it interchanged with the Rock Island, the Burlington, or the Missouri Pacific, would not pass over the Union Pacific?

A. No, sir.

Q. But it would pass over the Southern Pacific?

A. Yes, sir. The Rock Island business out of Kansas City would pass sixty miles over the Union Pacific on a car haul basis, that is all.

Q. Well, that is a joint trackage arrangement?

A. Yes, sir.

Q. It would not appear in the Union Pacific accounts?

A. No, sir.

Q. It would run over the tracks, but they might as well not have had it, so far as the Union Pacific is concerned?

(No response.)

3133 Redirect examination by Mr. SEVERANCE:

Q. Mr. Gallagher, did some business move Union Pacific to Denver from Kansas City and then by the D. & R. G.?

A. Yes, sir.

Q. What was the division of the through rate from the Missouri River to San Francisco between the Union Pacific and Southern Pacific, when you were with the Union Pacific?

A. Via Ogden?

Q. Yes.

A. It was fifty-four per cent. to the Union Pacific and forty-six per cent. to the Southern Pacific.

Q. The rates from the Missouri River to San Francisco were just the same by all routes—all these different routes that you have mentioned—weren't they?

A. All rail routes, yes.

Q. That is what I mean—the all rail routes. What was the division to the Southern Pacific if the traffic was handed to them at these northern Texas junction points that you mentioned?

A. I don't know exactly the figure.

Q. Do you know approximately?

A. Do you mean on a shipment out of Kansas City?

Q. Yes. Missouri points; any Missouri River points. I mean what was their percentage of the Missouri River rate. You say via Ogden it was forty-six per cent. Now, what would it be if the traffic came down around?

A. You mean from Sherman and Denison, from Kansas City?

Q. Yes.

A. I think the line north of Sherman and Denison got twenty-four or twenty-five per cent; something like that.

3134 Q. So that the difference to the Southern Pacific, in routing traffic by the Texas junctions rather than by Ogden, would be the difference between forty-six per cent in the case of Ogden and either seventy-five or seventy-nine per cent by northern Texas points?

A. Yes, sir.

Q. Well, that seems a substantial reason why they should try to work their business that way?

A. I don't know that those are the divisions, of course, but I have a recollection that way.

Q. That is your best recollection, is it?

(No answer.)

Recross-examination by Mr. LOVETT:

Q. Are you sure about those figures, as to the division for the Southern Pacific, Mr. Gallagher?

A. No, sir.

Q. You were asked about what the divisions were by way of Denison and Sherman.

A. Yes, sir.

Q. Do you know what they would be by way of El Paso?

A. I think they are fifty-two and forty-eight.

Q. Fifty-two to whom? The Southern Pacific?

A. I don't know exactly; I think it was forty-eight per cent to the Southern Pacific, or possibly fifty-two per cent. Those divisions are fixed in a rate clerk's mind. He remembers them; he has so many in his mind. I just associate those figures with the El Paso gateway.

Q. You don't want to be understood as testifying definitely about any of those divisions?

A. No, sir.

3135 H. W. RICHARDS,

being duly sworn as a witness on behalf of the Complainant, testified as follows:

Direct examination by Mr. SEVERANCE:

Q. Mr. Richards, what is your business?

A. Traffic manager of the American Radiator Company, Chicago.

Q. How long have you occupied that position?

A. Since July 1, 1906.

Q. Previous to that time what was your business?

A. Chief clerk in the general freight department of the Illinois Central Railroad, Chicago.

Q. How long were you with the Illinois Central?

A. Twenty years.

Q. And how long had you been chief clerk in the general freight office at Chicago?

A. In the neighborhood of six years.

Q. That would be from about 1900?

A. Yes, I should say so.

Q. Previous to that what was your business?

A. Chief tariff clerk. I had charge of the compiling of tariffs, making divisions.

Q. And before that?

A. Chief rate clerk.

Q. When you were with the Wisconsin Central was there a movement of California business over the Wisconsin Central in connection with the Southern Pacific by New Orleans?

A. You mean the Illinois Central, don't you? You asked me when I was with the Wisconsin Central.

Q. I don't mean the Wisconsin Central. I meant to say
3136 Illinois Central. Did I say Wisconsin Central?

A. Yes, sir.

Q. I beg your pardon. I didn't mean to say Wisconsin Central.

A. If you will repeat that question again, please.

Q. I say when you were with the Illinois Central was there a movement of coast business over the Illinois Central in connection with the Southern Pacific by New Orleans, from certain territory?

A. There was from certain territory, yes, sir.

Q. Chiefly from what territory?

A. Why, I should say from Pittsburg territory, Ohio, Ohio River points, and of course I presume there was a certain amount from south of the Ohio River. I was not familiar with that movement.

Q. And a small amount from Chicago, wasn't there?

A. An extremely small amount, yes, sir.

Q. But some did move that way?

A. I think there was an occasional shipment—an accidental shipment to a certain extent.

Q. Are you sure it was accidental?

A. I think so.

Q. What makes you think so?

A. I think shippers would be foolish to send it that way.

Q. Now, is that certainly so, Mr. Richards?

A. Why, it is about a thousand miles longer route.

Q. It is a longer route; but hasn't it some advantages?

A. It has. It has in the case of beer from Milwaukee. There was some movement of beer from Milwaukee, I think, steady movement, during the winter months.

Q. And it is very often that the Central lines are troubled with snow, is it not?

A. The Central lines?

3137 Q. In Wyoming. Yes. Take the Union Pacific.

A. Yes.

Q. And in the Sierra Nevadas.

A. Yes.

Q. And that is avoided by going around through New Orleans, is it not?

A. Yes, sir.

Q. Isn't it a fact that it is not at all an infrequent thing that the service that way is quicker, because of the delays in the winter on the northern routes?

A. I would not say so as an average thing. I would not route business that way out of Chicago.

Q. I understand that is not your preference, but I am asking you in reference to the fact, from your knowledge of the railroad business.

A. I should say that if there was congestion on the western roads that that would be an available route, yes.

Q. And that congestion might be caused by excess of traffic, or by snow, or by floods?

A. Yes, sir.

Q. Or I suppose by almost anything that causes congestion. How is the grade of the Illinois Central from here to New Orleans?

A. I don't know.

Q. You don't know anything about that?

A. No, sir.

Q. Do you know whether it is mountainous or level?

A. Why, it is fairly level, I should say.

Q. It is a pretty good line, is it not?

A. I am not an engineering man or an operating man, and I could not answer the question.

Q. You don't know anything about that?

A. I think it is an average grade, quite a good track, a fair track.

Q. Have you ever been over the Southern Pacific?

A. No, sir.

3138 Q. Where does the Radiator Company have its plants?

A. Litchfield, Illinois; Detroit, Michigan; Buffalo, Black Rock, New York; Titusville, Pennsylvania; Springfield, Ohio; Brantford, Ontario.

Q. How does your California business move, Mr. Richards?

A. You mean over what particular roads?

Q. Yes; over what routes. What transcontinental routes, I mean.

A. Why, all the lines, I might say, from Chicago to the Missouri River; the Union Pacific; the Southern Pacific; the Rock Island via El Paso; the Santa Fe; the North Pacific coast lines; and via New York and to Tehuantepec; and the American-Hawaiian Steamship Company.

Q. You have charge of all their traffic, haven't you?

A. Yes, sir.

Q. From all their plants?

A. Yes, sir.

Q. From what plants do you ship by the Tehuantepec route?

A. Principally from Buffalo and Detroit.

Q. Do you ship anything by the Morgan steamship line?

A. No, sir.

Q. Are you too far west to get the advantage of the absorption of the rate to the coast?

A. You mean via the gulf?

Q. Yes.

A. Why, yes; yes, I think so.

Q. Your plants are too far west for that?

A. I have never been solicited for that particular movement of traffic by that particular route.

Q. I think your plants are west of that zone?

A. Yes.

Q. You have only been with the Radiator Company since 1906?

A. July 1, 1906.

3139 Q. You have no knowledge, then, I assume, as to how the Southern Pacific people were trying to route that business from these different points previous to the acquisition of the Southern Pacific stock by the Union Pacific? You know nothing about that?

A. No, sir, I know nothing of it.
Q. Do you remember train 51 on the Illinois Central?
A Yes, sir.
Q. Do you remember what its time was from here to New Orleans?
A. I think it was fifty-one hours. It was so stated to me.
Q. That was the reason they called it train 51, was it not?
A. I think so.
Q. Wasn't that the reason it was numbered 51?
A. Yes, sir, that is my understanding; I was so informed.
Q. Do you remember what the Illinois Central's division was of the California rate by New Orleans?
A. From where?
Q. Chicago?
A. I have a recollection it was in the neighborhood of 24.7 per cent; somewhere around that. It is merely a recollection.
Q. And the balance of the rate went to the Southern Pacific?
A. After deducting certain——
Q. Certain arbitraries?
A. Certain arbitraries.
Q. What were those arbitraries?
A. I think ten cents on San Francisco, and I think five cents on California points.
Q. Yes. That is, the extra five cents to San Francisco was the toll?
A. Yes, sir.
Q. The bay toll there?
A. Yes, sir.

Q. What was the Illinois Central's proportion of the rate 3140 from Chicago via Omaha?

A. At what time?

Q. Well, at any time when you knew about it, after they built into Omaha.
A. They didn't have a route previous to 1901, I think.
Q. How is that?
A. They didn't have a line previous to 1901; I believe that was the date.
Q. I understand that. I said any time after they moved in there. I do not suppose they had any part of the rate before they were there.
A. I think they had a working arrangement then, but it was not a very good one.
Q. You had a line to Sioux City, hadn't you?
A. Yes, sir.
Q. Did you work with anyone down from Sioux City before that?
A. Worked with the Omaha line in connection with the U. P. Their proportion was fifteen per cent, I believe.
Q. That is, your proportion was fifteen cents to Omaha?
A. Yes, sir. That is the fixed proportion east of the Missouri River.
Q. Just the same as the other lines?
A. Oh, yes.

Mr. LOVETT. That means from Chicago.

Mr. SEVERANCE. Yes, that is what I am asking him about. I asked him about the Illinois Central's proportion of the rate via New Orleans, and now I am asking him via Omaha.

Q. And what were the arbitraries that way?

A. Five cents deduction, I believe.

Q. Well, there was an arbitrary for the bridge at Omaha, wasn't there?

A. I believe that was it. I think it was only five cents though.

Q. There was the same arbitrary in San Francisco, wasn't
3141 there?

A. I don't believe the lines east of the Missouri River participated in that.

Q. All that was absorbed by the lines west of the river?

A. West of the Missouri River, that is my recollection.

Q. Did the Illinois Central stand a share of those arbitraries by business moving via New Orleans?

A. I think they got five cents. That was made up of two cents at Cairo bridge, and I think there was three cents at New Orleans. I am not clear on that; it is merely recollection. I would not be surprised if I was wrong on the three cent proposition.

Q. How long does it take to lay goods down from Buffalo or Detroit to San Francisco by the Tehuantepec route?

A. In the neighborhood of forty-seven to fifty days. It all depends on when the goods are shipped from Buffalo.

Q. Do they have a fixed differential?

A. Yes, sir.

Q. About what percentage is it below the all rail rate?

A. Well, the actual rate from New York is eighty-five cents. The rate from Buffalo to New York is sixteen cents. It is at the rate of $1.01 as against the overland rate of $1.40.

Q. Did you ever move any business by the Panama route?

A. Not to my knowledge.

Q. How does your business to Portland, Oregon, move?

A. Why, over all of the available routes.

Q. That is, the northern routes and the central routes?

A. Northern and central; in connection with the Central line and O. R. & N.

Q. By the Union Pacific in connection with them, and by the
3142 Great Northern and Northern Pacific.

A. It might move by the Burlington.

Q. And the Burlington?

A. Yes, sir.

Q. Where does the Burlington take that traffic? To Billings?

A. I believe they do.

Q. They take it to a connection with the Northern Pacific?

A. Yes, sir.

Q. Do you ever use the Canadian Pacific?

A. Occasionally.
Q. For what points?
A. Seattle.
Q. But nothing south of Seattle?
A. No.
Q. Do you make any shipments via the rail and lake routes?
A. Yes, sir, during navigation.
Q. How does that move? To what points and from what points?
A. It moves via Duluth to the north Pacific coast.
Q. From Detroit or Buffalo?
A. From Detroit and Buffalo both.
Q. How does it move from Duluth? Over what lines?
A. Northern Pacific——
Q. Divided?
A. It is divided equally. We attempt to divide it equally.
Q. Is that your policy in handling all your traffic?
A. That is our general policy, yes, sir.
Q. To give all the roads the benefit?
A. We try to give every road a share of the traffic.

Cross-examination by Mr. LOVETT:

Q. What portion, if you remember, did the Illinois Central get on California business moving by way of Ogden and Omaha, after the Illinois Central's line was opened to Omaha, that originated on
3143 its line south, say in the neighborhood of the Ohio River?
A. Did you say "what proportion," sir?
Q. Yes, sir.
A. Originating in Illinois?
Q. Yes.
A. In Chicago territory. I think it was fifteen per cent.
Q. Well, is that true as far south as the Ohio River?
A. No; no. There was a special basis of divisions in there I believe.
Q. Do you remember what they were?
A. No, sir, I do not.

Redirect examination by Mr. SEVERANCE:

Q. One question I forgot to ask you, Mr. Richards: Business originating along the line of the Illinois Central south of Chicago moved both ways to the coast, via New Orleans and via Omaha, did it not?

A. The business from the north central part of the state and the northern part of the state moved via Omaha; and south of that territory it moved via New Orleans.

Q. Well, not exclusively.

A. Not exclusively, no. That was the preferred route of the Illinois Central from a revenue standpoint.

Q. Yes. But take business from even as far south as Memphis; it moved by Omaha, to some extent, did it not?

A. I don't recall any particular business that moved that way. The volume was not great enough for me to notice it.

Q. We have had several witnesses who have had to do with the Illinois Central who indicated there was some territory down there where the business moved both ways.

Mr. LOVETT. There is no testimony to that effect, is there?

3144 Mr. SEVERANCE. Oh, yes. Mr. Fish testified to that, among others.

Mr. LOVETT. From Memphis to where?

Mr. SEVERANCE. Not Memphis; but I say points down along the line. The business was competitive between the two routes, certainly.

Q. Well, I will ask you that question, Mr. Richards. I will not confine you to Memphis, but points along the line of the Illinois Central—whether or not the business moved both by New Orleans—I don't mean the same business, of course—and also by the northern gateway.

A. That is correct.

Q. That is what I understood. That is all.

A. It all depended upon the point of origin which gateway it moved; that is, the revenue is taken into consideration.

Q. Well, I do not think I made myself clear.

Mr. LOVETT. You said "along the line."

Mr. SEVERANCE. What?

Mr. LOVETT. You said "business originating along the line of the Illinois Central." That might mean Chicago.

Mr. SEVERANCE. Yes, I did not make myself clear.

Q. Were there any different points on the line of the Illinois Central from which business moved both ways—that is, from the same point—some business go by Omaha and some business by New Orleans?

A. No; I don't believe so.

Q. You don't think that such a thing ever happened?

A. It might have happened; but the general——

Q. You think that the towns on the Illinois Central were

3145 cut right up, and all the business from some towns had to go one way, and all the business from other towns had to go the other way, do you?

A. That was the general policy and instructions.

Q. And where was the division?

A. So far as the lines north of the Ohio River were concerned, the division was in the central part of the State of Illinois—a little north of central, I think.

Q. When were those instructions issued?

A. A good many years ago. I don't remember the exact date.

Q. Well, how many years ago?

A. I don't know. I don't know whether it was fifteen, or twelve, or ten.

Q. Were you with the Illinois Central at the time?

A. Yes, sir.

Q. Would you say that they were issued before, or after, the year 1901? That would be eight years ago.

A. I think it was prior to 1901.

Q. Who issued them?

A. Issued over the name of the general freight agent.

Q. Who was he?

A. W. E. Keepers.

Q. He specified certain territory where the business should move north and other territory where it should move south?

A. Yes, sir.

Q. Did the transcontinental lines have agencies soliciting business along the line of the Illinois Central?

A. They had agencies at St. Louis and Chicago, and presumably Memphis and New Orleans.

Q. Did they have traveling agents?

A. I presume so.

3146 Q. Did those traveling agents and other agents abide by these instructions and make no effort to move business otherwise than as instructed by Mr. Keepers?

A. That is a point that never came up in my recollection. We generally moved the business as we saw fit.

Q. You did.

A. There wasn't a great volume of business that moved.

Q. Without reference to the shipper's desires?

A. To my recollection, the shippers, as a rule, never raised that question. We solicited by one point, and if we got it, if he was agreeable to giving it to us, we got it by the point we solicited it.

Q. As I understand you, so far as being able to control any business is concerned, the Southern Pacific and the Union Pacific might as well have had no agents along the line of the Illinois Central at all, because they could not affect the movement of traffic; is that right? Do you mean to testify to that?

A. Why, I think so far as the Union Pacific or the Southern Pacific especially was concerned, it was entirely agreeable to our sending the business as we saw fit.

Q. And the Union Pacific were entirely satisfied to have the business move via New Orleans?

A. I do not recall that they ever raised any objections.

Q. Well, you wouldn't think they would object, would you? You would think they would like to have it go that way?

A. The volume of business that we originated for the coast

3147 was not of such great amount.

Q. Then, so far as you know, the Union Pacific never made any effort to get any business off the Illinois Central?

A. They might occasionally have solicited some.

Q. But it never came under your knowledge?

A. I do not recall any controversies about it.

Q. I say, you do not recall of ever knowing of such an instance, do you, as the Union Pacific soliciting any business——

A. Not any specific instance, no.

Q. Do you know whether they had any agencies anywhere along the line?

A. Yes, sir.

Q. What were they doing, do you know?

A. Looking after the business in the territory, presumably, at the larger points.

Q. And do you know whether they were looking after the coast business?

A. I presume they were, naturally.

Q. But that never came under your observation? That is a mere inference, is it?

A. No, I did not have opportunity to come in contact with them, only occasionally.

Q. Then as a matter of fact your relation with the road was such that you would not be able to testify as to what they did do?

A. No, sir.

Q. As to what business they did secure?

A. No.

(Recess until 2 o'clock p. m.)

3148 FREDERICK L. HASTEDT.

being duly sworn as a witness on behalf of the Complainant, testified as follows:

Direct examination by Mr. SEVERANCE:

Q. Mr. Hastedt, where do you live?

A. City of Chicago.

Q. How long have you lived here?

A. Three years and five months.

Q. And what is your business?

A. Contracting freight agent of the Rock Island-Frisco line.

Q. Previous to coming to Chicago where did you live?

A. St. Louis, Missouri.

Q. How long did you live there?

A. Oh, about 46 years.

Q. Not in the railroad service all that time?

A. Yes—not all the time, no, because I was born and had to be educated.

Q. What was your business in St. Louis immediately preceding your coming here?

A. Prior to my coming here I was with the C. H. & D., Pere Marquette system.

Q. For how long?

A. For about six months.

Q. And previous to that?

A. With the Union Pacific Railroad.
Q. For how long?
A. For eight years.
Q. In what office?
A. In the general agent's office.
Q. At St. Louis.
A. At St. Louis.
Q. Previous to that what business were you in?
A. With the Frisco Railroad.
Q. At St. Louis?
A. At St. Louis.
Q. And previous to that?
A. With the Frisco Santa Fe.
3149 Q. At St. Louis?
A. At St. Louis also.
Q. That was before the Santa Fe let go of the Frisco?
A. No, when the Santa Fe amalgamated with the Frisco.
Q. I say it was before they let go of it.
A. No, I was with them when they were connected and when they separated.
Q. And previous to that?
A. With the Santa Fe.
Q. How many years had you been in the railroad service in St. Louis before coming to Chicago?
A. I should judge about 25 years.
Q. Do you remember what year it was you first went with the Union Pacific?
A. June 1st, 1896. I blew in with the cyclone.
Q. The same day, eh?
A. Oh, no, right after it. The cyclone was the latter part of May.
Q. It picked you up and landed you in that office, did it?
A. That is the idea, exactly.
Q. Who was the general agent of the Union Pacific at St. Louis at that time?
A. Col. James F. Aglar.
Q. Did he have to do with both freight and passenger business, or only the one?
A. Joint agent, freight and passenger both.
Q. How long did he continue in that capacity?
A. Mr. Aglar was representing the Union Pacific Railroad up to the consolidation for about 25 years I should judge.
Q. You mean the consolidation with the Southern Pacific?
A. The Union and Southern Pacific railways.
Q. And who represented them there after that?
A. After the consolidation?
Q. Yes.
A. Col. James F. Aglar up to the time of his death.
3150 Q. When was that?

A. I think it was about two years prior to his death.

Q. Now, previous to the time of this consolidation, did the Southern Pacific maintain a separate agency?

A. Yes, sir.

Q. And who was their agent?

A. At the time the consolidation was made, Mr. L. E. Townsley was their representative, and prior to him was V. B. Prim, and prior to him was Mr. Lapinier, and prior to him was Charles H. Morrell.

Q. Did they have men working under them?

A. Yes, sir.

Q. Solicitors?

A. Yes, sir.

Q. And did Mr. Aglar have solicitors?

A. Yes, sir.

Q. Previous to the consolidation of the lines which way did the Southern Pacific endeavor to route their business to the coast?

A. My recollection is that they worked very strongly to the El Paso route.

Q. Did they work any by New Orleans?

A. Not to my knowledge, no, sir.

Q. But by El Paso?

A. Yes, sir.

Q. And your agency worked business what way?

A. By the Missouri River—that is, Kansas City and Council Bluffs and Ogden.

Q. Which way did most of the business out of St. Louis move?

A. By Kansas City and Omaha.

Q. The business you secured——

A. That is a question I couldn't answer very well.

Q. Divided?

A. Yes; some went by Council Bluffs and some went by Kansas City.

Q. Were these efforts made by these respective agencies to route coast business active or otherwise?

3151 A. Why, it certainly was active.

Q. It was active?

A. Yes, sir.

Q. Did you work Portland business too?

A. Yes, sir.

Q. Via what route?

A. Union Pacific, Oregon Short Line, O. R. & N. Co.

Q. Did you work Oriental business?

A. Yes, sir.

Q. By what route?

A. San Francisco and Portland.

Q. Both?

A. Both ways.

Q. And when you worked it by Portland it was in connection with what company?

A. Naturally go by the Union Pacific, Oregon Short Line, O. R. & N., and Portland & Asiatic Steamship Company.

Q. And when it moved by San Francisco?

A. Occidental & Oriental Steamship Company.

Q. You did not work at that time in connection with the Pacific Mail?

A. Well, I wouldn't say that; I don't think so.

Q. The Occidental and O. R. & N.?

A. Yes, I think that was the proposition there.

Q. When were these two agencies consolidated, Mr. Hastedt?

A. From the remarks made here, I understand it was in 1901, but I would not say positively myself.

Q. That was the year that the stock of the Southern Pacific was bought by the Union Pacific?

A. That is the idea.

Q. What I wanted to know was whether it was the same year that these agencies were consolidated.

A. I couldn't say about that.

Q. Whether it was the same year or later?

A. I couldn't say about that myself: I know they were consolidated.

3152 Mr. LOVETT. 1901, I think everybody agrees, in the summer of 1901.

Mr. SEVERANCE. That it was consolidated at St. Louis?

Mr. LOVETT. I think all about the same time: I don't know.

WITNESS. Yes.

Q. Now, after that agency was consolidated, which way did the agency endeavor to route Pacific coast business?

A. It depended on circumstances. Some business went by the El Paso route and some went via Missouri river gateway.

Q. What was your preferred route?

A. Missouri river gateways.

Q. Was there any special road that you worked with between St. Louis and the Missouri river?

A. The Wabash Railroad was our preferred route.

Q. Between the rivers?

A. Between the rivers, yes, sir.

Cross-examination by Mr. LOVETT:

Q. During what time was it that you were connected with the Union Pacific office in St. Louis?

A. Do I know what date?

Q. I say during what time was it?

A. It was during the years 1896 to 1904—eight years.

Q. From 1896 to 1904?

A. That is the idea.

Q. And I believe you testified that prior to the consolidation of the agencies your office attempted to work the business exclusively by the Missouri river?

A. Correct.

Q. After the consolidation of the agencies you worked both ways—by El Paso and by the Missouri river, but preferring the Missouri river?

A. Yes, sir.

Q. And that when the Southern Pacific had a separate
3153 agency there, prior to the amalgamation of the agencies, that agent preferred to work business to California by way of El Paso?

A. I should judge so, taking the long haul, yes, sir.

Q. Did he sometimes work that business by way of——

A. Yes, we were very friendly there among ourselves, the Union and Southern Pacific Railways before the consolidation. We established a point down in St. Louis there that the railroad men were all friendly.

Q. Such business as you got for California passed over the Southern Pacific anyway, didn't it, from Ogden to California?

A. Yes, sir.

Q. No other outlet?

A. No, sir.

Q. Your principal competition was with the Atchison, wasn't it?

A. The Santa Fe, yes, sir.

Q. With reference to this Oriental business: I believe you testified that you worked that business both by way of San Francisco and Portland?

A. Yes, sir.

Q. When it went by way of Portland it moved by the Portland & Asiatic Steamship Company?

A. Yes, sir.

Q. That company was organized in 1901, wasn't it?

A. Well, I have forgotten the date now myself, Judge.

Q. Have you any recollection of how it moved prior to the organization?

A. Our experience with that export business was very limited; it was more in the nature of cotton originating at Texas points, and they had a representative who used to come to St. Louis occasionally soliciting that business, by the name of Mohler. I think he was a brother of the traffic manager of the O. R. & N. Company.

3154 Q. You had very little connection with it?

A. Very little, yes.

Q. There really wasn't very much of it anyway, was there?

A. Well, there wasn't a great amount of it at all.

Q. Prior to the amalgamation of the agencies you still had no preference for that Oriental business as between Portland and San Francisco, had you?

A. The export, you mean, Judge?

Q. Your Oriental business.

A. Well, yes, our preference was San Francisco. All our beer business used to go that way.

Q. You understood that the Union Pacific was interested in the Oriental & Occidental Steamship Company, didn't you?
A. Well, I don't think I did, Judge.
Q. Didn't you?
A. No, I did not.
Q. Did you know it was interested in the Portland and Asiatic?
A. Well, I knew the combined lines were.
Q. And you didn't know that they were interested in the Oriental & Occidental?
A. No, sir, I did not.

By Mr. SEVERANCE:

Q. You stated to Judge Lovett that your principal competitor was the Atchison.
A. Well, they were our competitors, certainly.
Q. After the unification of these agencies, the Atchison was practically your only competitor, wasn't it?
A. Certainly they were.
Q. Before that you had two competitors——
A. Yes, sir.
Q. the El Paso route and the——
A. Yes, sir.

By Mr. LOVETT:

Q. Just one moment. Mr. Severance doesn't quite understand this competition. I want to enlighten him. The competition
3155 before the amalgamation of the agencies was by the El Paso route of the Southern Pacific; that is one line?
A. Yes.
Q. Line two, the Santa Fe; and, line three, the line made up by way of Ogden, of the Southern Pacific and Union Pacific?
A. Yes, sir.
Q. So the Southern Pacific was a party to two of those routes?
A. Certainly, they were.
Q. The Southern Pacific to El Paso and the Southern Pacific by the Ogden route as far east as Ogden?
A. Yes, sir.

3156 J. J. WAIT,

being duly sworn as a witness on behalf of the complainant, testified as follows:

Direct examination by Mr. SEVERANCE:

Q. Mr. Wait, what is your business?
A. I am in charge of the freight department of the Hibbard, Spencer & Bartlett Company of Chicago.
Q. How long have you been engaged by that company?

A. About fifteen years.
Q. What is their business?
A. Hardware.
Q. To what parts of the country do you send your goods?
A. Practically all of it.
Q. That is one of the largest concerns of the kind in the country, isn't it?
A. Yes, sir.
Q. And you ship to the Pacific coast?
A. Yes, sir.
Q. Previous to your connection with Hibbard, Spencer, Bartlett & Company what was your business?
A. Railroad man; also in a similar capacity with the Illinois Steel Company, North Chicago Rolling Mills Company, and also at one time a freight broker.
Q. Did Hibbard, Spencer, Bartlett & Company ship to the coast in the old days before the Union Pacific and Southern Pacific were brought together?
A. Yes, sir.
Q. Were you acquainted with the representatives here?
A. Yes, sir.
Q. Mr. Neimyer and Mr. Knight?
A. Yes, sir.

3157 Q. Which way did Mr. Neimyer solicit, if at all, your business to the Pacific coast when he represented only the Southern Pacific?

A. By any junction that he could get it.
Q. What do you mean by that, please?
A. There were several routes; there was the Ogden route and the El Paso route, and I believe they used also some Texas junctions besides El Paso, and they also had a route via New Orleans.
Q. And they solicited business by all these routes?
A. I think so; yes, sir.
Q. Did Hibbard, Spencer & Bartlett move traffic to the coast by all these lines?
A. I think we did, yes, by every line.
Q. Mr. Knight solicited business which way?
A. Ogden.
Q. Omaha?
A. Omaha and Ogden, yes.
Q. How did your business in those days move to Portland?
A. If my recollection is correct, there were three routes; there was the Ogden route, and the O. R. & N., and the Shasta route, and the Northern Pacific and Great Northern routes.
Q. And it moved by all these routes?
A. By all those routes.
Q. Did some of your business move to Ogden by the D. & R. G.?
A. Yes, sir.

Q. Do you remember which line they interchanged with then, or did they interchange with both, that is, the Shasta route and the Oregon Short Line?

A. Part of the time, I think, they interchanged with both. My recollection is that part of the time the Ogden gateway was open and part of the time it was closed.

Q. By the Ogden gateway you mean the Shasta?

A. The O. R. & N.

Q. Oh, the O. R. & N.?

3158 A. The O. R. & N. My recollection is not clear about that, but I think sometimes they would accept business, and sometimes they would not, from their eastern connections there.

Q. Do Hibbard, Spencer, Bartlett & Company maintain distributing houses on the coast?

A. No, sir.

Q. Your shipments are to retailers?

A. Yes, sir.

Q. You have traveling agents out there?

A. Yes, sir.

Q. Have you any factories outside of Chicago, Mr. Wait?

A. Not in our own name. We ship to a considerable extent from eastern factories.

Q. That is, you sell the goods and ship direct from the factories to the consumers?

A. Yes, sir.

Q. Where are they located?

A. At numerous points in Central Traffic and Trunk Line territory.

Q. And how does that traffic in the east move to the coast?

A. It moves by all the practical routes, very largely by the Sunset, and also by the Mallory and Santa Fe routes.

Q. At the time the Union Pacific and the Southern Pacific were separate, was your business solicited by the representatives of the Sunset here—business moving from those factories?

A. Yes, sir.

Mr. LOVETT. What factories?

Mr. SEVERANCE. In the east.

Q. Factories along the Atlantic seaboard?

A. Along the Atlantic seaboard, yes.

Q. Was that also solicited by the other transcontinental lines?

A. Yes, sir.

Q. All-rail lines?

A. Yes, sir.

3159 Q. Including the Union Pacific?

A. Yes, sir.

Q. Have you shipped to the coast by water or otherwise than by the Gulf line?

A. Yes, sir.

Q. By what lines?

A. By the Panama and the Tehuantepec and the old Magellan and Cape Horn routes.

Q. In the old days, prior to this amalgamation (I am directing your attention to that time), prior to 1901, if you remember, how were the rates by the Panama route as compared with the all-rail line?

A. My recollection is that they were about 80 per cent of the all-rail rate.

Q. How are the rates by the Tehuantepec route as compared with the all-rail line now?

A. Some of them, I think, are as low as 60 per cent of the all-rail rate.

Q. Did you ever ship to California by the Canadian Pacific?

A. I think we did at one time, yes.

Q. And how did that traffic move?

A. It moved down the Pacific coast by steamer.

Q. From Vancouver?

A. From Vancouver, yes.

Q. Where did that traffic originate?

A. At Chicago and east; some of it up in the northwest.

Q. Since Mr. Neimyer's agency has included both lines, which way does the agency solicit coast business?

A. By any junction they can get it.

Q. What is their preferred route, if you know, in their solicitation?

A. That I don't know.

Q. You don't know?

A. I don't know that they have ever expressed a preference.

3160 Cross-examination by Mr. LOVETT:

Q. I understood you to testify that when the agencies were separate, the Southern Pacific solicited the California traffic by any gateway that they could get the business?

A. That was my understanding.

Q. You shipped some, I believe you stated, by all gateways?

A. I think so.

Q. That which was shipped by the Sunset route, was that from this territory or from your eastern shipments?

A. Mostly east.

Q. Very little, if any, from this territory?

A. Very little from here. We did not regard it as a good route.

Q. You preferred the Ogden route from this territory?

A. We preferred the Ogden or the El Paso route.

Q. There were the three lines on the Pacific coast engaging in that business, and only three, at that time, weren't there—the Sunset Route by El Paso, the Santa Fe, and the Southern Pacific line up to Ogden and the connections east?

A. There was the Northern Pacific.

Q. I am speaking of the California business.

A. Oh, California. That was all.

Q. And the various connections of those lines extending westerly from here also solicited that business, didn't they?

A. Yes, sir.

Q. And always have?

A. Yes, sir.

Q. Everything that was shipped by the Union Pacific for California necessarily went over the Southern Pacific?

A. Yes, sir.

Q. Did you ever ship anything to Portland by way of the
3161 Shasta Route?

A. I think so.

Q. Were there any considerable quantities? Wasn't that quite an indirect route?

A. I assume that most of the Portland business went over the O. R. & N.

Q. That was the shorter and much better route, wasn't it?

A. Yes, sir. We considered it a better route. I don't know whether it was or not.

Q. You are the one that is to be suited in that matter.

A. Yes.

Q. When the shipments were made by the Canadian Pacific, about which you testified, about when was that?

A. It was a long time ago.

Q. Prior to 1900, wasn't it?

A. Oh, I think it was, yes.

Q. And for only a short time?

A. I think so.

Q. And at a differential?

A. That is my recollection.

Q. You were asked whether the Union Pacific and Southern Pacific solicited your shipments that originated on the Atlantic seaboard for California, and you answered yes, as I understood. Practically all other lines engaged in trans-continental traffic solicited those shipments, did they not?

A. Yes, sir.

Q. And always have?

A. And always have.

Q. When was the last shipment you made by the Shasta Route to Portland, do you remember?

A. It was a long time ago; I could not say when.

Q. You as a shipper are not interested in any way in the division of the through rate between the different carriers participating in the haul, are you?

A. No, sir.

3162 By Mr. SEVERANCE:

Q. How does the volume of your business now moving by Omaha and Ogden compare with that moving by El Paso or the southern gateway, both New Orleans and Texas junctions?

A. I have no definite figures on that, but at a guess I should say that if the business via El Paso was represented by 1 that the business via Ogden and via the Santa Fe line would each be represented by 2. That is, approximately.

Q. How would you say those proportions were in the old days when the Southern Pacific was a separate organization? I am including in El Paso all the southern gateways that you mentioned—New Orleans, the Texas points, and El Paso.

A. I don't know. That is too far back for me to remember.

Q. Where you spoke about the El Paso being represented by 1 now, you mean all the gateways in the south?

A. Yes.

Q. From New Orleans to El Paso?

A. Yes.

3163 E. C. WILMORE,

being duly sworn as a witness on behalf of the Complainant, testified as follows:

Direct examination by Mr. SEVERANCE:

Q. Mr. Wilmore, where do you live?

A. In La Grange, Illinois, a suburb of Chicago.

Q. What is your business?

A. Traffic manager of the Sefton Manufacturing Company.

Q. What does the Sefton Manufacturing Company manufacture?

A. The Sefton Manufacturing Company is located at Chicago.

Q. I say what do they manufacture?

A. Paper boxes, and paper pails and paper goods of all kinds.

Q. How long have you been with them?

A. 15 years.

Q. To what part of the country do you ship your product?

A. All over the United States.

Q. Including the Pacific coast?

A. Yes, sir.

Q. And have you done so during all that time?

A. Yes, sir.

Q. Do you know Mr. Neimyer?

A. I do.

Q. Did you know him when he was the representative of the Southern Pacific alone?

A. Yes, sir.

Q. Did you know the Union Pacific agency here then?

A. Yes, sir.

Q. Was your business solicited by these agencies?

A. Yes, sir.

Q. Which way did Mr. Neimyer's organization solicit your coast business.

A. They were glad to get it by any route.

Q. Which way did they solicit it, or did they express any preference?

3164 A. They did not express much preference for any route.

Q. Do you mean that they solicited your business by Ogden?

A. They would if they could not get it the other way.

Q. That is what I want to get at—if they could not get it the other way. But which way did they preferably solicit it?

A. As a rule it did not make much difference.

Q. I understood Mr. Husted to say that you told him that they solicited by El Paso or New Orleans preferably, and that is the reason I asked you the question.

Mr. LOVETT. Do you think that is fair examination?

Mr. SEVERANCE. I think it is. I was surprised at the answer, because it is not according to what Mr. Husted told me the gentleman said to him, that is all. He may have misunderstood him.

WITNESS. Well, this is what I meant to say: that they solicited by the El Paso route, but if they could not get it by that route they would just as leave have it by either one of the other routes; but they did not solicit our business from Chicago by the New Orleans route.

Q. Now let us see if I understand your answer this time; that in the first place they solicited by El Paso; if they could not get it that way, then they were glad to take it by Ogden?

A. Yes, sir.

Q. That is what you intend to say?

A. Yes, sir.

Q. Well, that is about what I thought. I misunderstood you before. And Mr. Knight's representatives solicited the business how?

A. By the Ogden gateway.

Q. Exclusively?

A. Yes, sir.

Q. How did your business move to Portland?

A. We moved it by the O. R. & N. and also by the northern routes.

3165 Q. That is, the Northern Pacific and Great Northern?

A. Yes, sir.

Q. Did you ever ship to California by the Canadian Pacific?

A. Yes, sir.

Q. How did that traffic move?

A. It went down to California points by boat?

Q. From Vancouver?

A. Yes, sir.

Q. And where did it strike the Canadian Pacific line—Minnesota Transfer?

A. Yes, sir, in connection with the Soo Line.

Q. Since the agencies of the Southern Pacific and the Union Pacific have been consolidated, which way, if at all, is your business solicited by that agency, preferably?

A. I don't know as it has ever been brought about by any particular line. They were always glad to get it by way of their connections.

Q. Any of the lines over which they could get a haul?

A. Yes, sir. They solicited just as hard one way as the other way.

Q. Did they call on you frequently?

A. Yes, sir.

Q. How would you say the volume of your business moving by Omaha now compares with the volume that moved that way before the consolidation?

A. I don't think there is any more business moving by the Ogden gateway, that is, in comparison with our business before the consolidation; I do not think the percentage is any greater than it was previous to that time.

Q. You think it is about the same, do you?

A. About the same proportion.

Q. Your business has increased, I suppose?

A. Yes, sir.

Q. Both ways?

A. Yes, sir.

3166 Q. Do you ship by other lines to the coast?

A. Yes, sir.

Q. What other lines?

A. The Santa Fe. You are now speaking of California points?

Q. Yes, sir.

A. The Santa Fe and, as I spoke of, the Canadian Pacific and boat line. I don't remember whether we used the Northern Pacific and Great Northern; possibly we have at times.

Cross-examination by Mr. LOVETT:

Q. When did you ship by the Canadian Pacific to California, Mr. Wilmore?

A. The shipments that I can remember of more particularly than others occurred two or three years ago.

Q. Wasn't it longer than that?

A. Yes, others longer than that.

Q. I say did you have any as recent as two or three years ago?

A. Yes, sir.

Q. By the Canadian Pacific?

A. Yes, sir.

Q. How did that move?

A. It moved by Minnesota Transfer, Soo Line, Canadian Pacific, and boat line from Vancouver.

Q. And you think that was as recent as two or three years ago?

A. Yes, sir, we had some business with them.

Q. Did that move at the same rates as the direct lines?

A. Yes, sir.

Q. No differential?

A. No, sir.

Q. Did much move that way?

A. Not a very great deal.
Q. Some years ago there was a differential?
A. Yes, sir.
Q. That was a good, long while ago, wasn't it?
A. Yes, sir.

3167 Q. Do you remember any shipments by the Northern Pacific and Great Northern to California?
A. We have made some but not very much.
Q. How did that go?
A. That would go either by Seattle or Portland down by boat.
Q. You did not ship much that way?
A. Very little.
Q. And when?
A. Oh, that has been some years ago; I can't recall just the exact date.
Q. The Northern Pacific and Great Northern do not solicit California business that way, do they?
A. Not to any extent, if at all.
Q. And never have, as far as you know?
A. No.
Q. The Southern Pacific, in soliciting business for California prior to the amalgamation of the agencies, I believe you testified, were willing to get it any way that they could, and if they could not get it by El Paso, they were very glad to get it by way of Ogden?
A. Yes, sir.
Q. Just so they got it by either one of those gateways they did not argue with the shipper as to which he should choose, did they?
A. No, sir, they were satisfied to get it at all.
Q. If the shipper agreed to give it to them and he indicated a desire for it to go by Ogden, they did not try to argue with him to send it by El Paso, did they?
A. No, sir.
Q. You never shipped anything to California by way of the Union Pacific to Portland and then by boat down?
A. No, sir.
Q. You never were solicited that way, were you?
A. No, sir.
Q. Your business is solicited by all lines extending westerly and connecting with those lines?
A. Yes, sir.

3168 By Mr. SEVERANCE:

Q. I don't know that I understood you. Which route did you say your traffic took that went by boat from Portland? You testified that some business went by rail to Portland and then by boat to San Francisco. I understood you to say that in answer to Judge Lovett.
Mr. LOVETT. By the Northern Pacific, he said.
Q. By the Northern Pacific, was it?
A. Yes, sir.

3169 W. B. HURLBUT,

being duly sworn as a witness on behalf of the Complainant, testified as follows:

Direct examination by Mr. SEVERANCE:

Q. Mr. Hurlbut, where do you live?

A. My residence is in Morgan Park; my business office is in Chicago.

Q. And what is your business?

A. Traffic manager for the Wisconsin Pulp & Paper Mills.

Q. You look after the traffic of a large number of mills in Wisconsin, don't you?

A. Yes, sir; about 35 or 40.

Q. And to what parts of the world is their product shipped?

A. Principally into the middle and western states.

Q. Including the coast?

A. Yes, sir.

Q. Have you ever been in the railroad service?

A. Yes, sir.

Q. With what company?

A. My last railroad experience (which was a very brief one, however) was with the Missouri Pacific and Iron Mountain. For a short time I was in St. Louis with those companies. Back of that I was for a good many years in the service of the Illinois Central and Y. & M. V. roads.

Q. Can you remember what years, during what times, you were with the Illinois Central and the other lines?

A. Yes, sir. From the time I was a boy I was with the Illinois Central, up to 1890, when I was appointed assistant general freight agent in Chicago. I was here in that capacity until 1892. From 1892 to 1896 I was assistant general freight agent for the Illinois Central and the Y. & M. V. at Memphis. From 1896 to 1900 I was general freight agent for both of those roads.

3170 Q. Which two?

A. For both of those lines.

Q. Which one did you mention?

A. The Illinois Central and the Y. & M. V., with office in Louisville. From 1900 to 1902 I was with both roads in Chicago, as their general coal agent.

Q. And then you left the railroad service?

A. Then I left the railroad service, yes, sir.

Q. When you were with the Illinois Central were you working coast business, working for coast business?

A. During what part of my service with the Illinois Central?

Q. Just state (you know better than I) when, if at all.

A. We worked for Pacific coast business particularly during the time that I was located in the south, that is, in Memphis and in Louisville.

Q. And which way did your traffic move?

A. The traffic that we handled on what we term our southern lines, meaning the Illinois Central lines south of the Ohio River, was moved almost invariably by New Orleans.

Q. Did any of it move via the Missouri River?

A. Not any of the traffic over which I had jurisdiction.

Q. That is, you mean over which you had control?

A. Over which I had control or jurisdiction. I might say that the Illinois Central system is divided into two grand divisions, one north of the river, meaning north of the Ohio River——

Q. At Cairo?

A. Yes, or Evansville; and the other division is south of the Ohio River. My jurisdiction, while I was in Memphis and Louisville, extended only over that part of the system south of the Ohio River. Consequently all of the business for the Pacific coast that we tried to get we naturally tried to haul it over our road to New Orleans.

3171 Q. Did the Southern Pacific co-operate with you in securing business that way?

A. Yes, sir.

Q. Did the Union Pacific at that time have agencies at Louisville and Memphis?

A. Not to my knowledge, no, sir.

Q. In neither place?

A. In neither place, not so far as I am aware.

Q. Did they have traveling agents who made those places, or out in that region?

A. Not to my knowledge; I never came in contact with one of them.

Q. Did any of the connecting lines of the Union Pacific reaching toward the Missouri River gateway have agencies in those places?

A. I believe some of the lines reaching the Missouri River had representatives in Louisville or Cincinnati, more particularly Cincinnati.

Q. Yes, I know they had in Cincinnati.

A. But I doubt if any of them had any agencies in Memphis, except, of course, the old Kansas City, Fort Scott & Memphis Road and the Missouri Pacific, both of which lines ran directly into Memphis from the west.

Q. Don't you recall that the Union Pacific had an agency at Cincinnati?

A. I could not say that, no, because I was never located in Cincinnati; I was in Louisville.

Q. The lines that did have agents there, like the Missouri Pacific and others, were they working for coast business?

A. Yes. I presume they did. That was part of their duties, I should take it.

Q. When you were in the service of the Illinois Central in the north were you working for coast business here?

A. It depended where the business originated. If in the
3172 east we would try to get coast business for a haul over our road.

Q. Which direction did you move it? At that time you had no line to the Missouri river, had you?

A. At that time we had no line into Omaha.

Q. But you had a line to Sioux City?

A. We did have a line to Sioux City, but that was not regarded as a gateway for western traffic; it seemed to end right there, some how or other.

Q. Yes, I know. You had to have another line to help you into Omaha?

A. Yes. We did try to work up a line, I believe, with the Union Pacific by Norfolk at one time, but did not seem to work very well.

Q. That reached the Union Pacific on a diagonal shoot across Sioux City?

A. Precisely, yes, sir.

Q. In shipping the products of the paper mills to the coast, do you distribute it among different lines?

A. Not among many. We use the routes via Ogden and the Santa Fe line, that is practically all, except to northern coast points we use the Great Northern, the Northern Pacific and the Canadian Pacific.

Q. Your mills are all up in Wisconsin?

A. Yes, sir.

Q. And they are located on the lines of what roads there?

A. The Wisconsin Central, the St. Paul, the North-Western, the Soo Line.

Q. And it would be very much out of the way to get that by the southern gateways to the coast, from up there?

A. Yes; I doubt if there are working arrangements via the southern routes, that is, the southern routes east of El Paso. I know the route is open via El Paso, but we don't use it.

3173 Q. At the time you were with the Illinois Central, did some traffic move to the coast from Chicago territory by the Illinois Central and Southern Pacific?

A. I believe some business was moved, yes, sir.

Q. That was a rather longer route than the Missouri river lines?

A. Yes; I will say according to my recollection that we never made any special effort to try to get coast business via New Orleans. If a shipper had any business he could possibly give to the Illinois Central to any other territory than that, we would try to get that other rather than the coast business.

Q. Because you got more out of it?

A. Because we got more out of it, and we could not figure that the service via New Orleans would be at all satisfactory, that is, to the extent it would enable us to keep on good terms with any shipper who wanted to send business that way.

Q. Business did move over your line from Cincinnati and Cleveland territory through New Orleans to the coast, did it?

A. Yes, that was the business that we solicited very strongly, but via the southern gateways.

Q. That is what I say.

A. Yes, sir. That is out of the middle and eastern states. The farther west we got, however, our competition against the more direct routes through the Missouri river was keener.

Q. But you met the competition of those routes in the territory you mention?

A. In the middle and eastern states, yes.

Q. The competition of the Missouri river gateway lines?

A. Yes, sir.

3174 Cross-examination by Mr. LOVETT:

Q. You do not class Illinois as a middle state, do you?

A. No, I had in mind Ohio, Pennsylvania and western New York territory.

Q. You went into your present employment, you say, in 1902?

A. No, for two years after 1902 I was with the National Hardwood Lumber Association as their traffic manager, but I have been with the Paper people during the past five years except the brief time I was with the Missouri Pacific.

Q. You left the Illinois Central in 1902, I understood you to say?

A. Yes, sir.

Q. The Illinois Central's line to Omaha had not been opened then, had it?

A. I believe it had by 1902.

Q. When was it opened, do you know?

A. I couldn't say.

Q. Only shortly before that, at all events, I suppose?

A. Yes; it was not very long before that, if it was before that. I have an indefinite recollection that it was in 1901.

Q. Such business as the companies you now represent ship to the Pacific coast by the Union Pacific, goes over the Southern Pacific from Ogden west, doesn't it?

A. Yes; that is to say for Central California points—Sacramento and San Francisco; for the Southern California points we usually use the Salt Lake route, in connection with the Union Pacific.

Q. Prior to the opening of the Salt Lake route, though, the Southern Pacific was the only outlet for the Union Pacific's California business, wasn't it?

A. Yes, sir, so far as I know.

Q. Well, don't you know that it was the only outlet, because
3175 there was no other railroad there?

A. Yes, that is true.

Q. The Salt Lake route was open in 1905, wasn't it?

A. I couldn't say, Judge.

3176 PETER P. HEINRICHS,

being duly sworn as a witness on behalf of the Complainant, testified as follows:

Direct examination by Mr. SEVERANCE:

Q. Mr. Heinrichs, what is your business?

A. In the trunk and traveling bag business.
Q. What is the name of your company?
A. P. Becker & Company.
Q. Have you charge of their traffic?
A. Yes, sir.
Q. For how long have you had charge of that traffic?
A. Ever since I have been connected with the concern, about 26 or 27 years.
Q. To what parts of the country do you ship?
A. The middle and western country principally; we have shipped to the east, but not a great deal.
Q. Is your company a manufacturing concern here in Chicago?
A. Yes, sir.
Q. Have you shipped to the Pacific coast for many years?
A. Yes, sir. The business has grown in that time. Years ago, of course, it was not as brisk as it has been in recent years.
Q. It has grown with the development of the country?
A. Yes, sir.
Q. Becker & Company is one of the large concerns in the trunk business, isn't it?
A. Well, we think we are one of the——
Q. You think you are large—feel large?
A. We think so.
Q. And I think other people think you are.
A. Of course that is a matter of opinion, you know.
3177 Q. How does your California traffic move?
A. Various ways—yes, two ways; we have only two outlets.
Q. What are they?
A. What we recognize as the northern route, the Union Pacific via Ogden, and the Santa Fe.
Q. Your business moves one way or the other?
A. One way or the other, yes, sir.
Q. Have you ever shipped over any other line than the Union Pacific to the Ogden gateway?
A. Why, we might have had a Denver & Rio Grande shipment; I can't just recall.
Q. You don't remember that?
A. We have tried them all pretty near—I mean these devious routes going out.
Q. Do you ever ship any by New Orleans to the coast?
A. Not carload; less than carload we have shipped already.
Q. That would go Illinois Central and Southern Pacific?
A. Yes, sir. That routing, if you will allow me, was principally controlled from out the coast—not at this end.
Q. Has that happened recently, or is that some years ago?
A. Oh, that is recently. We had some small shipments that were routed Illinois Central and Sunset.
Q. How is your business ordinarily routed—by you or by your consignees?

A. On car shipments we control the routing.

Q. Do you have houses of your own on the coast?

A. No, sir.

Q. Do you sell to wholesalers or retailers?

A. Both.

Q. How does your Portland business move?

A. We have had Oregon Short Line, Union Pacific via Denver, and had Northern Pacific and Great Northern, I believe already, by St. Paul.

Q. Does the matter of equipment cut some figure in your business?

A. It does, sir.

3178 Q. Just explain that, will you?

A. It is the matter regarding the size of cars. We, of course, express a preference on our shipments to the road that can give us the proper equipment to hold the capacity as to the minimum weight governed by the trans-continental tariff. We did have one shipment, if I recall, in which the routing was controlled on a carload shipment—rather dictated—by one concern on the coast via Illinois Central, New Orleans, care of the Sunset. For that shipment the equipment could not be furnished, and we diverted it to the C. B. & Q., care of the U. P. at Denver, which is principally the point that the "Q" carried our California business to—either there care of the U. P. or care of the Santa Fe. The matter of equipment of course came up there. They could readily furnish us the proper sized cars to conform to the tariff.

Q. That is the C. B. & Q. could?

A. Yes, sir.

Q. They could give you cars large enough so you could get in the minimum weight?

A. Yes. Our stuff is very bulky, and it is quite a task to get the proper sized cars. In the past we have gotten from the Santa Fe two cars for one—refrigerator cars. I presume there was some privilege that was granted. Only for a short time was that privilege given. We loaded Santa Fe. However, the capacity would run about what the minimum was.

Q. Then, the movement of traffic of the character of yours might largely be controlled by the furnishing of equipment suitable for it?

A. Equipment and convenience to our plant. We had no switch track facilities, and of course the road that had the nearest depot, the nearest switch yards to our plant, we would naturally favor.

3179 There was nothing besides that, and it was a matter of dollars and cents to us as to the length of time that our team took to haul that load to those depots or those switch yards. That was a practical thing. And then other matters: the cars were pretty well taken care of. Some little attention has got to be given, in the carrying of our product, to the inside of the car, to see that it is well cleaned up and nails taken out. We did not wish any claims for damages, you know. And working together of course with the C. B. & Q. road in that way, it was to our advantage rather than to

take outside roads, although we have shipped Santa Fe, North-Western, and other lines.

Q. How are your transcontinental rates now compared with what they used to be?

A. More excessive, Mr. Severance; in fact they are prohibitory. Our business has dwindled down to practically mighty little car shipments—it is less than carloads.

Q. How recently have they been increased?

A. The first of January; the rate was advanced to $2.60.

Q. What had the rate been before that?

A. $2.20. Well, it varied according to the classes, or, rather, the rates; the lowest possible rate we could get was $2.20 on our commodity. That was on empty trunks. I am speaking of California terminals now.

Q. Yes, I am speaking of California.

A. On telescopes we got a rate of $2.20; trunks packed with traveling bags was $2.40. Of course only one particular kind could go into the car; otherwise the rate would be set up to the extreme high rate.

Q. How long had that other rate been in force before the
3180 first of January?

A. The other rate? I think it is about three years; it might possibly be four or more. I can't just recall that definitely now.

Q. How much was the rate before that?

A. Two dollars.

Q. How long was that in force?

A. Oh, that was in force possibly three or four years; it might be five years.

Q. What was the rate before that?

A. I think about $1.80.

Q. So they have been gradually hoisting you, have they?

A. Yes.

Q. 20 cents at a clip.

A. Yes; the past ten years, as you can see, from $1.10, whereas the less than carload is $3.

Q. Has this last raise or the last two raises had any effect on your business?

A. Yes, sir.

Q. What effect?

A. You can tell the effect at this end from the small amount of orders we have had and the comparison prior to that. Last year I don't suppose we shipped more than three or four cars, something like that, whereas it used to be a car or two a month. Just simply petered right out.

Q. Is there any other reason that you know of except these increases in rates?

A. No, sir. I suppose local factory influences out there may have had its effect.

Mr. LOVETT. Local what?

WITNESS. Local factory interests out there. I think, though, if all things were equal, we would stand a better show of doing business. I think that the rate is actually prohibitive, without any question about it.

Q. Do you remember when the Union Pacific and Southern Pacific had separate agencies here?

A. Yes, sir.

3181 Q. Was your business solicited by both agencies?

A. Yes, sir.

Q. Actively?

A. Yes, sir.

Q. Is your business to the coast solicited by the joint agency now?

A. Yes, sir.

Q. Do they express any preference in routes now?

A. No, sir. They can't control the routing at all, because we will ship it the way we see fit.

Q. You don't pay any attention to what they do say, then, in that regard?

A. No, sir.

Q. You have always done that, haven't you?

A. Yes, sir. There is only one particular instance where the routing was controlled out at the other end. The customer dictated the routing of that shipment, but we could not follow it because the proper equipment was not given by the road that was specified, and we diverted it to the road that was convenient to us.

Q. The road that has been convenient to you has been the C., B. & Q.?

A. Yes, sir.

Cross-examination by Mr. LOVETT:

Q. When the Union Pacific and the Southern Pacific had separate solicitors, Mr. Heinrich, and they were soliciting your business, which way were they trying to move it?

A. Well, they never specified in particular, Judge. I don't know. They might have understood that we had a preference of our own.

Q. The Southern Pacific never attempted to secure it by any particular route, did it? Any gateway was acceptable to it?

A. No; Mr. Neimyer has asked me personally. Occasionally

3182 he would say, "try to give us some Portland business," or something of that kind, or some Seattle business. It was understood we would try to give him as long a haul on it as we possibly could.

Q. I was speaking of the northern business.

A. Of the northern terminals?

Q. Yes.

A. None at all.

Q. And when they were soliciting separately, when there were separate solicitors?

A. Of course Mr. Knight expressed a preference for shipping it U. P.

Q. Naturally he would want it by the Union Pacific?

A. And Mr. Neimyer—well, I don't just recall that.

Q. You don't recall, though, that Mr. Neimyer ever attempted to solicit by one gateway as against another?

A. No, sir.

Q. When he worked with the Southern Pacific, it was very acceptable to him at Ogden or El Paso or any other junction.

A. Yes, sir. The local lines did a lot of that soliciting, Judge. The Illinois Central man came in every day or two and solicited business, and did not express a routing on it, how he would take care of that business.

3183 Q. Then the lines leading west also solicited very actively, didn't they?

A. Yes, sir, every one of them.

Q. And they do yet?

A. Yes, sir.

Q. And all that you gave to the Union Pacific would go over the Southern Pacific from Ogden, wouldn't it?

A. Yes, sir.

Q. With reference to this advance in rates, Mr. Heinrichs; do you know whether there was any change made in local rates in California?

A. Change made in local rates there?

Q. On the same things, yes.

A. That I don't know, Judge.

Q. Do you know whether the California manufacturers complained that your rate was too low and wanted it advanced?

A. That I never heard of.

Q. You never heard of that?

A. No.

Mr. SEVERANCE. What is that question?

Mr. LOVETT. I asked him if he knew whether or not the California manufacturers in competition with him ever complained that his rates were too low?

Q. You don't know whether they wanted your rates advanced or not?

A. No, I don't know.

Q. The effect of the advance has been to practically drive you out of that business, you say?

A. Yes, sir.

Q. Where do they now get their trunks, or have they quit using them?

A. Well, I guess a lot of that product is made out there.

Q. They get it locally?

A. A big lot of it, yes.

Q. There are factories out there?

A. Yes, sir.

3184 C. A. JENNINGS,

being sworn as a witness on behalf of the Complainant, testified as follows:

Direct examination by Mr. SEVERANCE:

Q. Mr. Jennings, what is your business?

A. I am manager of the transportation department of the American Cotton Oil Company.

Q. Where are they located?

A. The American Cotton Oil Company, with its subsidiary plants, are pretty well scattered all over the country.

Q. About where? Can you state? Or are there so many that you could not be able to name them?

A. Oh, I could name them all if you want to take them down in detail.

Q. Well, in what parts of the country, Mr. Jennings?

A. All through the southern portion of the country, excepting Texas. We have plants at St. Louis, Chicago, Cincinnati, Montreal, Providence, New York.

Q. What is the business of the American Cotton Oil Company?

A. It is largely the product of cotton seed.

Q. What do you manufacture? What kind of products?

A. Oh, various articles. Soap, washing powder, lard compound, cottolene.

Q. Is the N. K. Fairbank Company connected with them?

A. That is one of the subsidiary companies.

Q. That is one of the constituent companies, is it?

A. Yes, sir.

3185 Q. That is a soap company, is it?

A. Yes. Soap, lard compound, cottolene.

Q. Is the American Cotton Oil Company one of the large concerns of the kind, or the largest concern of the kind in the country?

A. I believe that we are the largest.

Q. And to what parts of the world does your product move?

A. Very generally all over the world.

Q. How long have you been their traffic manager?

A. I have been in my present position for sixteen years or a little better. Prior to that time my connection was directly with the N. K. Fairbank Company.

Q. But the American Cotton Oil Company has been in existence 16 years, has it?

A. Yes.

Q. And you have had charge of their traffic during that time?

A. Yes, sir.

Q. You say you have plants along the seaboard?

A. Yes.

Q. How does your traffic from the Atlantic seaboard territory move to California, and how has it moved that way for a good many years?

A. It has moved practically all routes. Some movements all rail; some via the gulf ports; some via Panama, Tehuantepec, and some around the Horn.

Q. Is your product one that demands speedy transit?

A. Some of it does. Other products, such as soap, for instance, move more leisurely.

Q. There is no hurry about soap, unless the people at the other end of the line are out of soap, is there?

A. Not particularly.

3186 Q. Do you remember the time Mr. Neimyer and Mr. Knight had separate soliciting offices here?

A. Yes, sir.

Q. You are acquainted with these gentlemen?

A. Yes, sir.

Q. Do you have charge of the routing of the traffic from the factories all over the country?

A. Practically so; yes, sir.

Q. Then you must have seen more or less of soliciting agents in all your days?

A. I have seen quite a few of them.

Q. Did any of your traffic ever move to San Francisco by the Canadian Pacific and the boat line from Vancouver?

A. Yes, sir.

Q. A large amount, or a small amount?

A. Oh, I don't think there was any very extensive amount of it. There have been a number of shipments.

Q. And from what territory did those shipments move?

A. I think that movement was confined largely from St. Louis to California points.

Q. And how did the Canadian Pacific get that from St. Louis?

A. Through the Minnesota transfer.

Q. That, I suppose, was something like soap—that they were not in any hurry for.

A. Yes. It must have been soap. I do not recall specifically what it was, but it must have been soap shipments.

Q. When Mr. Neimyer was representing the Southern Pacific exclusively here, did his agency solicit your Atlantic seaboard business by the Morgan line?

A. Mr. Neimyer never came very much in touch, if at all,

3187 with our business from the Atlantic seaboard. I do not recall his soliciting any of that business.

Q. Who took charge of that for them?

A. Well, any solicitation for it must have been conducted by either the New York office or the Boston office, possibly.

Q. You have offices there?

A. We have offices in New York and Providence, where the shipments would be made from.

Q. The solicitation would be there?

A. It would be directed towards those offices.

Q. How about Cincinnati? Where would the solicitation come for that traffic?

A. Possibly to my office here; although I am of the impression that the Southern Pacific people had an agent in Cincinnati—Mr. Connor.

Q. They did; Mr. Connor. You know Mr. Connor, don't you?

A. Oh, yes.

Q. During those days was there any of your traffic moved from Cincinnati by way of New Orleans to the coast?

A. I don't know of any.

Q. Did your traffic at any time move to Portland over the Shasta route?

A. We have moved shipments to Portland via the Shasta route, from St. Louis.

Q. From St. Louis?

A. Yes.

Q. Did that go by the Ogden gateway, or south?

A. I am inclined to think that it went through El Paso. At St. Louis we were located on the Iron Mountain with our factory there, and I am inclined to believe, from what recollections I have of it, that it was more out of compliment to the Iron Mountain & Texas Pacific long hauls than to a consideration of the
3188 Southern Pacific interests, that we sent it by that route. There was a time, as I recall it, when the Union Pacific demanded delivery of Portland business to them at the Missouri River, which made a very short haul for the originating line, from a St. Louis shipping standpoint. So it is my impression and recollection that they solicited that business via El Paso, not having any gateway through Colorado common points.

Q. By "they" whom do you mean?

A. The Iron Mountain.

Q. Did considerable traffic move that way?

A. Oh, no; it wasn't a heavy movement.

Q. Is it your practice to endeavor to divide your business?

A. Yes, sir.

Q. Among the different lines of road?

A. Yes, sir.

Q. Do you now meet Mr. Neimyer in connection with the solicitation of traffic?

A. Very frequently, yes, sir.

Q. And what routes is he soliciting traffic over?

A. Well, I would ask if you are inquiring as to transcontinental traffic?

Q. Yes, sir.

A. We have a great deal of traffic that has no bearing on the Pacific coast.

Q. You have a great deal locally, I suppose, on the lines?

A. A great deal.

Q. The Union Pacific and Southern Pacific both?

A. A heavy movement out of Texas and New Orleans.

Q. You have a plant down there somewhere, haven't you?

A. We have a number of plants.

3189 Q. I mean you have a plant at New Orleans?

A. Yes, sir; we have several of them.

Q. Several of them?

A. Yes, sir.

Q. Having reference now to transcontinental business, if any is solicited by Mr. Neimyer, say from territory where the product can fairly well move either way, either via New Orleans or El Paso or Ogden, Omaha, which way, if any, does he preferably solicit?

A. Well, his present solicitation is rather in favor of the Union Pacific-Southern Pacific line.

Q. That is the Omaha gateway?

A. Or Kansas City.

Q. That is what I mean. The Missouri River gateway.

A. The Missouri River gateway, yes.

Q. Did I ask you whether you had shipped by the Canadian Pacific to San Francisco?

A. Yes.

Q. I intended to, and I did not know whether I had or not.

Mr. LOVETT. Sent up from St. Louis, he said.

Mr. SEVERANCE. Oh, yes: sent up to the Minnesota Transfer from St. Louis.

WITNESS. The shipments would naturally move from St. Louis, because in the division of our different territory between the Chicago and the St. Louis factories, that falls to St. Louis.

Q. Do you have any Oriental business that moves by the coast?

A. We haven't had for some time. We formerly had a little.

Q. How does most of your Oriental business now move? By Suez?

3190 A. Yes; out of New York principally, through the Atlantic——

Q. When it moved by the Pacific coast, through what ports did it move?

A. Practically all of the ports. I am not sure as to any movement through Portland. I know that we had movements through Seattle and San Francisco, and I think at one time San Diego.

Q. That is when the Atchison had its boat line out of San Diego?

A. Yes, sir.

Q. Or in connection with the boat line out of San Diego?

A. Yes.

Q. Have you any recollection of what line of steamers took the traffic from San Francisco when it went through that port?

A. No, I have not.

Q. By whom was this ocean business solicited—by the railroad connections or by the steamship lines?

A. My recollection is by the railroads entirely.

Q. Do you recall whether at the time Mr. Knight represented the Union Pacific he solicited steamship business to the Orient in connection with that railroad?

A. I think he did.

Q. But you do not recall the steamship line?

A. No, I do not.

Q. And Mr. Neimyer the same, in connection with the Southern Pacific? I mean at that time.

A. I am inclined to think he did, yes. I do not remember specifically, but I think Mr. Neimyer was soliciting Asiatic shipments through the Pacific ports.

3191 Cross-examination by Mr. LOVETT:

Q. Such business for the Pacific coast south of Portland as Mr. Knight secured for the Union Pacific moved over the Southern Pacific from Ogden west, did it not, Mr. Jennings?

A. Oh, yes, sir.

Q. There were three lines—the Southern Pacific by way of El Paso; the Santa Fe with their connections, of course, and the Southern Pacific to Ogden, and the Union Pacific and other lines east of Ogden?

A. Yes, sir.

Q. Prior to the opening of the San Pedro those were the only three lines to California?

A. As far as I know. Rail lines.

Q. Rail lines?

A. Yes.

Q. And whatever business Mr. Knight secured would pass over the Southern Pacific by way of Ogden?

A. I would suppose so, yes.

Q. In the solicitation, during that time, by Mr. Neimyer, for California business, did he seek to direct it by any particular gateway, or was he satisfied, apparently, to get it by either gateway for the Southern Pacific?

A. My recollection is that, extending over a period of practically twenty or twenty-five years, Mr. Neimyer, in his solicitation, has been practically impartial as among the several gateways.

Q. That is your recollection?

A. Yes, sir.

Q. You never shipped anything to San Francisco by way of the Union Pacific and the boat line from Portland down to San Francisco, did you, Mr. Jennings?

3192 A. I do not recall of ever having done so.

Q. Your business is solicited by all lines leading to the West?

A. Oh yes, sir.

Q. All of those intermediate carriers who participate in that transportation actively solicit business?

A. Yes, sir.

Q. You are not interested in the division of the through rate between the different carriers, are you?

A. No, sir.

Q. This Oriental business about which you were asked—was that ever a very large item?

A. No, it was not.

Q. You have no recollection of any of it moving by way of Portland, I believe?

A. I do not recall the use of Portland on Asiatic business, although there may have been some.

Q. As far as you recall, it moved by way of San Francisco and by Puget Sound.

Mr. SEVERANCE. And San Diego.

WITNESS. And San Diego. We had some few small shipments.

Redirect examination by Mr. SEVERANCE:

Q. You say your recollection is that Mr. Neimyer has been impartial between the gateways. Is it not a fact that your company has factories so scattered that you have some that are more readily accessible to the different gateways; that is, you have some that are so located that traffic would better move by the southern gateway, and others where it is more convenient to have it move by the Ogden gateway?

A. Well, I don't know. Not all of our plants are equipped to handle California trade. I would say that St. Louis, Chicago, Cincinnati, Providence and Guttenberg——

3193 Mr. LOVETT. What is the last name, please?

WITNESS. Well, just make it New York. It is a suburb, or part of New York harbor. Guttenberg was the name of it—are the only ones which really engage in shipping to the coast.

Q. Have you an office in Cincinnati in connection with your plant there?

A. You mean my department, individually?

Q. Yes.

A. No.

Q. Who looks after the routing of the business from Cincinnati?

A. I do, in a general sort of a way.

Q. Wasn't that business solicited by New Orleans in the old days?

A. Not to my knowledge.

Q. From Cincinnati?

A. Not to my knowledge. The application of rates and the transit privileges in connection with cotton seed oil would rather operate against its back haul through New Orleans, but would rather force it out through Chicago or St. Louis or Missouri River crossings.

Q. Is that the case with your other plants, too?

A. That would be the case in St. Louis, yes, sir.

Q. All your plants?

A. Well, all of our plants are not refineries.

Q. Well, take Chicago, St. Louis and Cincinnati; would that be true as to those?

A. Cincinnati and St. Louis, yes. The Chicago refinery is not engaged in handling the oil to the coast. It handles the manufactured product, and there it loses the privilege of transit.

Q. Well, take your business from New York: do you mean
3194 to testify, Mr. Jennings, that previous to the amalgamation of the Union and Southern Pacific, the Southern Pacific agency had no preference as to shipments out of New York for the Pacific coast as between New Orleans and the Morgan line?

A. No.

Mr. LOVETT. That is not quite a fair question, Mr. Severance. He testified Mr. Neimyer did not indicate any preference.

Mr. SEVERANCE. Well, he is located in Chicago, and Mr. Neimyer is the man he sees, I suppose.

Mr. LOVETT. Yes.

WITNESS. I think I stated in my previous testimony that the solicitation was not made here, but addressed to our New York office, or Providence.

Q. Now, Mr. Jennings, what plants shipping to the coast were within your immediate jurisdiction? As to which traffic did Mr. Neimyer solicit you?

A. I would say Chicago, St. Louis.

Q. And Cincinnati?

A. And possibly Cincinnati, yes.

Q. As far as Cincinnati and St. Louis are concerned, you have given a very good reason why that traffic would naturally go via Ogden?

A. Yes.

Q. Now, as to Chicago: you do not remember that he expressed any preference as between Ogden and El Paso or New Orleans?

A. No.

Q. Traffic out of your office here in Chicago?

A. As I stated, he was impartial in his solicitation.

Q. From your Chicago factory?

A. Yes. You are treating from the Chicago standpoint now, entirely?

3195 Q. Yes, I am speaking of Chicago. I see the point of the other places you have stated—on account of your transit business. You do not recall that Mr. Neimyer ever tried to get you to route business by El Paso or New Orleans from Chicago?

A. Via El Paso, in competition with the Santa Fe, for instance, yes; but as to specific routing via New Orleans from Chicago, no.

Q. Which route did he prefer—El Paso or Ogden? I mean where he could control the business?

A. That all depends upon the time. Right now I would say he would solicit in favor of the Union Pacific line.

Q. But I mean before, when he only represented the one line.

A. I don't know that he expressed any preference. I cannot recall his expressing a preference as between Ogden or El Paso.

Q. You do not think he tried to get the traffic either way?

A. Giving preference one to the other?

Q. Yes, sir.

A. No; I don't think so.

Q. Now he does try to get it via Ogden?

A. Yes.

3196 G. K. SAGE,

being duly sworn as a witness on behalf of Complainant, testified as follows:

Direct examination by Mr. SEVERANCE:

Q. Mr. Sage, what is your business?

A. I am in charge of the traffic for Fairbanks, Morse & Company, Chicago.

Q. What is their business?

A. They are manufacturers and jobbers of gasoline engines, steam pumps, scales, wind mills, etc.

Q. Where is their factory?

A. We have more than one. Our largest factory is at Beloit, Wisconsin.

Q. And what other places?

A. We have one at Three Rivers, Michigan; another at Indianapolis, Indiana; and then the scale factory at St. Johnsbury, Vermont, for whom we sell goods in the western country.

Q. You sell to the western country from all these places?

A. No. From the first mentioned we sell all over the country, but on the scale business we only sell in the western country—all west of Pittsburg and Buffalo through to the coast.

Q. How long have you been with Fairbanks, Morse & Company?

A. About six years.

Q. Previous to that what was your business?

A. I was connected with the Rock Island Railway here, in the office and on the street, as a freight solicitor.

Q. How does your traffic move to the Pacific coast from these different factories?

3197 A. We ship practically by all the available routes; that is, via Ogden and El Paso and via the northern gateways to the north Pacific coast points.

Q. Do you use the Morgan line from New York?

A. Not very often, sir. I do not recall of many cases, excepting possibly in cases where we have purchased goods from some house in New York; I have noticed some of those go through via the Morgan line.

Q. You purchase goods from the house in New York?

A. From some New York house—some special line of goods that we may be called upon to sell. Not our own goods.

Q. Oh, I see.

A. Supplies that we buy. Sometimes they are shipped by the Morgan line, but very seldom.

Q. Do you maintain distributing agencies on the Pacific coast?

A. Yes, sir.

Q. Whereabouts?

A. At Los Angeles, San Francisco, Portland and Seattle.

Q. Take your California business; how does that move?

A. In reference to Southern California?

Q. Yes.

A. We move that via Ogden and El Paso, first via the Missouri River gateways.

Q. Do you send pipe and that sort of thing from Pittsburg and Youngstown to the coast, at times?

A. To Southern California, yes, sir.

Q. Does any of that move by New Orleans?

A. I think some of it did, sir, from the Pittsburg district. That was some time ago. I think I recall some cars going through
3198 that way. But the pipe we handle now, on which we route, we send it all by the Missouri River gateways.

Q. How does your Portland business move?

A. We divide that up among all the lines—the northern lines; and some over the Union Pacific; and some over the Oregon Short Line and O. R. & N.

Q. Do you know Mr. Neimyer and Mr. Knight?

A. Yes, sir.

Q. Do you remember when they were representing their respective lines of road here?

A. Yes, sir.

Q. At that time you were working for the Rock Island?

A. Yes, sir.

Q. Were you working Pacific coast business via El Paso at that time?

A. Yes, sir.

Q. And did you work that in connection with the Southern Pacific or independently or both?

A. We were compelled to work——

Q. I don't mean the way you shipped it; but I mean in soliciting business. Did you solicit it with their cooperation or——

A. Both ways. We would work independent, and with them.

Q. That was your long line?

A. Yes, sir; our long haul that way to Southern California.

Q. You were with them before you had your line to El Paso, weren't you?

A. Yes, sir.

Q. And which way did you work California business then?

A. Southern California we would work via Fort Worth, in connection with the T. & P.

Q. And was that also true as to that—that you worked that at times independently, and at times in cooperation with the

3199 Southern Pacific?

A. I think so, yes.

Q. What year did you get your line through to El Paso, if you remember?

A. I really don't recall that, sir; I don't remember that date.

Q. Well, the time that I was asking about, when you worked business that way, was that the time when Mr. Neimyer and Mr. Knight were both in business here? I mean when you worked through Fort Worth?

A. I think it was, sir; I think so. I don't recall when the consolidation took place.

Q. The consolidation took place in 1901.

A. Yes, sir. Then, it was.

Q. Did you work Portland business in those days?

A. Yes, sir.

Q. And over what routes? Beginning with the river—with the Rock Island and Chicago.

A. The Rock Island, of course. As I remember it, our preferred route, of course, was via Ogden in connection with the Oregon Short Line.

Q. And your connection was made how—with the Union Pacific or D. & R. G.?

A. D. & R. G., or the Colorado Midland, out there to that point.

Q. Do you remember whether any of that traffic moved by the Shasta route from Ogden?

A. I have not a very clear recollection that we did have a route via the Shasta; but I remember that for a short time we had a route that way, and that is about all I can recollect of it.

Q. And how was that route made up? As you stated, to Ogden by the Rock Island and Denver.

A. As I remember it was by the D. & R. G., via Ogden, and the S. P.

3200 Q. Was there any way in which the Southern Pacific at that time could participate in the Portland business with you, except by using this Shasta route?

A. Not that I know of, sir; not the Southern Pacific proper.

Q. You say you also worked business to Portland by your route in connection with the Short Line?

A. Yes, sir; except, I think, for a time when there was some trouble there and we were told to shut off on it. I don't know. There was some trouble with the rates being taken out, or some trouble.

Q. And then you worked with the Shasta?

A. Yes, sir.

Q. On business to San Francisco points previous to the time your El Paso line was put in: how did you route it?

A. To San Francisco?

Q. Yes.

A. We would route that via the Rio Grande, via Ogden.

Q. That was your only way in, wasn't it?

A. The only way in.

Q. Unless you sent it down south by the Santa Fe?

A. I don't know whether we had a working arrangement that way or not. I don't recall that.

Q. Who was your superior officer here at that time?

A. Mr. Wentz.

Q. Did you also turn traffic over to the Union Pacific at Omaha?

A. Yes, sir; when it was so routed.

Q. I believe you said you only went with your present company six years ago?

A. Yes, sir; in 1902.

Q. Does Mr. Neimyer, or any of his assistants, call on you
3201 soliciting business to the coast now?

A. Yes, sir; both Mr. Neimyer and his solicitors.

Q. By what route to San Francisco and California points?

A. I do not recall that any route is specified. On San Francisco, for instance, we would generally route it via Ogden, if we were going to give it to the Southern Pacific, in case we weren't going to ship over the Santa Fe.

Q. Via Ogden, you mean via Omaha and Ogden?

A. Well, via Omaha and Ogden, surely, yes. One moment. We would also work with the other lines via Omaha, via the Missouri River gateways and Ogden, the Rock Island, and Q., or any other line.

Q. You say it is your practice to divide up your traffic between the different lines?

A. Yes, sir.

Q. You have had a good deal of experience here in the solicitation of traffic. How many years did you say? Fifteen?

A. Well, I suppose I was for about—in all I would say ten years in the soliciting business.

Q. What is your opinion as to the ability of soliciting agents to control the movement of traffic? Do you think they are useful to railroads in getting business?

A. Yes, sir, I do. They can help a shipper materially, if they are posted on their tariffs, routes, time, etc. And all that tends to help——

Q. To get business?

A. I think so, yes.

Q. Is that true in as marked a way, with a large shipper like your company, that is able to maintain a traffic department, as it is
3202 with a small shipper who is unable to maintain one?

A. Possibly not so much so; but still they can be a help to you.

Q. In the case of a smaller shipper who has no traffic department, what do you say as to the value to the shipper of a soliciting department?

A. I think it is quite valuable to him.

Q. And does that in turn result in getting business to the road the solicitor represents?

A. I think it results in that, yes.

Q. Assuming that two lines are in position to compete for business, one of them maintaining a soliciting agent in a large place like Chicago, and the other having no soliciting agent, from your experience, which one would you say would be apt to get the most business at a parity of rates?

A. I think the one that maintained the solicitor.

Cross-examination by Mr. LOVETT:

Q. Most all railroads maintain solicitors, don't they, Mr. Sage?

A. Yes, sir, I think so, so far as I know.

Q. And always have?

A. As far as I know, yes, sir.

Q. You would regard that as pretty good evidence that they serve some useful purpose, wouldn't you?

A. I surely do, yes, sir.

Q. About those shipments over the Shasta route; I understood you to say that your recollection as to whether shipments moved that way to Portland is not very clear. Did I understand you correctly?

A. That was about it, yes. I remember at the time we did have a route that way.

3203 Q. Can you testify positively whether any shipments ever moved that way?

A. I could not swear to any shipments now; it is too long ago.

Q. You haven't any recollection of ever securing any shipments over that Portland route, have you?

A. I do not recall any particular shipments.

Q. Wasn't there a period during the receivership of the Union Pacific, and when the Oregon Short Line had a receiver, that the Denver & Rio Grande and its connections could work with the Oregon Short Line on the Portland business, practically on equal terms with the Union Pacific?

A. I am not very clear on that. I know there was some disturbance in there of some kind, but what it was I do not recall.

Q. But you don't mean to be understood as testifying definitely as to the movement of traffic to Portland by way of the Shasta route, do you?

A. I could not swear to any particular shipment, no, sir. I have the impression that we had a route that way.

Q. Yes; but there are a good many routes over which traffic does not move, aren't there—on paper?

A. That is true.

Q. When were you soliciting for the Rock Island?
A. Prior to 1902.
Q. What time in 1902 did you cease?
A. I left the first part of February, 1902.
Q. I believe you testified on your direct examination that in working for California business by way of Texas you worked
3204 alone and you also worked with the Southern Pacific agents?
A. You mean in reference to the solicitation?
Q. Yes.
A. Yes, sir.
Q. The Southern Pacific agents would co-operate with you in securing business for California over your line and the Southern Pacific to El Paso?
A. Yes, sir.
Q. And when you testified about working it by way of Fort Worth prior to the opening of your El Paso line, you meant, of course, that that would go over the Texas & Pacific to El Paso, and thence over the Southern Pacific?
A. Yes, sir.
Q. Going over the Southern Pacific in every case, to California?
A. On the Southern route, yes, sir.
Q. Now, in working San Francisco business by way of your Denver line, I believe you testified that you worked in connection with the Denver & Rio Grande?
A. The Denver & Rio Grande and the Colorado Midland, in connection with the R. G. W. at that time.
Q. And all of that business went over the Southern Pacific from Ogden west, did it not?
A. For San Francisco, yes.
Q. And you and the Denver & Rio Grande and Colorado Midland would be working that business as against the Union Pacific and its connections and the Burlington and other lines reaching westwardly from here?
A. Yes, sir.
Q. All of them, however, turning it over ultimately to the Southern Pacific at Ogden, except that which went by the Santa Fe?
A. Yes, sir.
Q. The companies with which you are connected now have plants located where? At Beloit, Wisconsin, and at some point
3205 in Vermont?
A. At Beloit, Wisconsin, and the scale factory at St. Johnsbury, Vermont.
Q. You ship nothing from Beloit to California by way of New Orleans, do you?
A. No, sir.
Q. No rates have ever been in effect that way, have they?
A. I think not.
Q. And you ship nothing from your factory in Vermont to California by way of the gulf, do you?

A. In the past I think there have been a few shipments.

Q. But they are very exceptional, are they not?

A. They are exceptional.

Q. Now the business moves all rail generally?

A. Yes, sir.

Q. These shipments from the Pittsburg district that you referred to on your direct examination—I did not exactly catch their character—were articles that your company bought in that district?

A. Yes, sir.

Q. And which were routed by the people who sold them, and not by you, weren't they?

A. There was a certain commodity there that we used to buy from a Pittsburg house, which they sold delivered, and they routed that themselves, and I think some of that went around the southern route.

Q. You think some of that went by——

A. I think it did. At the present time we are buying the same commodity from another house, and they permit us to route it, and we route it via the Missouri gateways.

Q. And these articles that you bought in New York, which you testified also were shipped by the southern route, were routed by the sellers, I suppose?

3206 A. Yes, sir. We did not have anything to do with that at all.

Mr. Severance. We have four or five other witnesses here, your Honor, but they are witnesses who would cover just about the same thing as others we have had, and we have concluded that we will not keep them here to examine them. I want to put in some documentary evidence, and will want a session tomorrow for another purpose.

The Examiner. The witnesses who are present who have not been examined, may be excused from further attendance.

(Paper marked "Complainant's Exhibit 127.")

Mr. Severance. I offer in evidence Complainant's Exhibit 127, which is a list of securities issued by the Southern Pacific Company since December 31, 1906, to and including December 17, 1908, which was prepared by Mr. William Mahl, the comptroller of that company, and it is stipulated to be correct.

It is further stipulated that the Oregon Short Line Railroad Company subscribed for and took the proportion of the $35,296,623 of additional preferred stock issued by the Southern Pacific Company, as shown by this statement, which it was entitled to take by reason of ownership of preferred and common stock of the Southern Pacific Company, and thereby acquired sufficient stock so that it now owns the same proportion of the total capital stock of the Southern Pacific Company that it owned before said additional stock was issued.

3207 Complainant's Exhibit 127 is as follows:

COMPLAINANT'S EXHIBIT 127.

SOUTHERN PACIFIC COMPANY.

*List of securities issued since December 31, 1906, to and including December 17, 1908.*

*Preferred Capital Stock:*

Issued under resolution adopted at meeting of Board of Directors, held May 9, 1907, and included in the amount authorized by a resolution of the stockholders adopted at a meeting held July 20, 1904 ..... $35,296,923

*Four Per Cent. Gold Bonds—Central Pacific Stock Collateral:*

Issued in exchange for a like amount of Central Pacific Railway Company Preferred stock received in payment for additions and betterments as provided in Central Pacific Railroad Co. plan of readjustment dated February 8, 1899, viz:

For year from August 1, 1906, to August 1, 1907 $200,000
For year from August 1, 1907, to August 1, 1908 200,000

400,000

WM. MAHL,
*Comptroller.*

DECEMBER 18, 1908.

(Paper marked "Complainant's Exhibit 128.")

3208 Mr. SEVERANCE. I offer in evidence Complainant's Exhibit 128, which is a list of securities issued by the Union Pacific Railroad Company from December 31, 1906, to December 17, 1908, inclusive, said statement being prepared by William Mahl, Comptroller of the said Union Pacific Railroad Company. It is stipulated that the same is correct, and that there has been no additional issue from December 17, 1908, to date.

Complainant's Exhibit 128 is as follows:

COMPLAINANT'S EXHIBIT 128.

UNION PACIFIC RAILROAD CO.

*List of securities issued from December 31, 1906, to December 17, 1908, inclusive.*

COMMON CAPITAL STOCK.

Issued in exchange for:

Oregon Short Line Railroad Co. Capital Stock ..... $10,000
Union Pacific Railroad Co. Twenty-Year 4% Convertible Bonds ..... 137,200

Total ..... 147,200

TWENTY-YEAR FOUR PER CENT CONVERTIBLE BONDS.

Issued under Indenture dated July 1, 1907 ..... $73,702,000

FIRST LIEN & REFUNDING FOUR PER CENT BONDS.

Issued under an Indenture dated June 1, 1908 ..... $49,400,000

WM. MAHL,
*Comptroller.*

NEW YORK, N. Y.,
*December 18, 1908.*

3209 Mr. SEVERANCE. I offer in evidence Complainant's Exhibit 129, which, it is stipulated, shows a list of the directors of the Union Pacific Railroad Company elected at the meeting of October 8, 1907, and a list of directors of said company elected at the meeting of stockholders of October 13, 1908, prepared by the secretary of the company, and it is stipulated that the same is correct and shows the situation up to date.

Complainant's Exhibit 129 is as follows:

COMPLAINANT'S EXHIBIT 129.

UNION PACIFIC RAILROAD COMPANY.

Directors elected October 8, 1907:

| | |
|---|---|
| Oliver Ames | R. S. Lovett |
| Wm. D. Cornish | Wm. Mahl |
| A. J. Earling | Charles A. Peabody |
| Henry C. Frick | Wm. G. Rockefeller |
| Robert W. Goelet | Henry H. Rogers |
| E. H. Harriman | Joseph F. Smith |
| Marvin Hughitt | James Stillman |
| P. A. Valentine | |

February 13, 1908, Mr. Stillman resigned and Frank A. Vanderlip was elected.

3210 Directors elected October 13, 1908:

| | |
|---|---|
| Oliver Ames | R. S. Lovett |
| Wm. D. Cornish | Wm. Mahl |
| A. J. Earling | Charles A. Peabody |
| Henry C. Frick | Wm. G. Rockefeller |
| Robert W. Goelet | Henry H. Rogers |
| E. H. Harriman | Joseph F. Smith |
| Marvin Hughitt | P. A. Valentine |
| Frank A. Vanderlip | |

Mr. Cornish died November 7, 1908, and W. V. S. Thorne was elected in his place.

NEW YORK CITY, *December 18, 1908.*

(NOTE.—R. S. Lovett is Vice-President and General Counsel, Wm. Mahl is Comptroller, and W. V. S. Thorne is Director of Purchases, of both the Union Pacific and the Southern Pacific, located at 120 Broadway, New York.)

(Paper marked "Complainant's Exhibit 130.")

Mr. SEVERANCE. I offer in evidence Complainant's Exhibit 130, showing list of directors of the Oregon Short Line Railroad Company, elected October 9, 1907, and the list of directors of said Com-

pany elected October 14, 1908, which lists were prepared by the secretary of the company, and are stipulated to be correct.

Complainant's Exhibit 130 is as follows:

3211 COMPLAINANT'S EXHIBIT 130.

OREGON SHORT LINE RAILROAD COMPANY.

Directors elected October 9, 1907:

| | |
|---|---|
| Oliver Ames | E. H. Harriman |
| Gordon M. Buck | R. S. Lovett |
| Samuel Carr | W. S. McCornick |
| L. H. Cornell | Wm. Mahl |
| Wm. D. Cornish | Oliver W. Mink |
| George E. Downs | H. B. Taylor |
| Maxwell Evarts | W. V. S. Thorne |

P. A. Valentine

Directors elected October 14, 1908:

| | |
|---|---|
| Oliver Ames | E. H. Harriman |
| Gordon M. Buck | R. S. Lovett |
| Samuel Carr | W. S. McCornick |
| L. H. Cornell | Wm. Mahl |
| Wm. D. Cornish | Oliver W. Mink |
| George E. Downs | H. B. Taylor |
| Maxwell Evarts | W. V. S. Thorne |

P. A. Valentine

Mr. Cornish died November 7, 1908, and vacancy remains.

NEW YORK CITY, *December 18, 1908.*

(NOTE.—Maxwell Evarts and Gordon M. Buck are regular salaried attorneys of both the Union Pacific and Southern Pacific, located at the offices 120 Broadway, New York; L. H. Cornell, George E. Downs and H. B. Taylor are employes of both the Union Pacific and Southern Pacific systems, located at the offices 120 Broadway, New York; Wm. Mahl is Comptroller and W. V. S. Thorne is Director of Purchases, of the Union Pacific and Southern Pacific systems.

3212 (Paper marked "Complainant's Exhibit 131.")

Mr. SEVERANCE. I offer in evidence Complainant's Exhibit 131, showing list of the directors of the Southern Pacific Company elected April 3, 1907, together with certain changes during the year, and the list of directors elected April 8, 1908. It is stipulated that these lists were made up by the secretary of the company, and are correct.

Complainant's Exhibit 131 is as follows:

COMPLAINANT'S EXHIBIT 131.

SOUTHERN PACIFIC COMPANY.

Directors elected April 3, 1907:

| | |
|---|---|
| Wm. D. Cornish | R. S. Lovett |
| Henry W. de Forest | Clarence H. Mackay |
| Maxwell Evarts | D. O. Mills |
| Robert Goelet | Ogden Mills |
| E. H. Harriman | James Stillman |
| Marvin Hughitt | W. V. S. Thorne |
| H. E. Huntington | David Wilcox |

A. K. Van Deventer

April 11, 1907, Mr. D. O. Mills resigned and W. Bayard Cutting was elected.

Mr. Wilcox died April 24, 1907, and on July 8, 1907, Wm. Mahl was elected.

January 23, 1908, Mr. Stillman resigned and Frank A. Vanderlip was elected.

3213 Directors elected April 8, 1908:

| | |
|---|---|
| Wm. D. Cornish | H. E. Huntington |
| W. Bayard Cutting | R. S. Lovett |
| Maxwell Evarts | Clarence H. Mackay |
| Henry W. de Forest | Wm. Mahl |
| Robert Goelet | Ogden Mills |
| E. H. Harriman | W. V. S. Thorne |
| Marvin Hughitt | Frank A. Vanderlip |

A. K. Van Deventer

Mr. Cornish died November 7, 1908, and the vacancy remains.

NEW YORK CITY, *December 18, 1908.*

(NOTE.—Maxwell Evarts is a regular salaried attorney of both the Union Pacific and the Southern Pacific, with offices with the company in New York: Wm. Mahl is comptroller of both the Union Pacific and Southern Pacific Companies and of the Pacific Mail Steamship Company and of the various companies affiliated with it, controlled by the Union Pacific or Southern Pacific: W. V. S. Thorne is Director of Purchases of both the Union Pacific and Southern Pacific systems, and A. K. Van Deventer is treasurer of the Southern Pacific.)

(Paper marked "Complainant's Exhibit 132.")

Mr. SEVERANCE. I offer in evidence Complainant's Exhibit 132, being a list of the directors of the Pacific Mail Steamship Company, elected May 29, 1907, and a list of the directors of the same company, elected May 27, 1908, these lists having been prepared by the secretary of the company, and it is stipulated that they are correct.

Complainant's Exhibit 132 is as follows:

3214 COMPLAINANT'S EXHIBIT 132.

PACIFIC MAIL STEAMSHIP COMPANY.

Directors elected May 29, 1907:

| | |
|---|---|
| Maxwell Evarts | George H. Macy |
| Henry W. de Forest | Ogden Mills |
| E. H. Harriman | R. P. Schwerin |
| Robert Goelet | R. S. Lovett |

W. V. S. Thorne

Directors elected May 27, 1908:

| | |
|---|---|
| Maxwell Evarts | R. S. Lovett |
| Henry W. de Forest | George H. Macy |
| Robert Goelet | Ogden Mills |
| E. H. Harriman | R. P. Schwerin |

W. V. S. Thorne

NEW YORK CITY, *December 18, 1908.*

(NOTE.—Maxwell Evarts is an attorney of the Union Pacific and Southern Pacific systems at 120 Broadway, New York; W. V. S. Thorne is Director of Purchases; and R. S. Lovett is Vice-President and General Counsel of said Union Pacific and Southern Pacific Companies; R. P. Schwerin is Vice-President and General Manager of the Pacific Mail Steamship Company, Occidental & Oriental Steamship Company, Portland & Asiatic Steamship Company, and San Francisco & Portland Steamship Company.)

(Paper marked "Complainant's Exhibit 133."

Mr. SEVERANCE. I offer in evidence Complainant's Exhibit 133, being a list of the directors of the Oregon Railroad & Navigation Company, elected September 26, 1907, together with certain changes during the year, and a list of directors elected September 10, 1908. These lists were made up by the secretary of the company, and it is stipulated that they are correct.

3215

Complainant's Exhibit 133 is as follows:

COMPLAINANT'S EXHIBIT 133.

OREGON RAILROAD AND NAVIGATION COMPANY.

Directors elected September 26, 1907:

| | |
|---|---|
| R. Blaisdell | E. H. Harriman |
| W. L. Bull | R. S. Lovett |
| H. F. Conner | W. R. Litzenberg |
| Wm. D. Cornish | Wm. Mahl |
| W. W. Cotton | R. B. Miller |
| Wm. Crooks | J. P. O'Brien |
| Maxwell Evarts | W. D. Skinner |

J. G. Wilson

January 20, 1908, C. G. Sutherland was elected instead of Mr. Crooks, who had died, and A. Gavin instead of Mr. Mahl, who had resigned.

Directors elected September 10, 1908:

| | |
|---|---|
| R. Blaisdell | E. H. Harriman |
| W. L. Bull | R. S. Lovett |
| H. F. Conner | W. R. Litzenberg |
| Wm. D. Cornish | R. B. Miller |
| W. W. Cotton | J. P. O'Brien |
| Maxwell Evarts | W. D. Skinner |
| A. Gavin | C. G. Sutherland |

J. G. Wilson

3216 Mr. Cornish died November 7, 1908, and the vacancy remains.

NEW YORK CITY, *December 18, 1908.*

*Supplementary to Complainant's Exhibit 133—O. R. & N. list of directors elected September 10, 1908.*

R. Blaisdell of Portland, Auditor of Company.
A. Gavin, an employe in Auditor's office.
W. R. Litzenberg, Secretary.
W. W. Cotton, Attorney.
W. F. Connor, Assistant to Attorney.
J. G. Wilson, Assistant to Attorney.
(Understand gentlemen above named have no other affiliations.)
W. L. Bull, New York Banker—No other connection.
R. S. Lovett, Vice-President and General Counsel of Union Pacific and Southern Pacific systems.
Maxwell Evarts, Attorney for Union Pacific and Southern Pacific systems.
R. B. Miller, General Freight Agent of Company and also of Southern Pacific lines in Oregon.
W. D. Skinner, Assistant General Freight Agent to Mr. Miller.
J. P. O'Brien, General Freight Agent of Company and also of Southern Pacific lines in Oregon.
C. G. Sutherland, Chief Clerk in Mr. O'Brien's office.

(Paper marked "Complainant's Exhibit 134.")

Mr. SEVERANCE. I offer in evidence Complainant's Exhibit 134, being list of the directors of the Occidental and Oriental Steamship Company, elected July 10, 1907, and the list of the directors elected July 8, 1908; also the list of the directors of the San Francisco and Portland Steamship Company, elected June 19, 1907, and the list of the directors of that company, elected June 3, 1908, said lists being made up by the secretaries of said companies, and it is agreed that such statements are correct.

Complainant's Exhibit 134 is as follows:

3217 COMPLAINANT'S EXHIBIT 134.

OCCIDENTAL AND ORIENTAL STEAMSHIP COMPANY.

Directors elected July 10, 1907:

A. J. Frey — Wm. F. Herrin
A. M. Garland — H. E. Huntington
R. P. Schwerin

Directors elected July 8, 1908:

A. J. Frey — Wm. F. Herrin
A. M. Garland — H. E. Huntington
R. P. Schwerin

SAN FRANCISCO AND PORTLAND STEAMSHIP COMPANY.

Directors elected June 19, 1907:

Andrew Carrigan — A. M. Garland
A. J. Frey — Wm. F. Herrin
R. P. Schwerin

Directors elected June 3, 1908:

Andrew Carrigan — A. M. Garland
A. J. Frey — Wm. F. Herrin
R. P. Schwerin

NEW YORK CITY, *December 18, 1908.*

*Supplementary to Complainant's Exhibit 134—Occidental & Oriental S. S. Co.*

R. P. Schwerin, Vice-President and General Manager of this Company as well as of Pacific Mail, San Francisco & Portland and Portland and Asiatic S. S. companies.

A. J. Frey, Assistant to the Vice-President of the Pacific Mail S. S. Co.

A. M. Garland, Freight Traffic Manager of Pacific Mail S. S. Co. No other affiliations.

3218 W. F. Herrin, Chief Counsel Southern Pacific Company. No other affiliations.

*Supplementary to Complainant's Exhibit 134—San Francisco & Portland S. S. Co.*

Andrew Carrigan, Merchant, San Francisco.

A. J. Frey, assistant to Vice President of Pacific Mail.

A. M. Garland, Freight Traffic Manager of Pacific Mail S. S. Co.

Wm. F. Herrin, Chief Counsel Southern Pacific Company.

R. P. Schwerin, Vice President and General Manager of this company, and also of Pacific Mail, O. & O. S. S. Co. and Portland & Asiatic S. S. Companies.

(Paper marked "Complainant's Exhibit 135.")

Mr. SEVERANCE. I offer in evidence Complainant's Exhibit 135, being a list of the directors of the San Pedro, Los Angeles & Salt Lake Railroad Company, elected November 18, 1907, and a list of the directors of said company, elected November 16, 1908. These lists were made up by the secretary of said company, and it is stipulated that they are correct.

Complainant's Exhibit 135 is as follows:

COMPLAINANT'S EXHIBIT 135.

SAN PEDRO, LOS ANGELES AND SALT LAKE RAILROAD COMPANY.

Directors elected November 16, 1907:

| | |
|---|---|
| H. I. Bettis | E. H. Harriman |
| W. H. Bancroft | Thomas Kearns |
| J. Ross Clark | W. R. Kelly |
| W. A. Clark | W. G. Kerckhoff |
| W. D. Cornish | R. C. Kerens |
| W. H. Comstock | T. F. Miller |

Mr. Cornish died November 7, 1908.

3219 Directors elected November 16, 1908:

| | |
|---|---|
| H. I. Bettis | E. H. Harriman |
| W. H. Bancroft | Thomas Kearns |
| J. Ross Clark | W. R. Kelly |
| W. A. Clark | W. G. Kerckhoff |
| Robert S. Lovett | R. C. Kerens |
| W. H. Comstock | T. F. Miller |

*Supplementary to Complainant's Exhibit 135—San Pedro, Los Angeles & Salt Lake R. R. Co.*

H. I. Bettis, Auditor of Company solely.
W. H. Comstock, Secretary solely.
W. R. Kelly, Counsel solely.
J. Ross Clark, Vice Pres. solely.
W. A. Clark, President.
E. H. Harriman, President U. P. and S. P. systems.
R. S. Lovett, Vice Pres. U. P. and S. P. systems.

H. I. Bettis, W. R. Kelly, W. G. Kerckhoff, E. H. Harriman, R. S. Lovett and W. H. Bancroft were nominated by Union Pacific interests but election of all was unanimous.

(Papers marked "Complainant's Exhibits 136 to 149 inclusive.")

Mr. SEVERANCE. I offer in evidence Complainant's Exhibits 136 to 149, inclusive, being the forms of proxies for meetings of the stockholders of certain of the Defendants, as shown on the face of the proxies, said forms being the ones sent out by the secretary of the respective companies to the stockholders prior to the meetings, with

request for the execution of the same; said forms having been produced by the Defendants at the request of the Complainant, and it is stipulated that they are correct.

Complainant's Exhibits 136 to 149, inclusive, are as follows:

3220 COMPLAINANT'S EXHIBIT 136.

Proxy. (Individual.)

——— Shares.

Know all men by these presents:

That I, ——— ———, do hereby constitute and appoint ——— ——— Wm. D. Cornish, W. H. Bancroft, and P. L. Williams, and each of them severally, my Attorneys and Agents for me and in my name, place and stead to vote as my proxy at the Annual Meeting of the Stockholders of the Oregon Short Line Railroad Co. to be held at ——— on the —— day of ———, 19—, and at any and all adjournments of said meeting, upon all my stock in said Company and according to the number of votes I would be entitled to vote if then personally present, with full power of substitution and revocation; hereby ratifying and confirming all that my said Attorneys, or either of them, may lawfully do at said meeting in my name, place and stead.

In witness whereof, I have hereunto set my hand and seal this —— day of ———, 19—.

——————— [L. S.]

Sealed and delivered in presence of

——— ———

3221 COMPLAINANT'S EXHIBIT 137.

Preferred stock. Proxy.

Shares ———

Know all men by these presents:

That ——— ———, Stockholder in Union Pacific Railroad Company, hereby constitute and appoint Louis Fitzgerald, Jacob H. Schiff, Winslow S. Pierce, Oliver Ames and E. H. Harriman, or either of them, ——— lawful agent and attorney for ——— and in ——— name to appear at the special meeting of the stockholders of said Company, to be held in Salt Lake City, Utah, on the tenth day of January, A. D. 1899, for the purpose of considering and acting upon a proposed amendment of the Articles of Association of said Company, increasing its Common capital stock by the amount of $27,460,100 and of authorizing the issue and use of such additional stock, and of taking all suitable action in that behalf, and in the name and on behalf of the undersigned to vote upon any questions and matters included in the said objects of the said spe-

cial meeting with the same power and effect as if the undersigned were personally present and voting.

In witness whereof, ——— have hereunto set ——— hand and seal this —— day of December, 1898.

——————— [SEAL.]

Witness:

——— ———

Please date, sign and have witnessed this proxy and return to Alex. Millar, Secretary, 120 Broadway, New York, in the enclosed envelope.

3222 COMPLAINANT'S EXHIBIT 138.

Proxy. Union Pacific Railroad Company.

Shares: {Preferred ———
{Common ———

Know all men by these presents:

That ——— ———, the undersigned stockholder in Union Pacific Railroad Company, hereby constitute and appoint Louis Fitzgerald, E. H. Harriman, Jacob H. Schiff, Winslow S. Pierce and Oliver Ames, or any or either of them, with power to substitute an attorney or attorneys in their place and stead, lawful agents and attorneys of the undersigned, for and in the name and stead of the undersigned to appear and to vote in respect of all Common Stock and all Preferred Stock, or either, held by the undersigned, at the Special Meeting of the stockholders of said Company, to be held at Salt Lake City, Utah, on the ninth day of October, A. D. 1899 (including any adjournment thereof), for the purpose of considering, voting and acting upon a proposed amendment of the Articles of Association or Charter of said Company, increasing its preferred capital stock by the amount of $25,000,000, and its common capital stock by the amount of $7,718,600, and of authorizing the issue and use of such additional preferred and common stock, and of taking all suitable action in that behalf; and also for and in the name and stead of the undersigned to appear and to vote in respect of all Common Stock and all Preferred Stock, or either, held by the undersigned, at the Annual Meeting of the stockholders of said Company, to be held at Salt Lake City, Utah, on the tenth day of October, A. D. 1899 (includ-
3223 ing any adjournment thereof), for the purpose of electing Directors of said Company, and for the transaction of any other business which may come before said meeting; with power, in the name and on behalf of the undersigned to vote at said Special Meeting and at said Annual Meeting upon any and all questions and matters included in or relating to the objects of said Special Meeting or of said Annual Meeting as though the undersigned were person-

ally present and voting. Authority is hereby given that any of said attorneys or their substitutes may act in the absence of the others.

In witness whereof, ——— have hereunto set ——— hand and seal this —— day of ———, 1899.

——— ——— [SEAL.]

Witness:

——— ———

Please date and sign this proxy in the presence of a witness and return it in the enclosed envelope to Alex. Millar, Secretary, 120 Broadway, New York City.

COMPLAINANT'S EXHIBIT 139.

Proxy. Union Pacific Railroad Company.

Shares { Preferred ——
Common ———

Know all men by these presents:

That ——— ———, the undersigned stockholder in Union Pacific Railroad Company, hereby constitute and appoint Louis Fitzgerald, E. H. Harriman, Jacob H. Schiff, Winslow S. Pierce and Oliver Ames, or any or either of them, or such person or persons as
3224 they or a majority of them may substitute and appoint, their attorney or attorneys in their place and stead, lawful agents and attorneys of the undersigned, for and in the name and stead of the undersigned to appear and to vote, in respect of all Common Stock and all Preferred Stock, or either, standing in the name of the undersigned, at the Annual Meeting of the stockholders of said Company, to be held at Salt Lake City, Utah, on the —— day of October, A. D. 1900 (including any adjournment thereof), for the purpose of electing directors of said Company and for the transaction of any other business which may come before said meeting; with power in the name and on behalf of the undersigned, to vote at said Annual Meeting upon any and all questions and matters included in or relating to the objects of said Annual Meeting, as though the undersigned were personally present and voting. Authority is hereby given that any of said attorneys or their substitutes may act in the absence of the others.

In witness whereof, ——— have hereunto set ——— hand and seal this —— day of ———, 1900.

——— ——— [SEAL.]

Witness:

——— ———

Please date and sign this proxy in the presence of a witness and return it in the enclosed envelope to Alex. Millar, Secretary, 120 Broadway, New York City.

3225 COMPLAINANT'S EXHIBIT 140.

Proxy. Union Pacific Railroad Company.

Shares: { Preferred ——— / Common ———

Know all men by these presents:

That ——— ———, the undersigned, stockholder in Union Pacific Railroad Company, hereby constitute and appoint Louis Fitzgerald, E. H. Harriman, Jacob H. Schiff, Winslow S. Pierce and Oliver Ames, or any or either of them, or such person or persons as they or a majority of them may substitute and appoint their attorney or attorneys in their place and stead, lawful agents and attorneys of the undersigned, for and in the name and stead of the undersigned to appear and to vote, in respect of all Common Stock and all Preferred Stock, or either, standing in the name of the undersigned, at the Annual Meeting of the stockholders of said Company, to be held at Salt Lake City, Utah, on the eighth day of October, A. D. 1901 (including any adjournment thereof), for the purpose of electing directors of said Company and for the transaction of any other business which may come before said meeting; with power in the name and on behalf of the undersigned, to vote at said Annual Meeting upon any and all questions and matters relating to the objects of said Annual Meeting, including the approval and ratification of all action of the board of directors and executive committee since the last annual meeting of stockholders, as though the undersigned were personally present and voting. Authority is hereby given that any of said attorneys or their substitutes may act in the absence of the others.

3226 In witness whereof, ——— have hereunto set ——— hand and seal this —— day of ——— 1901.

——— ———. [SEAL.]

Witness:

——— ———.

Please date and sign this proxy in the presence of a witness and return it in the enclosed envelope to Alex. Millar, Secretary, 120 Broadway, New York City.

COMPLAINANT'S EXHIBIT 141.

Proxy. Union Pacific Railroad Company.

Shares: { Preferred ——— / Common ———

Know all men by these presents:

That ——— ———, the undersigned, stockholder in Union Pacific Railroad Company, hereby constitute and appoint Louis Fitzgerald,

E. H. Harriman, Jacob H. Schiff, Winslow S. Pierce and Oliver Ames, or any or either of them, or such person or persons as they or a majority of them may substitute and appoint their attorney or attorneys in their place and stead, lawful agents and attorneys of the undersigned, for and in the name and stead of the undersigned to appear and to vote, in respect of all Common Stock and all Preferred Stock, or either, standing in the name of the undersigned at the Annual Meeting of the stockholders of said Company, to be held at Salt Lake City, Utah, on the fourteenth day of October, A. D. 1902 (including any adjournment thereof), for the purpose of electing directors of said Company and for the transaction of any other business which may come before said meeting; with power in the
3227 name and on behalf of the undersigned, to vote at said Annual Meeting upon any and all questions and matters relating to the objects of said Annual Meeting, including the approval and ratification of all action of the Board of Directors and Executive Committee since the last Annual Meeting of stockholders, as though the undersigned were personally present and voting. Authority is hereby given that any of said attorneys or their substitutes may act in the absence of the others.

In witness whereof, ——— have hereunto set ——— hand and seal this —— day of ———, 1902.

——— ——— [SEAL.]

Witness:

——— ———.

Please date and sign this proxy in the presence of a witness and return it in the enclosed envelope to Alex. Millar, Secretary, 120 Broadway, New York City.

COMPLAINANT'S EXHIBIT 142.

Proxy. Union Pacific Railroad Company.

Shares: { Preferred ———
Common ———

Know all men by these presents:

That ——— ———, the undersigned, stockholder in Union Pacific Railroad Company, hereby constitute and appoint Louis Fitzgerald, E. H. Harriman, Jacob H. Schiff, Winslow S. Pierce and Oliver Ames, or any or either of them, or such person or persons as they or a majority of them may substitute and appoint their attorney or attorneys in their place and stead, lawful agents and attorneys of the undersigned, for and in the name and stead of the undersigned
3228 to appear and to vote, in respect of all Common Stock and all Preferred Stock, or either, standing in the name of the undersigned, at the Annual Meeting of the Stockholders of said Company, to be held at Salt Lake City, Utah, on the thirteenth day of October A. D. 1903 (including any adjournment thereof), for the purpose of

electing directors of said Company and for the transaction of any other business which may come before said meeting; with power in the name and on behalf of the undersigned, to vote at said Annual Meeting upon any and all questions and matters relating to the objects of said Annual Meeting, including the approval and ratification of all action of the Board of Directors and Executive Committee since the Annual Meeting of stockholders, as though the undersigned were personally present and voting. Authority is hereby given that any of said attorneys or their substitutes may act in the absence of the others.

In witness whereof, ——— have hereunto set ——— hand and seal this —— day of —— —, 1903.

——— ——— [SEAL.]

Witness:

———— ————.

Please date and sign this proxy in the presence of a witness and return it in the enclosed envelope to Alex. Millar, Secretary, 120 Broadway, New York City.

3229 COMPLAINANT'S EXHIBIT 143.

Proxy.—Union Pacific Railroad Company.

Shares: { Preferred ——— / Common ———

Know all men by these presents:

That ——— ———, the undersigned, stockholder in Union Pacific Railroad Company, hereby constitute and appoint E. H. Harriman, James Stillman, Jacob H. Schiff, James H. Hyde and Winslow S. Pierce, or any or either of them, or such person or persons as they or a majority of them may substitute and appoint their attorney or attorneys in their place and stead, lawful agents and attorneys of the undersigned, for and in the name and stead of the undersigned to appear and to vote, in respect of all Common Stock and all Preferred Stock, or either, standing in the name of the undersigned, at the Annual Meeting of the stockholders of said company, to be held at Salt Lake City, Utah, on the eleventh day of October, 1904, and at any and all adjournments thereof, for the purpose of electing directors of said company and for the transaction of any other business which may come before said meeting; with power in the name and on behalf of the undersigned, to vote at said Annual Meeting upon any and all questions and matters, relating to the objects of said Annual Meeting, including the approval and ratification of all action of the Board of Directors and Executive Committee since the last Annual Meeting of stockholders, as though the undersigned were personally present and voting. Authority is hereby given that any of said attorneys or their substitutes may act in the absence of the others. All

1983

proxies heretofore made or given by the undersigned are
3230 hereby revoked.

In witness whereof,——— have hereunto set ——— hand and seal this —— day of ———, 1904.

——— ———, [L. S.]

Witness:

——— ———

Please date and sign this proxy in the presence of a witness and return it in the enclosed envelope to Alex. Millar, Secretary, 120 Broadway, N. Y. City.

COMPLAINANT'S EXHIBIT 144.

Proxy.—Union Pacific Railroad Company. Annual Meeting, October 10, 1905.

Shares: { Preferred ——— / Common ———

Know all men by these presents:

That ——— ———, the undersigned, stockholder in Union Pacific Railroad Company, hereby constitute and appoint E. H. Harriman, W. D. Cornish and W. R. Kelly, or any or either of them, or such person or persons as they or a majority of them may substitute and appoint their attorney or attorneys in their place and stead, lawful agents and attorneys of the undersigned, for and in the name and stead of the undersigned to appear and to vote, in respect of all
3231 Preferred Stock and all Common Stock, or either, standing in the name of the undersigned, at the Annual Meeting of the stockholders of said Company, to be held at Salt Lake City, Utah, on the tenth day of October, 1905, and at any and all adjournments thereof, for the purpose of electing directors of said Company and for the transaction of any other business which may come before said meeting; with power in the name and on behalf of the undersigned, to vote at said Annual Meeting upon any and all questions and matters, relating to the objects of said Annual Meeting, including the approval and ratification of all action of the Board of Directors and Executive Committee since the last Annual Meeting of stockholders, as though the undersigned were personally present and voting. Authority is hereby given that any of said attorneys or their substitutes may act in the absence of the others. All proxies heretofore made or given by the undersigned are hereby revoked.

In witness whereof, ——— have hereunto set ——— hand and seal this —— day of ———, 1905.

——— ———, [L. S.]

Witness:

——— ———

Please date and sign this proxy in the presence of a witness, and return it in the enclosed envelope to Alex. Millar, Secretary, 120 Broadway, N. Y. City.

3232 COMPLAINANT'S EXHIBIT 145.

Proxy.—Union Pacific Railroad Company. Annual Meeting, October 9, 1906.

Shares: { Preferred ——— / Common ———

Know all men by these presents:

That ——— ———, the undersigned, hereby constitute and appoint E. H. Harriman, W. D. Cornish and John N. Baldwin, or any of them, or such person or persons as they or a majority of them may substitute and appoint attorneys and proxies for and in the name, place and stead of the undersigned to appear and vote at the annual meeting of the stockholders of Union Pacific Railroad Company, to be held at its office at Salt Lake City, in the State of Utah, on the 9th day of October, 1906, at 12 o'clock M., and at all adjournments of said meeting, according to the number of votes that the undersigned would be entitled to vote if then personally present, for the purpose of electing directors of said Company, and of transacting any other business that shall come before said meeting, including specifically the approval and ratification of all action of the Board of Directors and Executive Committee since the last annual meeting of stockholders, hereby ratifying and confirming all that the said attorneys or either of them may lawfully do at said meeting in the name, place and stead of the undersigned; and all proxies heretofore made or given by the undersigned are hereby revoked.

In witness whereof, the undersigned ha—— hereunto set
3233 ——— hand and seal this —— day of ———, 1906.

——— ——— [L. S.]

Signed, Sealed and Delivered in the presence of:

——— ———

Please date and sign this proxy in the presence of a witness, and return it in the enclosed envelope to Alex. Millar, Secretary, 120 Broadway, N. Y. City.

COMPLAINANT'S EXHIBIT 146.

Proxy.—Union Pacific Railroad Company. Special Meeting, June 15, 1907.

Shares: { Preferred ——— / Common ———

Know all men by these presents:

That ——— ———, the undersigned, hereby constitute and appoint E. H. Harriman, W. D. Cornish and John N. Baldwin, or any of them, or such person or persons as they or a majority of them may substitute and appoint, attorneys and proxies for and in the name, place and stead of the undersigned, to appear and vote at

the Special Meeting of the stockholders of Union Pacific Railroad Company, to be held at Salt Lake City, in the State of Utah, on the fifteenth day of June, 1907, at 12 o'clock M., and at all adjournments of said meeting, according to the number of votes that
3234 the undersigned would be entitled to vote, if then personally present, for the purpose of considering and acting upon an amendment of the Articles of Incorporation of said Company, recommended by the Board of Directors, increasing its common capital stock by the amount of $100,000,000 and of authorizing the issue and use of such additional stock and of taking all suitable action in the premises, with power in the name and on behalf of the undersigned, to vote at said Special Meeting upon any and all questions and matters, relating to the objects of said Special Meeting, as though the undersigned were personally present and voting. Authority is hereby given that any of said attorneys or their substitutes may act in the absence of the others. All proxies heretofore made or given by the undersigned are hereby revoked.

In witness whereof, ——— have hereunto set ——— hand and seal this —— day of ———, 1907.

——— ——— [L. S.]

Witness:

——— ———

Please date and sign this proxy in the presence of a witness, and return it in the enclosed envelope to Alex. Millar, Secretary, 120 Broadway, N. Y. City.

3235 COMPLAINANT'S EXHIBIT 147.

Proxy.—Union Pacific Railroad Company. Annual Meeting, October 8, 1907.

Shares: [Preferred ———
[Common ———

Know all men by these presents:

That ——— ———, the undersigned, hereby constitute and appoint E. H. Harriman, W. D. Cornish, and John N. Baldwin, or any of them, or such person or persons as they or a majority of them may substitute and appoint, attorneys and proxies for and in the name, place, and stead of the undersigned to appear and vote at the annual meeting of the stockholders of Union Pacific Railroad Company, to be held at its office at Salt Lake City, in the State of Utah, on the 8th day of October, 1907, at 12 o'clock M., and at all adjournments of said meeting, according to the number of votes that the undersigned would be entitled to vote if then personally present, for the purpose of electing directors of said company, and of transacting any other business that shall come before said meeting, including specifically the approval and ratification of all action of the Board

of Directors and of the Executive Committee since the last annual meeting of stockholders, hereby ratifying and confirming all that any of the said attorneys or their substitutes may lawfully do at said meeting in the name, place, and stead of the undersigned; and all proxies heretofore made or given by the undersigned are hereby revoked.

3236 In witness whereof, the undersigned ha—— hereunto set ——— hand and seal this —— day of ———, 1907.

——— ——— [L. S.]

Signed, Sealed and Delivered in the presence of:

——— ———.

Please date and sign this proxy in the presence of a witness, and return it in the enclosed envelope to Alex. Millar, Secretary, 120 Broadway, N. Y. City.

COMPLAINANT'S EXHIBIT 148.

Proxy.—Union Pacific Railroad Company. Special Meeting, May 5, 1908.

Shares: {Preferred ———
{Common ———

Know all men by these presents:

That ——— ——— the undersigned, hereby constitute and appoint E. H. Harriman, W. D. Cornish, and John N. Baldwin, or any of them, or such person or persons as they or a majority of them may substitute and appoint, attorneys and proxies for and in the name, place and stead of the undersigned, to appear, act as the proxy of the undersigned, and vote (according to the number of votes that the undersigned would be entitled to vote if then personally present), at the Special Meeting of the stockholders of Union Pacific Rail-

3237 road Company, to be held at Salt Lake City, in the State of Utah, on the 5th day of May, 1908, at 10 o'clock A. M., and at all adjournments of said meeting, for the purpose of considering and acting upon the following propositions, viz:

1. To approve or ratify the sale to said Union Pacific Railroad Company of the railroad and branches, constructed or to be constructed, of The Leavenworth, Kansas and Western Railway Company, together with all the property, rights, privileges and franchises thereto pertaining, and all other property of the Company last named;

2. To approve or ratify the sale to said Union Pacific Railroad Company of the railroad and branches, constructed or to be constructed, of The Topeka and Northwestern Railroad Company, together with all the property, rights, privileges and franchises thereto pertaining, and all other property of the Company last named;

3. To authorize or approve an issue of bonds to be secured by a mortgage of a portion of said Union Pacific Railroad Company's lines of railroad, together with the appurtenances, including the lines of railroad proposed to be purchased as aforesaid.

With power, in the name and on behalf of the undersigned, to vote at said Special Meeting upon any and all questions and matters relating to the objects thereof, and to take all suitable action in the premises, with all the powers which the undersigned would possess if personally present at such meeting. Authority is hereby
3238 given to any of said attorneys or their substitutes to act in the absence of the others. All proxies heretofore made or given by the undersigned are hereby revoked.

In witness whereof, ——— have hereunto set ——— hand and seal this —— day of ———, 1908.

——— ——— [L. S.]

Witness:

——— ———

Please date and sign this proxy in the presence of a witness, and return it in the enclosed envelope to Alex. Millar, Secretary, 120 Broadway, N. Y. City.

COMPLAINANT'S EXHIBIT 149.

Proxy.—Union Pacific Railroad Company. Annual Meeting, October 13, 1908.

Shares: { Preferred ——— / Common ———

Know all men by these presents:

That ——— ——— the undersigned, hereby constitute and appoint E. H. Harriman, William D. Cornish and N. H. Loomis, or any of them, or such person or persons as they or a majority of them may substitute and appoint, attorneys and proxies for and in the name, place and stead of the undersigned; to appear and vote, according to the number of votes that the undersigned would be entitled to
3239 vote if then personally present, at the Annual Meeting of the stockholders of the Union Pacific Railroad Company, to be held at its office in Salt Lake City, Utah, on Tuesday, the 13th day of October, 1908, at twelve o'clock noon, and at all adjournments of said meeting, for the following purposes, viz: (1) To elect fifteen Directors; (2) To approve the form, and to authorize and direct the execution and delivery to The Equitable Trust Company of New York, as Trustee of the Company's First Lien and Refunding Mortgage, dated June 1, 1908, of an indenture for the purpose of subjecting, and to take all other action necessary or appropriate to subject, to the lien and provisions of said First Lien and Refunding Mortgage, all the railroads of the Company, and their franchises and appurtenances including equipment, subject and that may become

subject, to the lien of the Company's First Mortgage, dated July 1, 1897, to The Mercantile Trust Company, as Trustee (subject, however, to said First Mortgage), and to consent to and authorize an increase of the issue of said First Lien and Refunding Mortgage Four Per Cent. Bonds in accordance with the provisions of said Mortgage to $200,000,000, of which $100,000,000 are to be reserved for the refunding of the Company's First Mortgage Railroad and Land Grant Four Per Cent. Gold Bonds to mature July 1, 1947, and $50,000,000 to be reserved for issue from time to time hereafter for the purposes and upon the conditions and restrictions set forth and provided in said First Lien and Refunding Mortgage; (3) To authorize and provide for the purchase of the railroad, with its franchises and appurtenances, and all other property of The South Omaha and Western Railroad Company, a corporation of the State of Nebraska;

3240 and (4) To Transact all such other business as may legally come before the meeting, including the approval and ratification of all action of the Board of Directors and of the Executive Committee since the last Annual Meeting of the stockholders of the Company.

With power, in the name and on behalf of the undersigned to vote at said meeting upon any and all questions and business that may legally come before said meeting, and to take all suitable action, with all the powers which the undersigned would possess if personally present at such meeting. Authority is hereby given to any of said attorneys, or their substitutes, to act in the absence of the others. All proxies heretofore made or given by the undersigned are hereby revoked.

In witness whereof, the undersigned ha—— hereunto set ——— hand and seal this —— day of ———, 1908.

——— ——— [L. S.]

Signed, sealed and delivered in the presence of:

——— ———

Please date and sign this Proxy in the presence of a witness, and return it in the enclosed envelope to Alex. Millar, Secretary, 120 Broadway, New York City.

(An adjournment was then taken until the morning of Friday, March 19, 1909, at 10.30 o'clock.)

3241 653 FEDERAL BUILDING,

*Chicago, Illinois, Friday, March 19, 1909.*

The hearing was resumed before the Special Examiner, Hon. Sylvester G. Williams, at the above time and place, pursuant to adjournment.

Present: On behalf of the Complainant, Mr. C. A. Severance, Mr. G. E. Husted; on behalf of the Defendants, Mr. R. S. Lovett and Mr. W. R. Kelly.

## J. C. STUBBS, (2)

being duly sworn as a witness on behalf of the Complainant, testified as follows:

Direct examination by Mr. SEVERANCE:

Q. Mr. Stubbs, I want to ask you a few questions with reference to the Canadian differential that has been spoken of several times in the testimony. Do you remember the year that that differential, or difference in rates, was put in effect by the Canadian Pacific; that is, I mean the combined water and rail line to San Francisco?

A. I do not believe that I can come nearer than by saying that it was put in some time previous to 1898.

Q. I have no objection to your using this little book, if you would like to refresh your recollection.

A. I don't know whether it states it there or not.

Q. Yes; you will find it.

(Book handed to the witness.)

A. There was some changed conditions there at times. I do not know whether I can find it here. They did carry a differ-
3242 ential for a time, but when it was put into effect I do not recall.

Q. Mr. Stubbs, I suggest, to refresh your recollection, if you will turn to the history given by Mr. Kerr in his remarks, beginning on page 8 in that book.

A. Well, this is in 1887, the first differential was put in.

Q. Refresh your recollection by that. You recall, do you not, that there was a differential put in, by agreement with the transcontinental lines, in December, 1887?

A. Yes, sir.

Q. Were you present at that meeting on the fifth of November, 1887, at the Grand Pacific Hotel, in Chicago, when it was decided to organize the Transcontinental Association?

A. I think very likely I was. I think it is almost certain that I was, but I do not recall it. My recollection is that during that period I attended all the meetings of the Transcontinental Association, or all meetings for the purpose of organizing or reorganizing the association. That is my recollection.

Q. You were representing the Southern Pacific Company?

A. Yes, sir.

Q. Now, refreshing your recollection further by what appears on page 9 in this book, will you state in the record the time when the first Canadian Pacific differentials were put in, and what they were? It is up at the top of page 9.

A. The record shows that in November, 1887, it was understood that the Canadian Pacific should adopt differentials below the all-rail routes from New York on the 30-cent scale, and from Chicago,
3243 20-cent scale of difference. That is to say, the first-class rate from New York, via the Canadian line, would be thirty

cents lower than the all-rail rate, and from Chicago twenty cents lower, and so on down to five cents on the lowest class.

Q. Scaled down?

A. Scaled down, yes, sir.

Q. So that I will not have to repeat the question—wherever in your testimony, so far as you are discussing these differentials, you refer to the Canadian line, you mean the rail line to Vancouver and the boat line from there to San Francisco?

A. Yes, sir.

Q. Those differentials that you have just mentioned apply both ways, do they not? I mean to San Francisco and from San Francisco?

A. Those I have just spoken of, according to the record, applied both ways.

Q. What arrangement was made with reference to differentials, by that line, from Buffalo, Toledo and Detroit, and when?

A. According to this record, this statement of Mr. Kerr, which I accept as being correct, the differentials for Buffalo were ninety per cent. of the New York rate, and Toledo and Detroit eighty-five per cent. of the New York rate. That I understand to be ninety per cent. and eighty-five per cent., respectively, of the Canadian Pacific's differential rate to New York.

Q. Now, at that time, when those differentials were fixed, or about that time, was there any arrangement by which the Northern Pacific Railway Company had a differential to San Francisco by way of Tacoma?

A. The record says that the Northern Pacific claimed the
3244 same differentials through Tacoma by rail and water, and their claim was allowed and agreed to.

Q. Was there any arrangement made at that time with reference to the Pacific Mail, Panama route?

A. According to this statement of Mr. Kerr, there was an agreement made with the Pacific Mail Steamship Company, which represented the Panama route, whereby certain space was rented in their steamers.

Q. That was by the——

A. By the transcontinental lines.

Q. By the constituent members of the Association?

A. Yes, sir.

Q. That arrangement was not a permanent one, that lapsed after a while, didn't it?

A. I don't know how long it ran. Perhaps—oh, I would hardly like to guess. Not more than two or three years.

Q. And after that lapsed did the rail lines have any control over the rates by the Panama route?

A. Not that I recall.

Q. And the Panama route mentioned there was made up of what lines, Mr. Stubbs?

A. At that time I think it was the Pacific Mail, New York to Colon, the Panama Railroad across the Isthmus of Panama, and the Pacific Mail from the west coast of Panama.

Q. Was the Pacific Mail on both coasts then?

A. At that time, yes, I think so.

Q. At what time was the Pacific Mail on both coasts, if you remember?

A. I could not recall that. I would not attempt to say.

3245 Q. It was a fact, was it not, that afterwards the Pacific Mail ships were withdrawn from the Atlantic?

A. Later on the persons interested in the Panama Railroad established their own steamship line from New York to Colon, and the Pacific Mail retired from that service. After that period, (I cannot recall the date of its beginning) the Pacific Mail operated the steamships in connection with the Panama Railroad from Panama on the west coast to San Francisco only.

Q. And for a long time, what has been known as the Panama route was made up by the Pacific Mail on the west coast and the Panama Railroad and its ships on the east coast?

A. That is correct.

Q. And except during the time that this arrangement mentioned here was in force, which you think was two or three years only——

A. I cannot recall. It wasn't very long. Two or three years, I think, will cover it.

Q. After that lapsed, there was no control exercised over that line by the railroad companies up to say 1900—to put it more definitely, up to the time the stock of the Pacific Mail——

A. Well, I would not like to answer so as to admit that by that contract there was a control exercised by the rail lines. But there was no agreement by which the railroads had any influence upon the rates used, quoted, or carried by the Panama route after that time, as I recall it.

Q. That continued to be the case, did it not, up to the time the majority of the stock of the Pacific Mail was bought by the Southern Pacific? That is, there was no railroad control of that route, or any part of it, until that time?

3246 A. There never has been, according to my recollection, any railroad control of the rates by that route since that time. By that I mean that the mere fact that the Southern Pacific later on, as I understand it, purchased a controlling interest in the Pacific Mail Steamship Company's stock did not give the railroads any control over the rates. That is to say, I, as the chief traffic officer of the Central Pacific or the Southern Pacific system, never had any control over, or anything to do with, the rates by the Panama.

Q. But you recall that the majority of the stock of the Pacific Mail was afterwards purchased by the Southern Pacific Company?

A. I have understood that. Of course, I could not testify that I knew it; but I have understood that to be the case.

Q. Well, you haven't very much doubt about that, have you, Mr. Stubbs?

A. That is right. I think it is so.

Q. But you have not been the traffic officer of that line?

A. No, sir.

Q. Who has had charge of that traffic?

A. Mr. Schwerin, R. W. Schwerin.

Q. He is the traffic manager of the Pacific Mail Steamship Lines?

A. Yes.

Q. Mr. Stubbs, do you recall that some time later, during the receivership of the Union Pacific Railroad Company, there was a move agreed to by the other transcontinental lines, except the Union Pacific, to make a similar contract with the Panama route?

A. I do not recall it.

Q. To rent space?

A. I do not recall it.

3247 Q. How is that?

A. I do not recall that circumstance.

Q. Well, perhaps you can refresh your recollection, if you will turn to page 82 of that little book, beginning with the words "in 1896 an agreement was made."

A. Yes.

Q. This is your statement before the arbitrators?

A. Yes.

Q. Now, refreshing your recollection by reference to your statement made to the arbitrators, what do you remember about that?

A. Do you want me to read what I say?

Q. Yes; read what you say.

A. (Reading:) "In 1896 an agreement was attempted to reorganize the Transcontinental Association. In order to accomplish this it was essential to make a contract with the Panama route; secondly, to come to some understanding with the Canadian line. The agreement failed of the necessary unanimous ratification, for reasons which are not necessary to explain. Indeed, I do not know that anybody can explain them, except the Union Pacific people; and they never have. But all the necessary arrangements had been completed up to the final ratification. They included a contract with the Panama route, whereunder the transcontinental lines lease from the steamship company sufficient space in their steamers to accommodate a stipulated tonnage." Shall I go further?

Q. Just the next sentence.

A. "The Canadian Pacific demanded as the price of its co-operation in this agreement, a differential of 10 per cent., but finally consented to take nine per cent."

Q. Now having refreshed your recollection by that, you re-

3248 member, do you not, that it was only the refusal of the Union Pacific Railway Company, or its receivers, to unite in that agreement that caused that agreement to fail.

A. That may be true. I do not think it necessarily follows. I think that the proposition was—it should rather be stated—that we should try to make the engagement probably similar to the one that had previously been made with the Panama route. I do not think that up to this time—that is, the time that I made this statement—that there had been any negotiations with the Panama route, or that the possibilities or probabilities of our being able to make such an arrangement had been resolved.

Q. But you do recall that all of the lines interested, that is, all of the transcontinental lines, had agreed that such an arrangement should be made, with the exception of the Union Pacific? You so stated there?

A. No, I don't state it that way, if you please. I do not think the language warrants that conclusion. It may have been, as you infer, that the Union Pacific was the only objector, but I do not think that follows from this, and I haven't any clear recollection on it.

Q. Turn back to page 13 (Mr. Kerr's statement) and see if you do not remember reading that—beginning two-thirds down the page: "In March, 1896, a meeting of all transcontinental lines," and so on.

A. Well, that states that the endeavors that we have been talking about were undertaken and carried forward until they were stopped, owing to the objections of the receivers of the Union Pacific. I think that is conclusive as to that fact.

3249 Q. That seems to bear out the inference that I drew from your statement, does it not?

A. I think the inference is fair.

Q. Was the Union Pacific acting independently of the Southern Pacific at that time, in 1896?

A. Always.

Q. Now, if you will take the little book again and turn back to Mr. Kerr's statement.

A. What page?

Q. Page 9. You have already testified that, refreshing your recollection by this little book, the differentials were put in in December, 1887, and you stated the extent of those differentials. Now, what was the next step in the history of those differentials? You will find it down towards the bottom of page 9 there.

A. Mr. Kerr states here, according to this record, on page 9 of the book that I am reading from, that on May 17, 1888, there was a meeting held in San Francisco, and at that meeting, owing to the differentials previously given to the Canadian Pacific having not given that company a reasonable share of the traffic (that means according to their notions) they applied for an increase of these differentials, on the basis of 40 cents on first-class and 10 cents on tenth class, and lower between San Francisco and New York; and that a committee was appointed to consider the matter and brought in the following resolution.

Q. Read that.

A. "Resolved: That it is the sense of our committee that the differentials allowed the Canadian Pacific Railway Company should at all times be fixed upon such a basis as will secure to that company a fair and reasonable share of the overland tonnage, and if the
3250 present figures do not accomplish that result, they should be so modified as to bring it about. To this end the chairman is authorized to negotiate for the American lines with the Canadian Pacific Railway Company and make such changes from time to time as in his judgment are warranted, with the understanding that the same differentials shall apply to St. Paul and Minneapolis traffic, via the Northern Pacific, as may be awarded the Canadian Pacific Railway Company; it being understood that these differentials shall apply via the ocean routes only."

Q. That, of course, was adopted?

A. That was adopted.

Q. Now turn to page 11. What change was made then in the differentials, if any?

A. From New York they were made on the 40 cent scale; from Buffalo, 32 cents; Detroit, 30 cents; Chicago, 25 cents; St. Paul and Minneapolis, 15 cents. That scales down to: On the tenth class 7½ cents from New York, 7 cents each from Buffalo, Detroit and Chicago, and 5 cents from St. Paul and Minneapolis.

Q. According to this statement there were some slight differences in the eastbound record to Chicago?

A. Yes.

Q. What were they?

A. According to Mr. Kerr's statement there were some slight changes in the rates I just read.

Q. Slight differences, wasn't it?

A. Slight differences.

Q. Eastbound?

A. Eastbound. To Chicago, he states that there appears to have been a 24 cent differential on first-class; second-class, 19; third, 16; fourth, 15; fifth, 13; sixth, 13; seventh, 13; eighth, 10; ninth class, 9; and tenth class, 7.

3251 Q. How long did that differential—that is, the westbound and the eastbound, as modified, as you have stated—continue?

A. According to this record, Mr. Kerr's statement, until July 1889.

Q. Then what happened?

A. The differentials were changed.

Q. At the instance of what company?

A. The Southern Pacific—according to this record.

Q. And what were they placed at——

A. That is merely Mr. Kerr's statement, you know, as to who proposed it.

Q. Well, he says you moved for a reduction.

A. That may be. But the mere moving of it in a meeting does not indicate that the Southern Pacific was alone the proposer of it, or even the instigator of it.

Q. I suppose it is true, is it not, that in meetings of that character it is quite often the case that matters are talked over between different gentlemen before the meeting, and the fact that you may have made the motion would not indicate that you had originated the idea?

A. That is right.

Q. That is what you mean, isn't it?

A. That is what I mean to convey.

Q. What figure were the differentials placed at as the result of that meeting?

A. This is the scale "From"—what is called the first-class scale: Chicago, 17½ cents; Detroit, 21; Pittsburg, 22; Atlantic seaboard, 28; scaled down to 5 cents to or from all points on the lowest class—E. Wool, in grease, 7½ cents. That means 7½ cents per 100 pounds.

Q. Now turn to page 12. What was next done in the way of
3252 these differentials?

A. According to Mr. Kerr's statement here, in July, 1889, these differentials were again changed; and those that were substituted for them were to run for three months; and they were afterwards extended to October 1, 1890. In 1891 a new proposition was made to the Canadian lines, whereunder the Canadian Pacific was to receive an allowance in lieu of their differential.

Q. That lasted only one year, did it?

A. This allowance arrangement lasted through the year 1891, when, according to Mr. Kerr, the Canadian Pacific restored its differentials.

Q. Well, how, and when?

A. The record here—that is, Mr. Kerr's statement is: "This allowance arrangement lasted through the year 1891, when the Canadian Pacific again reverted to their differentials by resolution of the Association at the New York meeting, January 14, 1892. At the end of 1892 the Transcontinental Association was dissolved, and the Canadian Pacific adopted the basis of 10 per cent differentials."

Q. That is sufficient. The rest of it is reasons for it—unless you want to read it. I don't care anything about it.

A. No; except to say that that last statement of Mr. Kerr's—that the Canadian Pacific adopted the basis of 10 per cent differentials—means that it adopted it of its own motion and without the consent of the other lines.

Q. That is what I was just coming to. I wanted to bring that out.

Then, at the end of the year 1892, the Canadian Pacific put in
3253 a rate, which I notice you criticise, calling it a differential, in one place, because it was not by agreement—but they put in a rate, at any rate, that was 10 per cent—not in cents, but 10 per cent below the all-rail rates?

A. That is what I understand Mr. Kerr to state here.

Q. Well, you recall that was the fact, don't you, and that that continued until the arbitration?

A. I think I would accept Mr. Kerr's statement as correct; but I cannot swear, you know, that I have any clear recollection of the fact. The thing has gone out of my mind. It is old timber with me.

Q. Yes, I understand. I suppose if I could turn you to Mr. Stubb's statement you would accept that as correct?

A. Yes; but when did he make it?

Q. Mr. Stubbs?

A. Yes.

Q. He made that before the Board of Arbitration.

A. That was in 1898, wasn't it?

Q. Yes.

A. Well, that has gone out of my mind.

Q. Yes; but I say you wouldn't have any doubt about the correctness of it?

A. Oh, no; I don't deny it. There is no reason why I should. I want to be exact, you know—to strengthen the testimony in your favor.

Q. Yes, I know; you are under oath now and you want to be careful. Just one thing further about that Panama matter, that I forgot. Turn to page 72 of that little book, please.

A. Page 72?

3254 Q. Yes. Refreshing your recollection by your statement as it appears at page 72, are you now able to fix the date after which there was no composition with the Panama road? Wasn't it after 1893? Look down about the middle of the page.

A. I see something here that would probably answer a question that you asked me a little while ago—how long the Pacific Mail did the work on the Atlantic side. I see here that the Columbian line opened in 1893.

Q. Yes, sir.

A. That would answer that question.

Q. Now, running down a dozen or fifteen lines, you will see that reference to the Panama road there.

A. Well, I say here in this argument, that since that time—that is, since 1893—there has been no composition of the differences with the Panama road.

Q. Read the next sentence.

A. (Reading:) "They stand in the market ready to take business that offers at any rate that will take it."

Q. Now, Mr. Stubbs, you recall the arbitration of the question as to whether the Canadian Pacific should continue to make this lower rate, do you not?

A. Yes, sir, I recall that as a fact.

Q. And that was held where? Here in Chicago, wasn't it?

A. The arguments were made here, yes, sir. The arbitration took place here in Chicago.

Q. Do you remember now the date of that arbitration, the date of the decision? You can tell by that book. Look at page 201.

A. October 19, 1898.

Q. Having refreshed your recollection by this record, you re-
3255 call now, do you not, that the Canadian Pacific, with the exception of one year when they were granted that allowance by the American lines, had in either what you technically term a differential (that is, by consent) or a lower rate maintained independently by them, to San Francisco and return, by way of Vancouver, from the last part of 1887 until the last part of 1898—a period of eleven years.

A. I think that is true.

Q. The reason I want to bring that out is there has been some question as to how long that continued.

A. Yes, I think that is true. I could not have recalled it without reference to this book.

Q. Yes, I understand that. The Canadian Pacific people were desirous of continuing that situation, were they not, and the matter was submitted to arbitration, and they urged before the arbitrators that they should be permitted to continue it?

A. Yes.

Q. Now turn to page 66 of that book. On that page you give a list of what you denominate the American transcontinental lines. Will you state what they were?

A. The Atchison, Topeka & Santa Fe, the Burlington & Missouri River, the Chicago Rock Island——

Q. The Burlington-Missouri River Railroad in Nebraska?

A. Yes, sir, in Nebraska.

Q. That is the Burlington Railroad line west of the Missouri River?

A. Yes, sir; that is right.—the Chicago, Rock Island & Pacific;
the Colorado Midland; the Denver & Rio Grande; the Mis-
3256 souri, Kansas & Texas; the Missouri Pacific; the Northern Pacific; the Oregon Railroad & Navigation Company; the Oregon Short Line Railroad; the Rio Grande Western Railway, St. Louis & San Francisco Railroad; the Southern Pacific Company; the Texas & Pacific Railway; and the Union Pacific Railroad.

Q. Now, on page 67 you state "the line that forms the eastern boundary of the Transcontinental Association"—you evidently had a map there?

A. I state that this contention is in respect to freight rates and freight rates only, between—that is in either direction—San Francisco on the one hand, and on the other hand places in the United States and in Canada, east of an imaginary line which is shown on the map—indicating it there.

Q. The map which you had there?

A. Yes.

Q. That line formed the eastern boundary of the Transcontinental Association?

A. I think so, yes, sir.

Q. You referred to it as the Missouri River Line?

A. Yes.

Q. Is that right?

A. That is right.

Q. Turn to page 70. I notice you state here that "giving an example of competition"—which you will find at the bottom of page 69—you speak of places where competition is in whole or in part between a carrier by water and a carrier by rail. Do you find that?

A. Yes.

Q. It is at the bottom of page 69. Then at the top of page 70 you say: "Another example is found on the Pacific coast between San Francisco and Portland, between San Francisco and Los An-
3257 geles, Santa Barbara and San Diego, where the service can be done entirely by rail or entirely by sea." What line of boats was running between San Francisco and Los Angeles, Santa Barbara and San Diego at that time?

A. I think only the Pacific Coast Steamship Company's boats.

Q. Is that the same line that came down from Vancouver?

A. I think so, yes. But there were occasional outside boats; and there were always the steam schooners. They were more potential in their competition coastwise on freight than the Pacific Coast Steamship line.

Q. And what line was there running between San Francisco and Portland, mentioned by you here?

A. My recollection is that the line owned or controlled by the Oregon Railroad & Navigation Company was then being run there. I do not know whether the Dollar line was running then or not.

Q. Well, you remember the other one was the O. R. & N. line?

A. Yes, sir. I think the Dollar line was there too.

Q. Did the Pacific Coast Steamship Company also put in at Portland on the way to San Francisco?

A. At that time I cannot say. They did for a long period, and then withdrew, under some arrangement with the O. R. & N. Company; but that was long before I had anything to do with them, and my acquaintance with that is merely hearsay.

Q. Now, if you will turn to pages 88 and 89. I think that will answer that last question—your statement there that the Pacific Coast line was running down, as Judge Lovett thought, from Portland. Look on page 88.

A. What is that reference?

Q. On page 88. You might read the statement there com-
3258 mencing with the words "The Great Northern, at Seattle, the Northern Pacific at Tacoma and Seattle" that gives the steamship situation. You find that on page 88, don't you?

A. Yes, sir.

Q. This is in your statement to the arbitrators, Mr. Stubbs?

A. Yes.

Q. Suppose you begin with the words "The Great Northern."

A. (Reading:) "The Great Northern, at Seattle, the Northern Pacific at Tacoma and Seattle, connect with the same steamers for

San Francisco, as the Canadian line connects with at Vancouver. The distance from Seattle is 804 miles as against 833 miles from Vancouver. These are distances that are taken from the official schedule of distances published by the Pacific Coast Steamship Company. The Oregon Railroad & Navigation Company connect at Portland, Ore., with steamers for San Francisco which are owned jointly by the Oregon Railroad & Navigation Co. and the Pacific Coast Steamship Company. It also connects with the Great Northern Ry. at Spokane and with the Oregon Short Line Railroad at Huntington. Huntington is on the Oregon Short Line." Do you want more?

Q. Yes; go ahead.

A. (Reading:) "The latter, in turn, connects at Granger with the Union Pacific; at Salt Lake with the Rio Grande Western, which, in turn, connects with the Colorado Midland, and Denver & Rio Grande, and at Pueblo, Colorado Springs and Denver, they connect with all these systems,"—according to the map. Do you want more?

Q. Yes; go ahead; I will tell you when to stop.

3259 A. (Reading:) "The distance from Portland to San Francisco is 653 miles against 833 from Vancouver. These steamship connections which are actual and not merely possible, form the following through lines to San Francisco, which correspond to the Canadian line in the respects described and are therefore justly entitled to every consideration as an offset to the alleged better facilities of other lines, that the Canadian line is entitled to on the same ground, namely:" Do you want me to read on?

Q. Yes; I would like to have you read that in.

A. (Reading:) "From Minneapolis: First, the Great Northern Railway to Seattle and San Francisco. Second, The Northern Pacific Railway to Tacoma, Seattle and San Francisco. From Omaha: (There are three routes from Omaha) First, The Union Pacific Railroad via Granger, the Oregon Short Line Railroad and Oregon Railroad and Navigation Company to Portland and San Francisco. Second, The Burlington out through Denver, the Denver & Rio Grande, Colorado Midland, Rio Grande Western, Oregon Short Line Railroad and Oregon Railroad & Navigation Company, to Portland, thence to San Francisco. Third, The Rock Island, following the same route through Colorado Springs and Denver, thence on via the Colorado Midland, Denver & Rio Grande, Rio Grande Western, Oregon Short Line and Oregon Railroad & Navigation Company, to Portland, thence via Oregon Railroad & Navigation Company's steamships to San Francisco." Do you want me to read "from Kansas City?"

Q. Yes; go on.

A. It is practically the same thing. [Reading:] "From

3260 Kansas City: There are three lines from Kansas City: First, The Union Pacific Railroad through Denver, Cheyenne, Granger, Oregon Short Line to Huntington, Oregon Railroad & Navigation Company, to Portland, thence via Oregon Railroad & Navigation Company's steamships to San Francisco. Second, The Atchi-

son, Topeka & Santa Fe R'y to Denver, Colorado Springs to Pueblo, where they connect with the Denver & Rio Grande and Colorado Midland, in connection with the Rio Grande Western, thence via Oregon Short Line Railroad and Oregon Railroad & Navigation Company to Portland, thence via Oregon Railroad and Navigation Company's steamships to San Francisco. Third, The Missouri Pacific Railway; the same way."

Q. Those lines were in existence at that time, as you stated, weren't they, Mr. Stubbs?

A. Yes.

Q. Turn over to page 94.

A. Beginning where?

Q. Down at the bottom of the page. Between that list of routes that you read into the record, and the bottom of page 94, you have been discussing these various mixed water and rail lines, have you not, and comparing them with the Canadian Pacific line?

A. I think so. I would have to read it over to——

Q. Well, will you read what you said at the bottom of page 94, beginning with the words "These American mixed rail-and-water lines?"

A. (Reading:) "These American mixed rail-and-water lines do not exist merely on paper. They are open and in daily use for both freight and passengers. They are effectively worked against the all-rail lines for San Francisco trade with Oregon, Washington, Idaho, Utah and Montana. Some of them are preferentially worked
3261 for San Francisco's trade with St. Paul and Minneapolis and points further east—the Great Northern works them."

Q. That will do. Now, take your statement there that "These American mixed rail-and-water lines do not exist merely on paper, but are effectively worked against the all-rail lines for San Francisco trade with Oregon, Washington, Idaho, Utah and Montana." How was the mixed rail-and-water line made up that worked into Utah from San Francisco?

Mr. LOVETT. Worked into Utah from San Francisco?

Mr. SEVERANCE. Yes, from San Francisco. He said they worked in competition with all-rail lines for San Francisco business into those various states.

WITNESS. I presume it was the Navigation Company's steamers to Portland, O. R. & N., Oregon Short Line.

Q. And the all-rail line that it was competing against was the Southern Pacific line from San Francisco to Ogden, wasn't it?

A. Or the Southern Pacific line and the O. R. & N. Company via Portland.

Q. Yes; or the Southern Pacific Company?

A. Yes.

Q. But the direct route——

A. The short route, and the route over which most of the business moved, was the Central Pacific line, San Francisco to Ogden direct.

Q. Well, can you imagine any business controlled by the Southern Pacific being sent to Ogden by way of Portland—rail?

A. No.

Q. If you had a direct line of your own, you would not have to divide it, and it would be a short line, too. Now, what would
3262 be the mixed rail-and-water lines competing for Oregon freight from San Francisco?

A. The Navigation Company's steamers to Portland, and then the Navigation Company's rails into Oregon, or the Southern Pacific Company's rails south of Portland.

Q. From San Francisco north?

A. Yes. Well, no, I didn't mean that. That is, I did not mean to refer to the Southern Pacific's rail lines to San Francisco. Your question was, What would be the water route to Oregon.

Q. I wanted to ask you both. I will put the question again so you will understand it.

A. Let me re-answer that. You have got it all right. The rail-and-water routes to Oregon would be the steamship between San Francisco and Portland and the O. R. & N. Company's rails, or the Southern Pacific Company's rails.

Q. Yes. It would depend on the part of the state being reached?

A. Yes. And then against that was the all-rail line of the Southern Pacific.

Q. And as to business exchanged only between San Francisco and Portland, it would be the O. R. & N. boats on the one hand, as against the Southern Pacific Railroad on the other?

A. Yes.

Q. Now how was that competitive business handled into Washington, that you speak of here? What were the rail-and-water lines, as against the all-rail lines?

A. Of course, the same physical features existed there with respect to the route via Portland, but there was added the routes via Tacoma and Seattle—the Pacific Coast Steamship Company in
3263 connection with the Northern Pacific, at Tacoma, or in connection with the Great Northern, at Seattle.

Q. The Northern Pacific also reached Portland, didn't it?

A. Yes; but they would not work any San Francisco business in connection with the steamers via Portland.

Q. No, probably not.

A. Probably not. They might have done it. They might have done it, but I don't think they did.

Q. The O. R. & N. at that time had a line up to Spokane, the same as they have now, hadn't they?

A. Yes, as far as I know.

Q. From Portland?

A. I think so, yes.

Q. The Great Northern worked business by that route, did they not? Didn't they have an entrance into Portland over the O. R. & N.?

A. Well, for transcontinental business, yes.

Q. Do you know whether they did for business into the mountain states?

A. Of course not local business, not for Spokane.

Q. No. I mean the mountain states—into Montana, for instance.

A. Oh, I presume so. I don't know very much about that. That was before my connection with it. My understanding is—it isn't worth much, though, because I was not officially connected with these lines—that for points east of Spokane, on the Great Northern or the Northern Pacific, they exchanged with the Oregon Railway & Navigation Company. Now, that may not be true, but I think it is true.

Q. If you will look at your statement preceding page 80 you will find that you have been suggesting that during the year that
3264 the American lines guaranteed certain revenue to the Canadian line, the Canadian line sat still and did not work to get business.

A. Yes.

Q. And therefore got very little business. Now turn to what you said in that connection at the top of page 80.

A. Yes. Do you want me to read it?

Q. Yes.

A. Of course, generally, you understand, I have been reading from manuscript, but this is not read from manuscript.

Q. It is just as eloquent.

A. This is just as it came to me while on my feet.

Q. It is fully as eloquent.

A. (Reading:) "I submit, where would the Union Pacific that makes in connection with the Central Pacific the shortest and most direct line, that is the oldest line to San Francisco—where would that company be today if their agencies were to carry out the program indicated for his agencies by Mr. Kerr in that testimony? Would it get any business that was competitive as between themselves and the 'Santa Fe' or the Missouri Pacific or 'Burlington' or 'Rio Grande' or Rio Grande Western roads? In three months, notwithstanding all its natural advantages, more than 50 per cent of its business would leave its rails; if it would get anything at all that possibly could go over another route."

Q. That will do. Now, has anything occurred since 1898, Mr. Stubbs, to change your view of the usefulness of soliciting agents in getting competitive business?

A. Yes.

Q. Just explain what it is.

A. Well, in the first place, that is a pretty strong statement made there.

Q. How is that?

3265 A. In the first place, that statement is a pretty strong statement.

Q. Well, you made it, apparently.

A. I made it, yes. And probably I should not make it today. Probably I should not have made it if I had been in any other position

than that of an advocate trying to make things as strong as it was possible.

Q. Assuming, Mr. Stubbs, that you were carried away a little by your enthusiasm when you put it as high as 50 per cent., it is your opinion, is it not, that where business is competitive, soliciting agencies are of great value in securing business for the lines that they represent?

A. Yes, sir.

Q. Now, if you will turn to the bottom of page 95. Read what you state, beginning at the bottom of page 95, commencing with the words "Blot out from the map."

A. (Reading:) "Blot out from the map, remove from the earth's surface this single line of railroad, the Central Pacific between Ogden and Sacramento, the pioneer road—would any of these eight American lines entertain the proposition which is involved in the Canadian line's contention for a moment?"

Q. Those eight lines were the ones that you have read into the record?

A. I presume so. I pointed to them on the map. I do not remember what they were. I presume they were those.

Q. Go ahead.

A. (Reading:) "Does the existence of the Central Pacific Road and its operation as a part of a through all-rail line (in which some of the integral parts of the through lines via Portland, which are part water and part rail, are interested), alter the rights, the equitable rights of the Portland mixed lines as against the Canadian
3266 line or against any other competitor? We contend that it does not—that as a matter of right, of equitable right, as well as a matter of law under Justice Brewer's decision in the case of the Chicago-Northwestern, plaintiff in error against John Osborn, and the same plaintiff in error against A. J. Junod, a through line is a line, is a unit, regardless of whether part of it may be used in forming another through line even if it be a rival through line. The reasonableness of this proposition is manifest. Any other view would deprive certain individual carriers, not only from participation in, but also of an opportunity to compete for a given traffic." Shall I go on?

Q. You might read the next sentence, showing the illustration.

A. (Reading:) "To illustrate: If the Oregon Short Line (indicating on map) running from Huntington to Granger and to Salt Lake, were deprived of a connection for the purpose of making a through line to San Francisco, via Portland, with the Union Pacific at Granger, or with the Rio Grande Western at Salt Lake City, because those roads respectively had physical connection with the Central Pacific at Ogden, the Oregon Short Line would be deprived of all opportunity to compete for a share of the San Francisco traffic."

Q. That was a statement that you made of your view with reference to competitive through lines, wasn't it?

A. That was my argument to win the case that I was advocating.

Q. Well, you were endeavoring to give the arbitrators your best judgment?

A. I was endeavoring to convince them that the Canadian Pacific had no right to a differential.

3267 Q. Well, you succeeded, as you usually succeed?

A. I think so.

Q. Turn over to page 97. Down towards the bottom of the page—your reference to the San Francisco community.

A. Shall I read?

Q. Yes.

A. (Reading:) "In May, 1888, the right of the Northern Pacific to make by its mixed rail and water line between Minneapolis and St. Paul and San Francisco the same rates as were made by the Canadian Line between the same points was recognized and conceded by the Canadian Line by vote of its representatives at a meeting of the Trans-Continental Association in San Francisco, but it long ago fell into disuse. The Northern Pacific found it would not work, for immediately upon the suggestion of the proposition the Oregon Railway & Navigation Co. came in and wanted the same advantage. Since then the Great Northern has been completed. Give the Northern Pacific a differential and can you withhold it from the Great Northern? Give it to the Great Northern and Northern Pacific and how can you withhold it from the Oregon Short Line and Union Pacific? If you give it to them how can you withhold it from the Kansas City lines? The Great Northern, Northern Pacific, Oregon Railroad & Navigation Co. in connection with the Union Pacific, which means the Union Pacific, the Burlington, the Rock Island, the Missouri Pacific, the Atchison, Topeka & Santa Fe, all in this market working a mixed rail-and-water line on a differential rate and where would rates be? How much business

3268 would the other lines get? What would the all-rail lines do with the San Francisco community, who began with the use of the Cape Horn route, accustomed to subdivide its business and to ship a large part by water around Cape Horn: accustomed to divide it between the Cape Horn sailing vessels and the Pacific Mail Company previous to the opening of the overland route; accustomed to put a large share on the sailing vessels, a small share on the Panama route and a still smaller share on the overland roads simply to avail themselves of differences in rates? Touch this question. Introduce differential rates with any of the American lines, and it must be manifest to any practical railroad man who knows the inter-dependence of these rates and these lines, that they will operate exactly as a cut rate. Let the rate be cut on the Great Northern and it goes down to the Gulf of California. Let it be cut on the Northwestern and it goes down to the Gulf of Mexico."

Q. That will do. The rest of it just amplifies that. Now, Mr. Stubbs, at that time you were giving the views of a trained traffic man upon the inter-dependence of rates: and you do not in any way

withdraw your statements made there, do you? They are accurate, are they not?

A. I really do not know how to take your question. I do not know that I am called upon to recall.

Q. Don't you still believe, as you stated there, that rates are so interdependent, that if you were to put in a differential, or a cut rate, on any of these lines, it would necessarily bring down all of the rates on all the other lines which are in competition?

3269 A. I think under like circumstances I would reiterate that statement today.

Q. Yes; that is what I thought. And it does not make any difference in the effect upon rates, does it, whether that cut rate, put in on the mixed rail and water line, is what you technically term a differential—that is, put in by agreement—or whether it is put in as an act of competition?

A. Oh, no. That makes all the difference in the world. If it is put in by agreement, then the lines consenting are bound to hold to that agreement until they take the proper steps to annul the agreement. There are such things as agreed differentials.

Q. Yes; there are many of them, of course.

A. I discuss that pretty generally in the argument there.

Q. Yes; very clearly.

A. And give descriptions of them; and I could not do as well now without reading it.

Q. Then, as I understand you, this suggestion that you have been making here as to the inter-dependence of rates, and to the fact, as you say, that it would operate as a cut rate, has reference not to what you call a differential, but to a lower rate maintained by——

A. I think it bears on the previous argument. That is to say: if one of these mixed lines claimed a differential, then there were so many other mixed lines that could be created, that they would immediately come in and demand a like differential, and would so involve the whole traffic that there would be nothing left for the all-rail lines. It would disorganize the whole situation. It would shatter the whole rate fabric. That was the contention; that was the gist of the

3270 argument there.

Q. Yes, I know it; and it is a very sound one too.

A. Yes.

Q. And that is still your view just as you expressed it here?

A. Yes, I think so.

Q. Now, as a matter of fact, what was the result of the maintenance of this lower rate—I see you do not like to call it a differential in your argument here—after the time you agreed to it? In the last few years it was simply a lower rate. What was the effect on transcontinental traffic of the maintenance of that lower rate by the Canadian Pacific?

A. I don't know that I can describe it. I think I say, somewhere in there, that the effect of it was that other lines cut the rates, probably secretly, to do it; in other words, while during that period when

the Canadian Pacific arbitrarily put in the differential, while nominally the rates were as published by the other lines, in ways that some traffic men know how to do, the differential of the Canadian Pacific was offset.

Q. I understand.

A. I think I say something of that kind there. I am not sure about that.

Q. Yes, you do. Then, as a matter of fact, the maintenance of that lower rate by the Canadian Pacific did have a direct and almost over-powering effect on transcontinental rates, did it not, in the way you have suggested?

A. Well, I think that what I have suggested would qualify your statement very much; that instead of it having a direct effect,
3271 it would be an indirect effect; and instead of it being an overwhelming effect, it would be, comparatively speaking slight, I mean compared with an open war, resulting from their adherence to the differential. To explain what I mean: Today, with the enforcement of the law, the general (I think universal) observance of the law, if those conditions were created, the moment the Canadian Pacific put in the 10 per cent. differential, all the other lines would meet it, openly.

Q. That is what I wanted to get at.

A. But they would do it by published rates.

Q. Yes; that is right. At the present time, when the railroads are maintaining their published schedules?

A. What I mean to say is that according to my recollection, my belief, they did not do it openly at that time—meet it by published rates. They did it secretly.

Q. I understand; but at the present time it is your understanding, is it not, that the railroads, substantially without exception, are strictly maintaining published rates?

A. I believe they are.

Q. Then, the necessary effect, in your judgment, of putting in such a rate as the Canadian Pacific had in at that time, would be to cause a reduction of the published rates by competitive lines?

A. Oh, but worse than that. It would eventuate in destructive rates—a war of rates that would be quite as much damaging, if not more, to the commercial communities than to the railroads. If one line started out to put in lower rates than its competitor, or its
3272 numerous competitors, and would put in a lower schedule, the other lines would meet it. Then the original line would go lower; that would be met; it would go lower still, and that would be met, until rates became beyond the power of the average line to carry for any great length of time; and in the meantime all commercial conditions are upset and trade relations destroyed.

Q. But whether that rate war which you suggest would result, you have no doubt whatever as to the other lines meeting the cut in the first instance, even if it did not extend further, have you?

A. Well, that was the opinion that I held then; and I do not know that I have changed my mind. There might be something in the changed conditions that would alter my judgment in that regard.

Q. But it doesn't occur to you?

A. It doesn't occur to me just at this moment.

Q. Turn to page 93. Down at the last paragraph. You give the comparative length of the Canadian line with the Union Pacific Short line, Portland route. Just read that, will you? It is the last paragraph on page 93.

A. (Reading:) "The Union Pacific-Oregon Short line's Portland route is practically of the same length as the Canadian line's Vancouver route from Portland, Me., Boston and New York City and is only 260 miles shorter from Philadelphia, but these differences would be reduced to insignificance were the Canadian line to use its Minneapolis route."

Q. The Union Pacific-Oregon Short line route that you refer
3273 to there is the water and rail line to San Francisco, is it not? Comparing it with the Canadian Pacific line to Vancouver and the boat line down?

A. Well, let the words speak for themselves.

Q. Read back, Mr. Stubbs.

A. I say the Union Pacific-Oregon Short Line's Portland route.

Q. To where?

A. I presume we were talking about San Francisco. The whole question was on San Francisco.

Q. Yes, San Francisco; that is as I understood.

A. Yes.

Q. Page 100. The last paragraph.

WITNESS. I saved you a whole lot of work on this, didn't I?

Mr. SEVERANCE. Yes, indeed.

Q. I guess you had better turn back to page 99, the last paragraph. I want to get in some mileage here that you evidently carefully looked up at that time.

A. These distances you want?

Q. Yes.

A. (Reading:) "We now pass from the American part water and part rail lines via Seattle and Portland, which work through Minneapolis, Omaha and Kansas City gateways, to the consideration of other American part water and part rail lines, whose ocean service is performed on the Atlantic side and which work via Mexican Gulf Ports. Their San Francisco trade is confined almost wholly to that part of it which is done with the Atlantic seaboard territory. They are, therefore, much more restricted in the territory laid open to their competition than the Canadian line is. These lines, like the eight already reviewed, present physical features which are substantially similar to the characteristics of the Canadian line and pleaded by it in support of its contention. If there is a difference, it is of degree only and in degree the advantage is with the Canadian line
3274 as compared with them. They are the—

| | Miles. |
|---|---|
| Southern Pacific "Sunset" lines: | |
| Morgan Steamship Line, New York to Algiers (New Orleans) | 1,800 |
| Thence via rail to San Francisco | 2,489 |
| Total | 4,289 |
| Texas & Pacific Gulf Line: | |
| Cromwell Steamship Line, New York to New Orleans | 1,800 |
| Thence via rail to San Francisco | 2,455 |
| Total | 4,255 |
| "Santa Fe" Gulf Line: | |
| Mallory Steamship Line, New York to Galveston | 2,300 |
| Thence via rail to San Francisco | 2,666 |
| Total | 4,966 |

They all do San Francisco business too at equal rates. They compare with the Canadian Pacific's line from New York in this wise:

| | Miles. |
|---|---|
| The Sunset line is longer by | 240 |
| The Texas & Pacific Gulf line is longer by | 206 |
| The Santa Fe Gulf line is longer by | 917 |

From the territory north, northwest and east of New York City, the difference in distance favors the Canadian line still more, because it takes the business up and forward directly by railroad, while we have to bring it down to New York and transfer it to steamer. From the territory west, southwest and south of New York City, the differences are the same as from New York City, as the traffic moves via New York City, to reach any of the lines contrasted." Do you want any more?

Q. All that you say there with reference to the comparative distance or the comparative burdens borne by these gulf
3275 lines and the Canadian line would apply likewise to the northern lines and the Portland lines, wouldn't it, as you have already stated that their distances are practically the same?

A. Oh, there might be a little difference. Practically speaking, yes. I would not want to be held down to accuracy, though. Of course you understand that what I have been reading is with respect to the Gulf routes from New York.

Q. Yes, I understand that.

A. Now, I don't know that I understand your last question—thinking about it. You do not mean that the Gulf lines could take it up over the Union Pacific and then down, on a parity, do you?

Q. No. You stated in another connection here, a few minutes ago, that the Union Pacific Portland boat line to San Francisco was 260 miles shorter than the Canadian Pacific line. That is in this record. You read it into the record a few minutes ago. That is why I am asking you whether the comparative distance of the Sunset Route——

A. I know; but I am afraid the record stands to read like this, which is wrong, namely——

Q. Anything that is wrong, correct.

A. That what I have been reading, which is a description of the Gulf routes to San Francisco, might be applicable to the Portland route. I say I don't think that is right. I don't think you mean that.

Q. No. That is not right. What I mean is this: You have read these figures that show that the Gulf routes from New York to San Francisco are somewhat longer than the Canadian Pacific route from New York to San Francisco.

A. Yes.

Q. And I say that difference in length against the northern
3276 routes to San Francisco by rail and water applies likewise when they are compared with the Portland route as with the Canadian Pacific?

A. Yes. I would answer that question, practically so.

Q. That is all I meant.

A. Practically so.

Q. Turn to page 102; next to the last paragraph; commencing "All these Gulf lines present."

A. (Reading:) "All these Gulf lines present the same physical characteristics (some of them in an exaggerated degree), as are set forth as peculiar to the Canadian line. Undoubtedly they have equal rights with the Canadian line to have a share or a part of the traffic set apart for their exclusive enjoyment. By contrast the equities would be with the Texas and Pacific and Santa Fe, rather than with the Canadian line, and we claim the same thing for the Sunset line. Having the same kind of a line, the same opportunities and the same necessities to obtain by fair means a reasonable share of traffic, a differential in their favor would operate to increase their respective takings in like manner and to the same extent that a differential in its favor would operate to increase the volume of traffic taken by the Canadian line. Having rights, equal to the right of the Canadian line, if the latter is, under all circumstances entitled to a differential, they are equally entitled to a differential."

Q. That was your statement at that time?

A. I made that as part of my argument against the Canadian Pacific's claim.

3277 Q. That was a truthful statement, wasn't it, in so far as it is not a matter of argument but of fact.

A. At the time, I believed it. Still, it is a matter of argument. One of the arbitrators, one of the men on the Board, did not agree with me as to the facts.

Q. Two of them did, though?

A. Two of them did, yes. I got them on that.

Q. Page 108, at the top of the page. Just read that, will you?

A. (Reading:) "Reverting again to the comparison between the Sunset Route and the Canadian line: the Sunset Route competes in this New England territory, the great manufacturing center for cotton piece goods, domestics, boots and shoes, nails and many other commodities with which you are all familiar. It competes with the

all-rail lines on a dead level equality of rates. The Canadian line takes up goods at Boston, or at any of these New England points or any of the interior New York points, in cars; transports them without breaking bulk to Vancouver, transfers them from car to ship and delivers them at San Francisco. The Sunset line and all the Gulf lines take these goods from Boston, as a rule, and put them aboard of the steamers of the Metropolitan Steamship Company; they are delivered by that Company on their pier, in New York City; they are then lightered to the Mallory steamship pier or to the Morgan steamship pier, reloaded into the vessels of the Gulf lines, transported to New Orleans or to Galveston, then transferred from vessel to car, and carried to San Francisco. There is evidently a disparity between the ability to handle these goods; but in whose favor is that dis-
3278 parity? Is it the Canadian line?

Q. Now, the disparity you are discussing there is the necessity that the Sunset has of breaking bulk twice, isn't it? That is one disparity?

A. That is one disparity.

Q. Does the Sunset line still take its New England business from Boston and New York by boat, as a rule?

A. Some of it, yes. I think most of it.

Q. And that which is taken there by rail is unloaded and loaded on the ships there?

A. That is right.

Q. So that the same disparity exists, so far as the necessity of breaking bulk twice is concerned, whether the traffic is taken into New York by rail or steamer?

A. That is right, provided the cars run through over the Canadian line.

Q. Yes. Now that same disparity would exist as against the Gulf lines and in favor of the Union Pacific Portland line to San Francisco, wouldn't it? It would only have to break bulk once at Portland?

A. So far as it has any influence on the business, yes.

Q. Well, the same handicap, if it is a handicap——

A. If it is a handicap, yes.

Q. Would exist as against the Sunset route, in favor of the Portland route, as you pointed out exists when it is compared with the Canadian Pacific?

A. Yes.

Q. That is correct, is it not?

A. Yes, sir.

Q. Turn over to page 119, the sixth line from the bottom.

A. Yes.

Q. Just read that, will you?

A. I will begin with the eighth line from the bottom.
3279 (Reading:) "They are not used for San Francisco traffic with Montana, Utah and Colorado, as between the all-rail lines and the mixed water-and-rail lines."

Q. You are discussing the differentials there, are you not?
A. I think so.
Q. Go ahead.
A. I am referring to the customs, the use of——
Q. Of differentials?
A. No; of mixed rail and water lines.
Q. Oh, no; referring to differentials as between the two. Look up two or three lines above and you will see.
A. Yes, that is so—and the application of differentials to such lines.
Q. That is right.
A. (Reading:) "They are not used for San Francisco traffic with Montana, Utah and Colorado, as between the all-rail lines and the mixed water-and-rail lines. There is much valuable business in Montana, Colorado and Utah, competed for by these direct Central Pacific, Union Pacific, Denver & Rio Grande lines and by the Oregon Railroad & Navigation Co. and Oregon Short Line, and for Montana by the Great Northern and the Northern Pacific, as well as the Oregon Railroad & Navigation Company and Oregon Short line, but we all work on a dead level equality of rates."
Q. Has that equality of rates always continued, as far as you are advised, between the rail and water combined lines and the——
A. Well, as I meant it at the time, and as I guess it was understood by the arbitrators, it did not mean that the rates from San Francisco to Ogden, for example, were the same as the rates from
3280 Omaha to Ogden; that is that competition, but as between the various routes from San Francisco that could be made, there was the dead level of rates.
Q. That is what I understood you to mean.
A. That is what I mean, yes.
Q. And that has always been maintained, so far as you know?
A. So far as I know, yes.
(A recess was here taken until 2 o'clock p. m.)
Q. Now turn to page 139, the last paragraph, beginning with "Is it apparent," and read that.
A. (Reading:) "Is it apparent from this showing"—that is, the showing as to the growth of the State of California—"that the Canadian line has any equitable ground for claiming that its right to the smallest part of San Francisco's trade is paramount to the rights of the American lines to do, and enjoy, the whole of San Francisco's business with other points in the United States? Is its competition desirable and helpful; promotive of trade? Is its presence in the San Francisco markets welcome to the San Francisco merchant? We aver that it does not introduce any necessary element of helpful competition which promises a freer and fuller exchange of commodities between San Francisco and its eastern markets of supply and consumption. A single glance at the map will prove that San Francisco is served by a sufficient number of independent American lines, not only to handle all her freight, but to do so if it were

increased many times over its present volume. I refer to these lines
out via Portland, Seattle and Tacoma; out via San Diego, not
3281 touching the Central Pacific; besides the Central Pacific and
Southern Pacific lines and added to these, the Pacific Mail Steamship Company, the original line, in connection with the Panama route, and the vessels of Cape Horn."

Q. That statement was correct, wasn't it, Mr. Stubbs, in your opinion at that time?

A. That averment that I speak of?

Q. Yes, sir, about San Francisco being served by a sufficient number of independent American lines as detailed by you.

A. I think so. I thought it was a good argument.

Q. And a truthful statement, wasn't it?

A. I think it stated the facts as I understood them at the time.

Q. Now read on a little further on page 140.

A. (Reading:) "The history of the operation of these lines proves beyond question the impossibility of any combination without the competition of the Canadian line which would not be possible with it. The public interest is fully protected in this respect by the natural, uncontrollable, competition of the American lines, so that the Canadian line can not find any substantial foundation for its claim of right to share in this traffic in the assertion that its services are necessary or desired by San Francisco merchants either to move the traffic or maintain helpful competition."

Q. That statement was correct, wasn't it, as you understood it?

A. I believed it was a good argument.

Q. You believed it was a truthful statement, didn't you?

A. Under the circumstances, yes.

Q. Well, have those circumstances changed?

A. I think not. I think all the competition that ever existed exists today.

3282 Q. Those conditions have not changed except as they may have changed in some minor particulars, perhaps by different ownership of lines?

A. It is my judgment that all the opportunities for competition that existed then still exist. All the practical competition that then existed exists today.

Q. At that time, however, Mr. Stubbs, you did not have charge of the traffic over as many of those lines as you have now, did you?

A. With the single exception of the line Omaha to Portland. As a line matter I exercised practically as much control then as now.

Q. There was not only the line from Omaha to Portland, but the boat line from Portland to San Francisco existed then and still exists?

A. Yes.

Q. As to the line between Omaha and San Francisco, your jurisdiction extended only to Ogden at that time, didn't it?

A. As a line matter, no. I had practically as much influence in the matter of making line rates through Ogden as I have today, because it was a line matter.

Q. But a little over half of the line was separately represented, wasn't it?

A. That is true; but at the same time the Union Pacific could not use the line—the rail line—from Ogden to San Francisco without the consent and co-operation of myself as representing the Southern Pacific.

Q. And, on the other hand, you could not use the line from Ogden to Omaha without the consent of the Union Pacific representatives?

A. That is true, but I had the advantage of the Union Pacific; I had another string to my bow.

Q. And the Union Pacific had the advantage of you, in that
3283 they had another string to their bow in the line by Portland, as you have demonstrated by your argument?

A. Yes, for what it was worth. But there is a good deal of difference between the efficiency of the two lines respectively.

Q. Well, we will let that stand on what you said this morning.

Mr. LOVETT. Or whatever he may want to add now.

Q. Now, read a little further on page 140, beginning with "Moreover the volume of the traffic."

A. (Reading:) "Moreover, the volume of the traffic is not so great as to tax the capacity of any of the American lines to move it safely and expeditiously, while there are six of the American lines, all-rail and mixed water-and-rail, over which it can move to and from the State of California, under as favorable conditions, approximately, as it can move over the Canadian line, and we contend that it is not equally just and right to all concerned to require these American lines, or any of them, under such circumstances, to surrender, through the device of a differential or any other expedient, any portion of this trade which may otherwise seek their line."

Q. That is enough.

A. I had better add that other sentence, hadn't I?

Q. Do you want to read a little more?

A. (Reading:) "We are talking about *right* now."

Q. In so far as the paragraph you have read involves statements of fact, it was a truthful statement, wasn't it?

A. I think so, with the probable exception that would follow the increased tonnage.

Q. Yes; but it was a truthful statement at that time?
3284 A. I thought it was when I made it.

Q. And you still think it was?

A. I think it was under the circumstances, when it was made.

Q. And the only change now is, as you say, that there is more tonnage to move?

A. That is all I can think of at the present moment.

Q. Now turn to page 196, down below the middle of the page, commencing with "Now, the Canadian line adheres." Go on from there.

A. (Reading:) "Now, the Canadian line adheres to its allegation of physical disability by reason of being a broken line, as its chief

and almost its only dependence in its case here. The 'Sunset' line has been shown to you—and I take it as the extreme case; I take it because the 'Sunset' line is the great bugbear in the eyes of the Canadian line—has been shown to you to be physically, in respect to the disabilities described by the Canadian line, a weaker line than the Canadian line.

"In the first place, the ocean haul from Vancouver to San Francisco, is eight hundred and some odd miles—I have forgotten—eight hundred and fifty or sixty miles. It is 1800 miles from New York to New Orleans—more than double. Compare the line, New York to San Francisco via the 'Sunset,' New York to San Francisco via the Canadian line and Pacific Coast Steamship Company, and it is 200 miles longer this way." (Pointing on the map.)

Q. Pointing on the map of the Sunset line?

A. Yes, pointing out on the map the Sunset line. "There is a comparison. Narrow their contention down to that physical
3285 disability and there you have a graphic comparison; a picture of the two lines. Now, where does the Canadian line stand under that? What is its answer? 'Oh, well, the "Sunset" line has been operating so successfully that it has demonstrated its ability to take the business, and it has got all it should have.'" Do you want more?

Q. Yes.

A. (Reading:) "That is a fine argument, isn't it? If the 'Sunset' line can build steam ships, improve transfer service, run trains 2400 or 2500 miles from New Orleans to San Francisco, and take a fair share of the business; so much of the business that the Canadian line and no other line would be willing to give it any more, and it has double the ocean haul; and in total length of haul it is 200 miles longer than the Canadian line, tell me why the Canadian line can not do it? Mr. Chairman, I know that you could do it, and while I am not an operating man, if I were on the Canadian line, I could do it."

Q. That is enough.

A. Well, wait a minute. Don't you want me to say anything more?

Q. What?

A. You had better put some more of that in.

Q. Go on; I am willing.

A. "All I should ask would be that my backers should put up the money, as they did in the case of the 'Sunset' line."

Q. In so far as that statement which you have read involves statements of fact, it was a truthful statement, wasn't it, Mr. Stubbs?

A. Well, I thought it was a good argument.

Q. You thought it was a truthful statement of the facts, didn't you, in so far as it involved facts?

A. All I state with respect to facts, length of haul, etc., yes.

3286 Q. And when you expressed your ability, with proper finan-

cial backing, if you were on the Canadian line, to do what you said you could do, you told what you believed, didn't you?

A. I didn't state the whole case.

Q. You were giving an honest opinion as to your ability to do that, weren't you?

A. I was giving an argument to impress the arbitrators. No, I didn't state the whole case—I might as well tell you so. Of course I didn't state the whole case.

Q. But I say, in so far as you did state anything, what you said was so, wasn't it?

A. I think so.

Q. And those lines have not changed in length in any way since except as there may be a change by reason of your boat line going to Galveston now instead of to New Orleans?

A. No, I think physically they are probably the same.

Q. When we were taking testimony in New York, Mr. Mahl stated that he didn't know how you divided the expense of your office in Chicago as you would know. Not your salaries, but on what basis is the expense of the Chicago office divided between the different lines?

A. I can't say now that that is a matter of record in my office; it certainly is in the auditor's office.

Mr. LOVETT. You will have to get that from Mr. Young.

WITNESS. Mr. Young is the only man who could certify to that absolutely.

Q. Well, can you state from recollection what companies share in the expense?

A. I presume that all of the lines, except the Texas lines, share in it. I am not sure.

Mr. LOVETT. I don't think anybody knows that except the auditor.

3287 Mr. SEVERANCE. We will get that from him, then. I only ask you because Mr. Mahl thought you would probably know.

WITNESS. He probably thought I had the record in my office, but if there it would only be in the way of correspondence, probably Mr. Young asking my advice as to how it should be done. I haven't any clear recollection about that.

Q. A witness who was on the stand yesterday, Mr. Gallagher, testified as to a time when Portland business was worked by the Union Pacific and the Central Pacific, the Southern Pacific line by Roseville up to Portland——

A. The Shasta Route.

Q. During the receivership, as against the Denver & Rio Grande and the Oregon Short Line. He stated there was a fast train put on there for a while: he did not know how long it was on. Do you remember about that?

A. I do not.

Q. You have no recollection?

A. No.

Q. Can you tell me where, if any place, we could get the records or statistics which will show that? Were they burned up in the fire?

A. Possibly Mr. Monroe might give you testimony on it or Mr. Luce. I do not think there are any records in existence about it.

Q. They were burned up, were they?

A. All our records in San Francisco were lost.

Q. And you personally have no recollection about it?

A. No recollection about it at all.

Cross-examination by Mr. LOVETT:

Q. On your direct examination you were requested to read from statements by Mr. Kerr, and also some widely separated paragraphs in what purports to be your statement, made by you.
3288 Please state what that proceeding was in which those statements were made, what it was for.

A. Those statements were read from what purports to be—and I may say I believe to be—a printed copy of the arguments made before a board of arbitrators, sitting at Chicago, in a contention which was referred to arbitration, between the Canadian Pacific and certain American lines, including all those west of the Missouri river that engaged in Pacific coast traffic, of a demand upon the part of the Canadian Pacific, as an equitable right, for a differential under the rates made by the American lines for business interchanged by San Francisco, California, with the territory that, I may state broadly, is the territory in the United States lying east of the Missouri river.

Q. When did that arbitration occur and who were the arbitrators, and who represented the parties before the arbitrators?

A. The hearing before the arbitrators in Chicago was on October 12, 1898. The board of arbitration was composed of Mr. W. A. Day, Mr. Edward S. Washburn, Chairman, and Mr. J. W. Midgeley. The committee in charge of the case of the American lines was Mr. Paul Morton, Mr. W. H. Truesdale, Mr. B. Campbell, and Mr. Stubbs, the witness; on the part of the Canadian line were Mr. Robert Kerr and Mr. G. M. Bosworth.

Mr. SEVERANCE. Then there was another representative who came in—Mr. Shaughnessy.

WITNESS. Later on Mr. Shaughnessy, then the vice president of the Canadian Pacific, appeared, to support Mr. Kerr's argument.

Q. Was the matter argued?

A. Yes, sir.

3289 Q. Was it argued by lawyers?

A. No.

Q. Who argued it?

A. There was an express stipulation at the time; it was determined that the question should be arbitrated, and, later on, that the case would be presented by traffic officers—no lawyers would be employed.

Q. And no lawyers appeared in the matter at all?

A. No lawyers appeared.

Mr. SEVERANCE. Unjust discrimination!

Q. Who presented the arguments? Who made the arguments?

A. Mr. Kerr, for the Canadian Pacific line, supported later on by Mr. Shaughnessy, and I for the American lines.

Q. These statements which have been read by you to-day, at the request of Mr. Severance, into the record of this case, have been widely separated paragraphs from a very extensive argument made by you before the arbitrators, have they not?

A. Yes, and some, I think, from statements made by Mr. Kerr.

Q. Well, I was only asking about those that you were asked to read as statements made by you.

A. The answer to that is, Yes.

Q. They were all statements from arguments in that proceeding?

A. Yes, sir.

Q. I believe you stated that the subject matter of that controversy was the claim of the Canadian Pacific that it should be allowed on business between San Francisco and points east of the Missouri river in the United States, a differential under the rates carried by the American lines?

A. Yes.

Q. In order to justify that differential, the Canadian Pacific was contending that it was at a disadvantage and could not compete with the American lines on equal rates, wasn't it?

A. Yes, sir.

3290 Q. And, naturally, the argument of the Canadian Pacific was to magnify the strength of the American lines and minimize its own strength in that business, wasn't it?

A. Yes, sir. In fact, to my mind, all there was to substantiate the claim of the Canadian Pacific was the fact that its line was a broken line—partly by rail and partly by water.

Q. On the other hand, in order to defeat the claim of the Canadian Pacific for the differential you conceived it to be your province as an advocate (I might say) of the American lines to minimize, at least as far as the facts warranted, the strength of the American lines as against the Canadian lines, didn't you?

A. I did.

Q. In presenting that case for the side of the American lines, did you, as lawyers are supposed to do sometimes, put on the facts that interpretation most favorable to their line?

A. I made the strongest showing I knew how to make.

Q. In other words, you made every argument that you could with regard to the facts and presented in the strongest light that you felt you were justified in presenting, the facts from the side of the American lines as against the contention of the Canadian lines?

A. Yes.

Q. That is correct, isn't it?

A. Yes, sir.

Q. In some of these paragraphs which you read at the request of Mr. Severance, you were asked to state whether or not they were

correct statements of facts. Have you attempted to separate in those paragraphs any statement of fact from any matter of argument?

A. No.

Q. You were presenting the arguments of the American
3291 side, and were not testifying as to the facts in that matter, were you, Mr. Stubbs?

A. Yes; that is, I was not testifying—I was simply arguing the case of the American lines and presenting their case in its strongest possible light as I saw it.

Q. Not misstating the facts, but putting upon the facts the interpretation favorable to your side of the case?

A. Not consciously misstating the facts.

Mr. LOVETT. I accept the amendment.

Mr. SEVERANCE. Lovely!

Q. Now, in the last statement to which your attention was called appeared the assertion by you that if you were in charge of the Canadian Pacific and had the proper backing, that you could do with respect to San Francisco business from the east certain things. I understand that to be an expression of opinion, on pages 196 and 197.

Mr. SEVERANCE. Page 197 at the top, Judge.

Q. I will read the statement to which I refer: "If the 'Sunset' line can build steamships, improve transfer service, run trains 2400 or 2500 miles from New Orleans to San Francisco, and take a fair share of the business; so much of the business that the Canadian line and no other line would be willing to give it any more, and it has double the ocean haul; and in total length of haul it is 200 miles longer than the Canadian line, tell me why the Canadian line can not do it? Mr. Chairman, I know that you could do it, and while I am not an operating man, if I were on the Canadian line, I could do it." That is the end of the reading.

A. And the next sentence: "All I should ask would be that my backers"——

3292 Q. "All I should ask would be that my backers should put up the money, as they did in the case of the 'Sunset' line." After reading that, you were asked by Mr. Severance to state whether the statements of fact in that paragraph were correct, and, as I recall, you said that they were. Did you mean that as one of the statements of fact or as an expression of opinion or of argument?

A. Of course it can be no more and no less than the expression of an opinion.

Q. Has anything transpired since this argument was made, in 1898, tending to show whether those lines could to-day do as much San Francisco business as the Sunset line, or whether they could do the San Francisco business profitably, and, if so, what? To make the question more explicit, isn't it true that after the differential was denied the Canadian Pacific by this arbitration, that the Canadian Pacific practically withdrew from the business and that neither the Canadian Pacific, nor the Northern Pacific, nor the Great North-

ern have ever engaged to any considerable extent in business from the territory east of the Missouri River, between the Missouri River and San Francisco, and isn't that a pretty strong circumstance that they could not do it profitably?

A. Well, it is true that without a differential the Canadian Pacific has done practically no business. It is also true that neither the Great Northern nor the Northern Pacific nor any other line, mixed rail and water, via the Northern Pacific coast ports, including Portland, has done much, if any, business. At the time I made this statement that fact had not been developed. I suppose at the time I made this statement that every traffic man present thought some
3293 business could be done by the use of the mixed rail and water lines, having in mind what had been done via the Gulf ports, but none of them (as I did not) appreciated then as we all do now the essential difference in the controlling conditions between the two classes of service.

Q. Taking the experience during the last ten and a half years since this argument was made, hasn't it been demonstrated that the Canadian Pacific route and the other routes by way of Puget Sound or Portland, and water down to San Francisco, are impracticable at equal rates for the business between San Francisco and the East?

A. I don't know that I should want to use the term "impracticable."

Mr. SEVERANCE. How is that?

WITNESS. I don't know that I should want to use the term "impracticable." To be accurate, I should prefer to say that they were inefficient and uninviting routes and would not take the business as against other routes all-rail and the Sunset.

Q. What is the significance of the fact that those lines have not attempted to carry that business at equal rates—have not solicited it?

A. To my notion it means that, in their judgment, the undertaking would cost more than it would come to.

Q. Is there any other conclusion than that if they regarded that business as at all profitable they would engage in it?

A. I think there is no other conclusion.

Q. I believe you testified that you believe if those lines could engage in this business profitably at equal rates you would
3294 naturally expect them to do so. From the fact that they have not engaged in it you conclude it is strong evidence that they consider they could not do it profitably. Now, Mr. Stubbs, will you please state about the location of the Canadian Pacific lines with reference to the location of their through lines (I don't mean their various branches) and their relations to the San Francisco traffic?

A. The Canadian Pacific line, with the Soo connections, reaches St. Paul and that territory, and with their Canadian line reaches the eastern part of the Canadian Dominion, and connects at the border (or thereabouts) with New England lines that serve all New England and the Eastern States; and, of course, coming back to St.

Paul, their connections there with the lines running south from St. Paul, get them into this territory.

Q. And they move business to San Francisco, or would move business to San Francisco, how?

A. Their route would be to take up the business, move it over their line through Canada to Vancouver; there deliver it to a boat line which would carry it to San Francisco, or they could connect at the border at that time with an independent line (I have forgotten its name) which would give it a connection with the Northern Pacific. They did use that route and that connection for Seattle, Tacoma and Portland; but they did not, as far as I can remember, attempt to use that route for San Francisco business in connection with the Southern Pacific line south of Portland.

Q. They moved their San Francisco business through——

A. All that they ever took, as I remember, they sent through Vancouver and delivered it to or took it from Pacific coast steamship companies' vessels.

3295 Q. Will you please state in your own way the relative position of the Union Pacific and the Canadian Pacific with reference to business between San Francisco and points east of the Missouri River; how the Union Pacific would naturally move that business, and why, and how the Canadian Pacific must move it?

A. As I have stated, I think it is safe to say that the Canadian Pacific must move its San Francisco business through Vancouver in connection with steamships; possibly—perhaps I am willing to say probably—it could make arrangements to use the all-rail lines from the border down to San Francisco.

Q. Meaning the Southern Pacific from Portland to San Francisco?

A. As one link in the line, using the Southern Pacific and the Northern Pacific.

Q. The Northern Pacific to where?

A. Up to Seattle.

Q. From Portland?

A. Yes, sir. Now, the Union Pacific for San Francisco business has always used from the time it was opened, and is now using (there has been no change in that respect) the Central Pacific line, running from Ogden to San Francisco. The Central Pacific line, since 1885, has been operated by the Southern Pacific Company under a lease. And, to my notion, it must use that line, first, because of its directness; second, because it serves intermediate territory as well as San Francisco; and, I might say, thirdly, because in my judgment there is no other line open to it which would be at all effective or satisfactory in any degree except at a differential rate, and I think that no one of the lines leading across the continent, each line being composed of several different carriers, would consent to any line using a differential rate against it. That is my view of the case.

3296 Q. Among the so-called trans-continental lines described in your argument and read into the record to-day, was included the line made up of the Union Pacific and the Oregon Short Line and

the O. R. & N. up to Portland and then down by boat to San Francisco; another line made up by the Union Pacific from the Missouri River to Ogden and the Central Pacific line to San Francisco, besides several other lines. Now the point that I was trying to develop in this connection was the relative position of the Union Pacific and the Canadian Pacific with respect to San Francisco business, the Canadian lines being situated in Canada and moving (as you describe them) through Puget Sound ports in competition with the other lines. It had but the one line, as I gathered from your statement, which it used during the time that it carried freight under this arrangement. Is the Union Pacific not situated very differently from the Canadian Pacific, in this respect: That its natural line for San Francisco business is in connection with the Central Pacific by way of Ogden and not its boat line by way of Portland? Isn't that true?

A. It is true that the Canadian Pacific, within my experience, has never tried to use any line except that which is made in connection with the boat, steamers, running from Vancouver for business to San Francisco, and naturally I presume that that is the only line which has ever been open to their use.

Q. The only rail line?

A. I conclude that for some reason or other, which perhaps I can not explain, there has been no other line opened to their use at all.

3297 Therefore they were shut up to the use of the mixed water and rail line via Vancouver for San Francisco business. So far as the Union Pacific is concerned, its line made in connection with the Central Pacific was the original line across the continent, has always been the controlling line in so far as the control is represented by its taking the largest share of the business, and is the line of such paramount value to the Union Pacific that I do not think any company operating it would ever think of trying to make another line.

Q. Suppose the Union Pacific were to attempt to use, or had attempted to use the line by way of Portland for San Francisco business, as against the Southern Pacific, for instance, to cut the rate as the Canadian did, what, in your opinion, would have been the result to the Union Pacific?

A. Of course I think it goes without saying it would have been cut off from a connection with the Central Pacific at Ogden. Now, I do not mean to say by that that there would not have been through rates made in connection with that line, but I mean to say that in my judgment the result would have been about as bad as if there had been no rates made with them. In other words, they would have lost more than they would have gained.

Q. And would have been working directly against their own interest, wouldn't they?

A. Against their own interest. They would have lost so much more that no sane manager would have ever attempted to divert business—San Francisco business—from the Ogden route to the route via Portland.

Q. You mean no sane manager of the Union Pacific?

A. That is what I mean; or any other line for that matter, under like conditions.

3298 Q. The Canadian Pacific, then, could put in, as it did, these differential rates and through its only line, its only outlet, that is, through Puget Sound, and it did not have any other line that was sacrificing by that procedure. Now, if the Union Pacific had attempted to put in differential rates by Portland, as the Canadian Pacific was doing by way of Puget Sound, as I understand you the Union Pacific would be sacrificing a very much more important line, namely, its line by way of Ogden. Is that correct?

A. Yes; but, if I may be permitted——

Q. State fully.

A. A differential, as I interpret it, can not hold except by agreement. A differential over the Union Pacific line via Portland involves the consent of the Central Pacific, of the Rio Grande, of the Santa Fe, of the Burlington and of all these other lines. The fact that the Canadian Pacific was refused a differential is, it seems to me, evidence that the Union Pacific and no other line could ever have obtained the consent of the all-rail lines, or even the Gulf routes, to a differential for its line via Portland; and it follows, I think, at least it does in the minds of every traffic officer, every manager, that without a differential that route is practically a no thoroughfare as against the direct route. Now, added to that feature of the case is the fact that since 1883 the Central Pacific had a connection with the Rio Grande Western at Ogden, which made another all-rail route to the Missouri River and to Denver, and through the connections at Denver to all points in the United States; and I think it is obvious to the mind of every practical man, a man who knows anything about the business, that if the Union Pacific had undertaken to use its Portland route at a differen-

3299 tial rate as against the Union Pacific-Central Pacific Ogden route that the Central Pacific would not have worked for it, that that Ogden gateway would have been closed to them, and all the influence not only of the Southern Pacific but of the connections of the Southern Pacific, the Rio Grande connections of the Southern Pacific, at Ogden, would have been thrown dead against it, with the result that it would have lost a great deal more than it would have gained. Now, of course I don't know what took place in the councils of the Union Pacific road in those times, but I venture to say they considered that in all its phases time and again and elected to hold to the Ogden route, and not to undertake to work the Portland route. Not because they had any regard for the Central Pacific, but because they had a regard for the material interests of the Union Pacific Railroad Company.

Q. Yes. I have been asking you really to demonstrate the obvious because (to be perfectly explicit) Mr. Severance, I take it, is trying to establish the inference from the fact that in your argument before

this arbitration you included among the trans-continental lines, the line of the Union Pacific to Portland and boat line down, that the Union Pacific was in a position to compete on trans-continental business with the Southern Pacific by using, instead of its Central Pacific connection via Ogden, its line up to Portland and then its boat line down to San Francisco, and I wanted you to state whether that is a practical proposition, and if not, why not. If there is any other reason why it is not, in addition to those you have just stated, will you add them?

3300 A. To answer directly the last part of that question, whether in my judgment it was a practical proposition, I will simply say that to me it is obviously an impracticable route for the Union Pacific; obviously the Union Pacific would have been very foolish to have undertaken to use that route; obviously the Union Pacific officials knew that just as well as I did, and as a matter of fact they never did undertake to use it to any appreciable extent. I think possibly it will be found on the record that there may have been sporadic shipments that way, but for any organized endeavor on the part of the Union Pacific road to use that route I never have known of any such thing as long as I have been connected with the Southern Pacific.

Q. Wouldn't they have lost enormously more by——

A. Well, I have already explained that, of course.

Q. What is it?

A. I have already explained that, or intended to. The Union Pacific could not have organized for the use of its line, we will call it, via Portland and the steamboats to San Francisco, without being practically cut off from the business it was enjoying with San Francisco, and not only with San Francisco but with the business it was doing and had always done in all the interior territory in connection with the Central Pacific—it would have lost a great deal more than it could possibly have gained; and, as I have stated, that was evidently the view of the Union Pacific officials because they never attempted in any regular way, or open way, or systematic way, to do business that way.

There is one statement that I should like to make with reference to the routes I enumerated in this argument as possible

3301 routes to California. The contention of the Canadian Pacific was for a differential on account of its line being a broken line. Its contention was for a differential against, not any one American line, but all the American lines, each and every American line; that it alone should have a differential under the rates used by any of the American lines for San Francisco business. Now, of course I seized upon that as manifestly inequitable and unjust, and I tried to make on paper, as it could have been made in fact if it had been attempted, as many routes to San Francisco similar to the broken route of the Canadian as was possible. I do not think it will be found in that argument or anything I have said that I regarded those American broken routes which I used by way of illustration

and as opposed to the Canadian line, as effective routes or profitable routes.

Q. But as compared with the Canadian Pacific?

A. But as compared with the Canadian Pacific. I did not argue that the Canadian Pacific was not entitled to a differential against the all-rail short line. The whole argument and all the statements made were based upon the fact that there could be made any number of broken lines, meaning by that part water and by rail, that would be just as much entitled to a differential, as the Canadian Pacific, the result of which would have been chaos—there would have been no rates at all.

Q. Recurring again, for a moment, to that Ogden connection. Suppose that the Southern Pacific had been unable, for legal reasons or other reasons, absolutely to cancel its rates with the Union
3302 Pacific at Ogden and divert all of its traffic say to the Denver & Rio Grande, and had been required to keep in its rates, yet any traffic that it was able to control and route against the Union Pacific in a contest of that sort, would that have been a very large traffic?

A. It would have been a very large percentage of all the Pacific coast traffic. But I don't know why it is necessary to take my testimony on these points. The fact is that that route has been open—I mean the physical possibilities of such a route have always been there, just as the physical possibilities of a mixed rail and water route by the Northern Pacific through Tacoma or Seattle, and by the Great Northern in recent years through Seattle, and of the Union Pacific and Short Line through Portland, and of the Santa Fe through Los Angeles before they got into San Francisco, or through San Diego before they got into San Francisco. None of them has ever been used effectively. While there have been sporadic shipments that way, they have not amounted to anything.

Q. I want to take your testimony to develop just what you have stated about that, because that is one of the features of the complainant's case; as one of the features of the complainant's case they take the fact of the Union Pacific line up to Portland and the existence of the Pacific Ocean and the possibility of boat lines down to San Francisco as one of the elements to make out that the Union Pacific and Southern Pacific were competing lines, and I want to show whether or not as a practical matter it has been a competitor or could be a competitor.

A. Well, in those days of course I was on the Southern Pacific. There are officials of the Union Pacific, and of the Great North-
3303 ern, and of the Northern Pacific who could testify much better than I as to why they did not do it, and I presume they will be on the stand. The reasons are so obvious to me, the fact so apparent to every practical man, that it seems to me a waste of time to talk about it—even by Brother Severance.

Mr. SEVERANCE. Well, I wasn't talking; I was just listening to your talk in this little book.

WITNESS. You did a good deal of talking about it this morning.

Q. The substance of your statement, Mr. Stubbs, is that no sane management of the Union Pacific would attempt to use that Portland route in competition with the Southern Pacific for California business?

A. That is my judgment; and, as I have just tried to say, it is supported by the fact that they have not attempted to use it. I mean to say that any attempt upon their part to use it is not obvious to me. They may have attempted it and found out they could not do it.

Q. It wasn't serious enough to——

A. It wasn't serious enough to attract my attention.

Q. In the last paragraph read from your argument at the instance of Mr. Severance, on pages 196–197, you were contrasting the Canadian Pacific and the Sunset Route with reference to California business. Will you state now the situation of those lines with reference to that business and why the Sunset Route has been so successful in handling that business at rates upon which the Canadian Pacific has practically withdrawn? That is probably a big contract I am offering

3304 you, but I would like you to state the considerations now.

A. No, there is no reason why we should not state just the facts as we understand them. They can be developed. I think it very likely—in fact I know it to be true—that when I made this argument I did not understand the conditions as well as I understand them now and did very soon afterward, especially after I became more intimately associated with conditions up in the northwest which followed my taking service with the Union Pacific as well as with the Southern Pacific. I think the whole trend of this argument goes to show that all of us, every officer of a trans-continental line, from the outset, borrowed of their fears more than their judgment in dealing with the Canadian line. We did not understand—we did not know how inefficient such a line would be. We never ought to have allowed them to use the differential against us. If we had known as much as we did at the time this arbitration came up and the still more that we know now, the Canadian Pacific would never have had a differential there. We would not have permitted it. Now, there is a very different set of conditions as between the use of a steamship line on the Pacific in connection with rail lines for this so-called trans-continental business, and the use of a steamship line on the Atlantic. In the first place, there is practically but the one port, and that is San Francisco—practically speaking. San Diego doesn't amount to much as a tonnage producer. There is no other port which is a large producer of tonnage on the California coast but San Francisco. San Fran-

3305 cisco's whole trade with the United States is inland, that is, is back towards the east, is in the territory that is served en route by the railroads that reach San Francisco. The Canadian Pacific line or any other line which attempted to use part rail and part water, the water line being on the Pacific coast, could only reach San Francisco, and when it has got its freight there, except for that which was used in the city of San Francisco, all the rest would have

to be distributed back into the interior and up the local roads—a very great handicap, a handicap not only in the rates around but also in the time used.

Q. And the distribution would be through its rivals?

A. And the distribution would be through its rivals, and all its business would be revealed to its rivals. While on the part of the Sunset Route, it serves the port of New York, which in tonnage production of course is many times greater than that of the city of San Francisco. Its steamships had, in addition to the San Francisco trade, for their cargo all of New Orleans, Louisiana, Galveston, Texas, Oklahoma, part of Mississippi, some of Colorado, even some of Utah, all of western Texas, all of Arizona and New Mexico, and the whole state of California, from its southern boundary up to San Francisco, as contributors to its cargoes. At New York it could fill a vessel three times a week—never less than twice a week. It did not have to depend on San Francisco business alone for cargo for that vessel; it did not have to depend upon California business alone for that cargo; it did not have to depend upon the territorial business in addition to California business alone; but it had, as I have described, Louisiana,
Texas, and the tonnage of other states. The Texas tonnage
3306 itself has always been equal to that of California, so far as the amount that is moved out of New York is concerned. For that reason the line was enabled to put high class boats on, and a number of boats, and sail always twice or three times a week, with full cargoes. Then at the opening of the Sunset Route, the rail line, after you pass Houston, it was very light in tonnage, there was very little delay in the movement of trains. When the vessel arrived at New Orleans, or at Algiers, rather, the cargo was taken out; that which was for the territories and California was loaded into cars solid, and that was usually a train load, never less than ten cars, and sometimes as high as forty, and those cars were put in a through train, and it moved as a through train, without the ordinary delays, and went into San Francisco or to Los Angeles solid, besides having the opportunity to distribute on its way up to San Francisco at all points in Southern California along the line of the road and in the San Joaquin valley. That made it possible to have a steamship service on the Atlantic and a rail service that could not be duplicated by the use of an all-rail line to Seattle or to Tacoma or to Portland or to Vancouver, with a steamship line running from those ports to San Francisco. In the first place, they would have nothing but San Francisco business that they could possibly compete for at any reasonable rate and they would gather their business up in such a way, and the arrivals at the port of departure would be so broken that it would be almost impossible for them to have full cargoes. A steamer would sail with a half cargo and less than half cargo, and the delays incident to the rail transit
would be, as it would have to move in its regular trains, such
3307 that—well, it would make it an impossible route as compared with the Sunset Route.

Q. Take the Northern Pacific, the Great Northern and the Canadian Pacific, for instance, picking up freight from the interior; it would go to them in broken lots, wouldn't it, and in a very much more unsatisfactory way than it can be assembled by the Southern Pacific Sunset Route?

A. The Canadian Pacific would have to take cargoes from New York and its connections, from Boston and its connections, and then all along the Canadian pick up cargoes at the various junctions with their lines to St. Paul, and they would not make a solid train at any one point. The result would be that the tonnage necessary to fill their ship would arrive at destination in such broken lots that the steamers would run on half cargo and quarter cargo.

Q. Then, as to the unity of management of the Sunset line, under a single control, is that an important element in the advantages of that line?

A. I think it is; I think that is obvious.

Q. From New York to San Francisco?

A. I think so. We may theorize just as we please on that. I would have to confess it has been a surprise to me that there has been so little accomplished in the way of using the steamship lines via Vancouver and via Seattle and via Portland. We learned by experience originally. When we opened the Sunset line I thought we would have to have a differential rate, a lower rate. We started in with a differential rate. But the rail lines would not have it, and we had to stop it, within five months after we put it in. Since that time we have made rates equal with the rates of the all-rail line.

Q. The Northern Pacific once attempted to work California business by boat from Puget Sound down, didn't they, and gave it up?

A. I think they have all tried it, yes, sir. I haven't any clear recollection of particular shipments or particular dates.

Q. But they have long since abandoned it?

A. I have not heard of it for a number of years.

3308 Q. Mr. Stubbs, will you turn to page 119 of the report of the arbitration proceedings, and to that paragraph near the bottom of the page which you read at the instance of Mr. Severance? You state there [reading]: "There is much valuable business in Montana, Colorado and Utah, competed for by these direct Central Pacific, Union Pacific, Denver & Rio Grande lines and by the Oregon Railroad & Navigation Company and Oregon Short Line, and for Montana by the Great Northern and Northern Pacific, as well as the Oregon Railroad & Navigation Company and Oregon Short Line, but we all work on a dead level equality of rates." Do you recall what traffic was referred to there? The statement is rather indefinite.

A. The competition that I referred to is rather the competition of markets. For example, take the Utah trade: San Francisco was competing for Utah trade as against Chicago and Omaha.

Mr. SEVERANCE. Mr. Stubbs, you read the sentence just before that and you will see you are on the wrong tangent. That shows what you were talking about—the sentence just before that, where you

state "They are not used for San Francisco traffic with Montana, Utah and Colorado, as between the all-rail lines and the mixed water-and-rail lines." Excuse me from breaking in on the cross-examination, but I know you want to be accurate.

Mr. LOVETT. That is all right; except that I do not attach the significance to that that you do. However, what has Mr. Stubbs to say about that?

WITNESS. That is all right in that connection. What I had
3309 in mind in writing that statement was this: That in Utah and in Montana and in Idaho there was business which was competed for by these lines. Now, let me illustrate: Utah business was competed for by San Francisco and by Portland merchants and by the East.

(Mr. Severance turns at the table to make a memorandum.)

WITNESS. Now wait a minute; I will straighten it out; don't be nervous. It might be inferred that the business from San Francisco to Ogden could be taken out via Portland over the Navigation Company's boat to Portland and then down over the Oregon Short Line. But if they ever did anything of that kind, any such business as that, they did it upon the dead level of equality of rates. That is all that that amounts to. That is why the statement was made. And so with respect to Montana business. If the boats took freight from San Francisco to Portland, or to Seattle, and then out to Spokane, as against the all-rail line, it was done, so far as I know, on a dead level of equality of rates. Now, that is what that paragraph was meant to convey.

Mr. SEVERANCE. That is just what I understood.

WITNESS. Well, I am glad you understood it.

Q. You were asked on your direct examination about the competition between the O. R. & N. Company boat line from San Francisco to Portland and the railroad line of the Southern Pacific from San Francisco to Portland, for business between San Francisco and Portland proper reached by those lines. Such of that traffic as was
3310 in competition, was it large or small, Mr. Stubbs? Was there much traffic between San Francisco and Portland proper?

A. Yes, considerable.

Q. What was its character?

A. All kinds. General merchandise.

Q. General merchandise?

A. Yes, sir. But perhaps it would be well to explain. The Southern Pacific rail line between San Francisco and Portland never competed in the sense of meeting the rates of the steamship line; it never made rates that were equal, according to my recollection, to the rates offered by the steamship line with insurance added; but always did have rates in. I do not recall that there was any fixed relation between the rates. There may have been, but if so, I have forgotten it. And, with the exception of perishable freights and high explosives, I think that upon the average the rail line got very little business from San Francisco to Portland, as against the steamship line. But the

rates primarily from San Francisco to Portland made by the rail line were made as basing rates, in order to secure the business south of Portland on its own line, in the interior of Oregon; and they did work for that business and carried the bulk of it, I think.

Q. Who did?

A. The rail line.

Q. Always? Was that always the case?

A. There may have been periods when there were rival boats on, on the sea, and the rates by vessel were reduced very materially for the time being when business to points within a hundred miles of Portland, on the Southern Pacific line, shipped via boat; but I think, upon the whole, that the business from San Francisco to
3311 points south of Portland—say south of Salem—went by rail, and the Southern Pacific tried to make rates to induce it to go that way.

Q. If it didn't go by rail to San Francisco, how would it go?

A. It would go by boat to Portland and be re-shipped and sent down by rail from Portland, short-hauling the Southern Pacific.

Q. It would go by boat to Portland, you say?

A. Yes, sir.

Q. From points on the Willamette River?

A. From San Francisco. I thought you were talking about the business from San Francisco to Portland.

Q. I was; but you spoke of business on the Southern Pacific south of Salem.

A. Well, now——

Q. You switched off.

A. Oh, no, I didn't switch; that is, I did not intend to, I think, if you will follow me. What I said was this: that the Southern Pacific did, in a certain sense, compete against the steamship lines for the business from San Francisco to Portland; that is, it made rates; but there was such a difference in the rail rates and the steamship rates, the rail rates being so much higher, that, upon the whole, with the exception of perishable goods and probably high explosives, ordinarily the business from San Francisco proper to Portland proper, moved by boat; that the rates which the Southern Pacific Company made from San Francisco to Portland were made, in the main, as basing rates for the territory south. That is to say, what I meant to convey was that the Southern Pacific's rates to a point on its own line south of Portland would not exceed the Southern Pacific
3312 rates to Portland plus the local back. Sometimes it was less than that. And the main object of the Southern Pacific—because it recognized its inability to compete with the steamship line—in making rates from San Francisco to Portland was to make them as basing rates for the intermediate territory. That is as I understand it. And, of course, to points east on the O. R. & N.

Q. The wholesale merchants of Portland, as a rule, did not get their supplies from San Francisco, did they? Didn't they get them from east of the Missouri River?

A. I think that is true so far as the heavy jobbers are concerned; but there was a very considerable business done by San Francisco with Portland—merchandise business.

Q. Merchandise business?

A. Yes, sir.

Q. Was not the principal tonnage of the boats southbound from Portland, lumber?

A. Yes; lumber and grain.

Q. And northbound, what?

A. General merchandise.

Q. For Portland proper, or the interior?

A. Well, for Portland proper there was a very considerable business there. That is my recollection. I am not very well posted as to the details on that. But for Portland proper there was a very considerable business; and to that was added the tonnage that was taken to the East. My recollection is that the boats made no rates to the interior that were less than the sums of the locals on Portland.

Q. You are thinking now of the interior on the Southern Pacific Line, or the O. R. & N., aren't you?

3313 A. No; I am thinking of the interior on the O. R. & N. as well. That is to say, I do not recall that there were ever any rates made from San Francisco to Portland by boat—I mean any rates made from San Francisco to points east of Portland on the O. R. & N., that were less than the sums of the locals on Portland. I mean the local steamer rate from San Francisco to Portland, plus the local rail rate from Portland out to the destination. That is my recollection of it.

Mr. SEVERANCE. Well, you said a little while ago that the all rail rates and the steamer and rail rates to those points were the same. That is what you said in your speech here, and you reaffirmed it to-day.

WITNESS. I mean those interior points.

Mr. SEVERANCE. Yes, sir.

WITNESS. Well, I think probably that was likely. I do not recall it now; but I think that is true.

Mr. SEVERANCE. That is what you said.

Q. Now, as to the volume of that traffic between San Francisco and Portland: you said it was considerable. Of course, that is a rather indefinite term. Do you know any way by which you can be more explicit?

A. Well, I haven't any information that would enable me to testify as to what the volume of that business was.

Q. You could not be more explicit as to that?

A. I could not be. There are other men that can give better testimony on that than I can.

Q. On your direct examination you were also asked something about the competition for business between San Francisco and

3314 Washington. The impression left on my mind was that you were conveying the idea that the Southern Pacific and the

boat line were competing for that business; and, since the Southern Pacific has no line north of Portland, or running into Washington, I would like you to state through what connection, if any, it engaged in Washington business.

A. Well, the Southern Pacific could not reach Washington except by a connection with and the use of either the O. R. & N. from Portland or the Northern Pacific from Portland. In making those statements I take it as a matter of fact that everybody knows that the Southern Pacific does not go north or east of Portland.

Q. Well, I wanted the record to show that you meant that such competition, or such traffic as it engaged in between San Francisco and Washington was in connection with the O. R. & N. or the Northern Pacific.

A. It could not get into that territory without the use of either one or the other of those two lines I have named.

Q. Now, as to the Northern Pacific: such traffic between San Francisco and Washington as it interchanged with the Northern Pacific would not be in competition with the O. R. & N. boat line, would it, but with the Pacific Coast Steamship Company, if anyone? In other words, the line made up——

A. That depends.

Q. The line made up by the Southern Pacific rail line to Portland and the Northern Pacific from Portland to Tacoma or other Puget Sound point——

A. That would not be in competition with the O. R. & N.

Q. Well, that is the point.

3315 A. Nor would it be in competition with the O. R. & N. to Seattle.

Q. No. No Puget Sound point.

A. Or to Puyallup, or any of those towns.

Q. But that would be in competition with the Pacific Coast Steamship Company or other ships running between San Francisco and Puget Sound points?

A. That is right.

Q. Mr. Stubbs, will you please state the eastern boundary line of the Transcontinental Association territory as existing at the time of this arbitration, in 1898?

A. While it is not what I refer to here as the eastern boundary of the Transcontinental Association, yet, the eastern boundary of the Transcontinental Association is through Kuna on the Oregon Short Line. That is to say, that is the eastern boundary of the territory to which the transcontinental rates apply.

Q. A north and south line?

A. It is not exactly north and south; it is rather a crooked line. Now, what I refer to here——

Q. You mean by "here," in your argument before the arbitrators on the Canadian Pacific claim in 1898?

A. Yes. "This line forms the eastern boundary of the Transcontinental Association"—what I mean by that is the boundary east of

which the initial transcontinental rates apply. West of that boundary, which is practically the Missouri River, we added a local back, in order to make the through rate.

Mr. SEVERANCE. Well, this is practically what you call the gateway, isn't it?

WITNESS. It is the boundary from which the transcontinental
3316 rates which applied to this eastern territory ended. West of that boundary there was a local added in order to make the through rate. That is what I meant by that.

Q. The traffic involved in that arbitration was that between San Francisco and points east of a line referred to in your argument before the arbitrators. Now, what was that line?

A. It was practically, as I say there, the Missouri River line—the Missouri River common point line. That would be Kansas City, St. Joe, Council Bluffs, Omaha and St. Paul.

Redirect examination by Mr. SEVERANCE:

Q. Did that take in New Orleans on the south, or is it west of New Orleans?

A. No; it is Houston and Galveston.

Q. New Orleans is treated as a Mississippi River point?

A. Yes, sir.

Q. Now, to clear this up in a word: I would like to have it developed a little further. You have what you call the gateways, in making up tariffs, do you not? That is, a certain proportion of the tariff applies up to a certain point, a certain other percentage up to another point, and so on, on transcontinental business.

A. It is called Missouri River common points, Mississippi River common points, Chicago common points, Buffalo-Pittsburg common points, and Atlantic Coast common points. Every one of those represents a certain definite territory that I cannot give to you. Of course, you can get it out of the records.

Q. As I understand, Mr. Stubbs—take the whole rate from New York to the coast, the all-rail rate: There is a certain proportion of that rate that is given to the lines to Chicago—well, per-
3317 haps to Pittsburg—and then another to Chicago, another to the Mississippi River, or to the Missouri River, and then there is a cut-off at the Missouri River; and, after deducting certain arbitraries, everything from there to the coast is in one lump, and that is divided between whatever connecting lines there are; isn't that true? In substance, I mean. That may not be technically correct.

A. I may say to some extent it is correct; but I will work out those divisions and give them to you through the Judge, so that it will be perfectly plain.

Q. I wish you would.

A. I did prepare a statement that was perfectly plain to the ordinary man and traffic officer, but it was too intricate for the legal mind, and the Judge rejected it.

Q. Certain legal minds, you mean?

A. And I am going to fix it up for him.

Q. Now Mr. Stubbs, with reference to the Portland and San Francisco business: The Southern Pacific line solicited business both in San Francisco for Portland and in Portland for San Francisco, all rail, did it not, always?

A. I suppose that would be a fair presumption, but I doubt very much whether the Southern Pacific's solicitors paid any attention to the merchandise business moving from San Francisco to Portland, because, according to my recollection, it was generally understood that we were out of it for that; could not take it.

Q. The evidence in this case shows that that business was
3318 competed for, and you would not undertake to dispute the gentlemen on the ground out there who testified to that, would you?

A. Why, if you had anybody on the stand who knew more about it than I did in my judgment, I would not dispute him.

Q. Well, you seem to be rather hazy about it.

A. I am hazy about it; but I say that is my impression.

Q. Aren't you confusing the situation after you got control of both lines with the situation that existed before that time? The reason I ask you that is this: The evidence in this case shows that in June, I think, 1901, shortly after the acquisition of the control of the Southern Pacific by the Union Pacific, the rail rates between Portland and San Francisco went up, and they have been going up ever since, until the first-class rate has gone up from 26 to 41. Now, isn't it a fact that you are confusing the time since you had full charge with the old days when there was separate ownership?

A. Not consciously, I am not.

Q. Not consciously?

A. No.

Q. Well, isn't that possible?

A. I don't think it is.

Q. The rate by the boat line was less than the rate all rail, wasn't it?

A. It lies in my mind that the Navigation Company paid no attention whatsoever to the rail rates in making its rates from San Francisco to Portland. They had more or less competition by other vessels, and that competition was controlling in its influence on their rates. I do not think they ever paid any attention to our rates.

Q. Did you haul any traffic at all between those towns?
3319 A. Yes.

Q. Or were you out of the business?

A. So far as Portland is concerned; general merchandise?

Q. Yes.

A. My recollection is we hauled very little, if any, except the items that I have mentioned to you.

Q. Very little, if any?

A. Yes.

Q. That is your best recollection, is it?

A. I mean general merchandise, yes.
Q. That is your best recollection, is it?
A. Yes, sir.
Q. Did you haul anything southbound at all?
A. From Portland proper?
Q. Yes.
A. I think so.
Q. What kind of traffic?
A. I don't know as I can tell you. I think we have hauled, at times, some lumber; very little.
Q. Haven't you hauled flour?
A. I think we have at some times hauled grain—special shipments. I think it is likely that we have hauled some flour, but whether that originated at Portland or not, I could not tell. It is more than likely to have originated at a mill south of Portland. But I will not pretend to be accurate in my testimony on that, because I really do not know.
Q. Well, that is what I thought, Mr. Stubbs. Now, you were asked by Judge Lovett, as I recall his questions, about the relative damage that could be done to the Union Pacific and Southern Pacific, if the Union Pacific had attempted to move traffic to San Francisco by way of Portland, and you testified at some length as to what the
3320 Southern Pacific could have done to the Union Pacific in the way of diverting traffic to the Denver & Rio Grande. To commence with, the divisions of the through rate between the Central Pacific line of the Southern Pacific and the Union Pacific have always been the same, have they not, from Omaha to San Francisco?
A. I think always with respect to San Francisco, that is my recollection.
Q. And that division, as you recall, has been 54 per cent to the Union Pacific and 46 to the Southern Pacific, has it not?
A. That is right.
Q. And that division was always apparently satisfactory to both companies, wasn't it? Not that you would not have liked to have more, but didn't you treat that as a fairly satisfactory division, being practically on a mileage basis?
A. No, I wouldn't say that; but I suppose it makes no difference how it is. I always held that it was a wrong division. The cost of the service west of Ogden was such that it ought to be more.
Q. Because it was more expensive west of Ogden?
A. Yes. It was not satisfactory. However, it was all we could get at the time.
Q. And it always remained at that figure?
A. You are now talking of Omaha and San Francisco?
Q. Yes, sir.
A. Yes, sir; ever since I had any connection with the Central Pacific.
Q. You commenced in 1870?
A. In 1870, yes, sir.

Q. So that from 1870 on down, that division remained the same, and it was substantially on a mileage basis, intended to be on a mileage basis, wasn't it?

3321 A. Practically. On the original mileage basis.

Q. The original mileage, yes. Well, there has been a shortening of both lines lately, hasn't there—the cut-off over the lake shortening the Southern, and around Sherman——

A. Yes, there was a very early shortening of the Central Pacific part of the line.

Q. And you always felt that that was more than fair to the Union Pacific, did you?

A. Yes.

Q. Then you always felt that they had nothing to complain of in the way of division?

A. Yes.

Q. The Southern Pacific never attempted to force upon them a division which you would say was unfair?

A. If you mean what you ask me, I will say no.

Q. Unfair to the Union Pacific?

A. No.

Q. If such an attempt had been made, and, as a matter of retaliation, the Union Pacific had taken advantage of its Portland boat line, and had cut the rates, then, as I understood you to testify this morning, that would have resulted in cutting rates all along the line, over all routes as you said in your usually eloquent——

A. Well, whether I said so or not, I say so now.

Q. That would have involved a loss to the Southern Pacific of its rates on the enormous traffic going over the Sunset Route, would it not? That is true, if it was cut all along the line?

A. Why, if it was cut it would be cut everywhere, yes.

Q. It would hurt the Southern Pacific on its Sunset business and would hurt it on its proportion of the through business it

3322 did from Ogden west, wouldn't it? That is apparent, isn't it? That is obvious, isn't it?

A. Yes, as compared with normal conditions, of course.

Q. That is what I mean.

A. But, understand, not as compared with what the conditions might be if they had ignored that cut.

Q. I understand. We don't misunderstand each other. But that being the case, then, the situation is about this, is it not: the Southern Pacific, either by reason of self-preservation to maintain its rates and maintain its business, or because of the generosity of its traffic department, as represented by yourself, was always willing to maintain with the Union Pacific a fair division of through rates. That being the case, there was never any occasion for the Union Pacific, as a retaliatory measure, to attempt to use that Portland line, which is a round-about line; isn't that about so?

A. I am not aware of any provocation by the Southern Pacific to the Union Pacific to use any other line than the Central Pacific line.

Q. That is what I thought. How long ago was the American-Hawaiian line started, do you remember?

A. Several years ago. I cannot give you the date.

Q. Are they carrying considerable traffic?

A. I think at the present rate—this may be only a guess—but I think possibly 200,000 tons per annum.

Q. Have they carried more, or less, since the Tehuantepec road was built across?

A. More or less than when?

Q. More since it was built, than before?

A. Well——

3323 Q. The American Hawaiian line, as I understand it, went around the Horn in the first instance?

A. Yes. Yes, they have carried more.

Q. More since the rail line went across?

A. More steamers, yes, latterly.

Q. What is the relative length of that line as compared with the all rail lines?

A. It is very much longer.

Q. What is its length as compared with the Morgan line?

A. Very much longer.

Q. Could you give an estimate of how much longer?

A. No.

Q. They carry business at a very substantial reduction in rates?

A. The difference is obvious, you know.

Q. I don't know just where it crosses; that is the reason I am asking.

A. I cannot give it to you. It goes down to——

Q. It is the narrow part of Mexico, is it not?

A. Yes.

Q. The lower end of Mexico?

A. I am not going to attempt to pronounce the name of that port—Coatzacoalcos, that is in the lower end of Mexico, you know.

Q. Mr. Stubbs, so that we will not have any misapprehension about this: Judge Lovett asked with reference to what is printed in that little book, if it was not an argument in which you were making the best case you could for your side of the controversy, and you responded that it was. You do not mean to say, or to be understood as saying, that any statements of fact in there made by you are otherwise than entirely accurate, as you understand them?

A. Where I stated them as facts I understood them to be facts.

Q. And where you gave your opinion, you gave your best

3324 opinion?

A. Well, I gave the opinion that I thought would answer my case.

Q. And you would not want to say now whether the opinions that you gave there were honest opinions, or not?

A. Well, that depends upon the definition of the term "honest." I think my statements there were made in the same spirit and with

the same degree of accuracy as any statements that a lawyer would make in pleading a case at the bar—whether it was Judge Lovett, or Loomis, or anybody else.

Q. That is to say, that so far as you undertook to state a fact there, as to tariffs, movement of traffic, the location of lines of railway, or railway and steamship, or any other fact in there, it was accurately stated, was it not?

A. Yes, I think so; that is, as accurately as I knew about it from my sources of information.

Q. I understand. You intended to?

A. Yes.

Q. And when it came to a matter of argument or deduction from those facts, you put it as well as you could for your side?

A. Or, as what I could do under certain circumstances. I might have exaggerated a little there, using the poetic license.

Q. Well, haven't I pretty fairly stated your attitude towards this speech, Mr. Stubbs?

A. I am willing to accept your statement, Mr. Severance. It is all right.

Q. And your poetic license did not extend to any misstatements of the facts?

A. No, sir.

Mr. LOVETT. I think it is very unprofessional for one lawyer to quote an argument on a brother lawyer.

3325 Mr. SEVERANCE. Now, let us see about that. We have had that up before. Let us see just what Brother Stubbs said on that subject. I have it here.

Mr. LOVETT. Mr. Stubbs was a lawyer there.

Q. On page 155. If you will turn to page 155, Mr. Stubbs, in view of Judge Lovett's suggestion.

A. I can tell you what I said there. I said I hadn't had the assistance of any lawyer, didn't I?

Q. Just turn to page 155 and see if you find this statement: "Now, it has been intimated to me that the Canadian people are under the impression that we have had the advice and aid of counsel. That is not true; not in any sense, nor in any degree. The presentation of the case that has been made by the American lines, is my work, wholly unassisted by any lawyer or any counsel by way of advice, reference or suggestion."

A. That is right. I said that. That is true, too.

Mr. SEVERANCE. I am relieved now from the charge of being unprofessional.

Mr. LOVETT. No, but he is the lawyer. He is the lawyer. It is his argument. That is where he was acting as a lawyer.

Q. Now, from your rather lengthy reply to Judge Lovett concerning what you now regard as the advantage the Sunset Route has over the Canadian line, I don't know whether I understood you to withdraw the statement appearing on page 197 of this little book, reading as follows: "If the Sunset line can build steamships,

improve transfer service, run trains 2400 or 2500 miles from
3326 New Orleans to San Francisco, and take a fair share of the business, so much of the business that the Canadian line and no other line would be willing to give it any more, and it has double the ocean haul; and in total length of haul it is 200 miles longer than the Canadian line, tell me why the Canadian line cannot do it? Mr. Chairman, I know that you could do it, and while I am not an operating man, if I were on the Canadian line, I could do it. All I should ask would be that my backers should put up the money, as they did in the case of the Sunset line."

A. I stand by that today.

Q. You stand by that today?

A. Yes, sir. But I want the backers to put up the money, and I do not guarantee that it would be a profitable investment. There is the nub of the whole thing. That is, an investment that any reasonable man would make. They are better off without the business than attempting to get it under such conditions.

Q. Now, the local territory from Omaha to Ogden is much richer in tonnage than the local territory from Ogden to San Francisco, is it not?

A. I think, without knowing and without comparing it, that likely I should have to answer that yes.

Q. That is what I thought.

A. But it is not so much so as one merely traveling over the roads would think. The percentage of non-productive or comparatively unproductive line on each would not, I think, differ very widely, if it was figured out.

Q. Have you any territory on the Southern Pacific west of
3327 Ogden as rich in local business as the line through Nebraska, for instance?

A. Why, no. But is the line through Nebraska as rich as the line through California?

Q. Well it is longer?

A. Of course it is longer; but then the total line is longer. One is a little over 700 miles as against 1000.

Q. I meant to put my question upon the mileage basis,—whether it is per mile more productive.

A. That is what I say—I am not so sure about that. I think your inference is correct, that perhaps the productiveness per mile of road, Omaha to Ogden, is greater than the productiveness per mile of road Ogden to San Francisco; but I think we would both be surprised to see how small the difference was if we would go to figure it out. But that is a guess, just like my answer to your question is a guess.

Q. After the Sunset line was started it operated for a short time under a differential, didn't it?

A. I think for about four months.

Q. Since then there have been at times differentials as to specific commodities?

A. Well, since that time I think that there have been at times lower rates by that route than by the all rail routes—not an agreed differential, but a condition of competition by the sea routes that the all rail lines did not care to encounter, and they turned it over to the Sunset Route to take care of; and I think that there is today and has been for some time, what they call New York pier rates to certain points, which are lower than the all rail rates from New York.

3328 Q. Yes; that is on certain special commodities?

A. Certain commodities, yes, sir.

Q. The class rates are just the same?

A. Yes; and on a majority of the commodities they are the same too.

Q. That is what I was getting at. The times when these rates have been cut by the Sunset were when rates were brought down by the Panama route, or some of the ocean lines; isn't that so? And you say the all rail lines did not want to meet that, on account of interior rates?

A. At the time the reductions in the rates that I referred to—not the cuts—were made, they were made under those conditions; but it is not what we would call a cut rate under those conditions.

Q. I did not mean a cut; I mean a reduction; that is right. They were at times induced by the Panama competition.

A. That is my recollection. I haven't any very clear knowledge of the particular cases.

Q. Judge Lovett in his questions spoke about the fact that I have called your attention to certain portions of this argument, as he calls it, or as you call it, in your little book——

A. What do you call it?

Q. Disconnected from each other. You do not understand that there are any statements in your argument in any place that modify any of these statements of fact to which I have called your attention, do you? That is, in all cases sufficient of the context was examined by you so that you know that is true, don't you? There is nothing that modifies the statement of fact?

A. I don't know of anything that——

Mr. SEVERANCE. I am perfectly willing, if Judge Lovett

3329 desires, to have the whole speech go in the record.

Mr. LOVETT. I think it would be better to put in the whole record.

Mr. SEVERANCE. I am perfectly willing.

Mr. LOVETT. If you will offer it, then.

Mr. SEVERANCE. All right.

Mr. LOVETT. That is, not merely Mr. Stubbs' speech, but Mr. Kerr's; the statement; the whole thing. Let us put it in the record and it will speak for itself.

Mr. SEVERANCE. That is perfectly satisfactory. Then you offer it and I will consent that it go in.

Mr. LOVETT. You offer it and I will consent. You are offering the testimony.

Mr. SEVERANCE. It doesn't make any difference. I have offered all I care to.

Mr. LOVETT. Well, let both parties put it in.

Mr. SEVERANCE. All right. It goes in jointly and severally.

The EXAMINER. Which side is to be bound by the admissions or whatever evidence is contained in it?

Mr. SEVERANCE. We are all bound by it, everybody.

Mr. LOVETT. We don't want those little pamphlet circulars in?

Mr. SEVERANCE. No, I don't care about that.

(Said book was marked "Complainant's Exhibit 150" (Stubbs), and is incorporated in the record at the close of the examination of the witness.)

3330 Recross-examination by Mr. LOVETT:

Q. Just a question or two, Mr. Stubbs. You were asked by Mr. Severance about the division allowed the Union Pacific on this transcontinental business, or at least on business between the Missouri River and San Francisco.

A. His statement was Omaha to San Francisco, and I answered it in that way.

Mr. SEVERANCE. Yes; Omaha to San Francisco.

Q. Hasn't the Southern Pacific always allowed the Denver & Rio Grande and its connections east the same divisions that it has allowed the Union Pacific on this business?

A. The same.

Q. The Denver & Rio Grande has no boat line to Portland, no rail line to Portland or outlet that way, has it?

A. No.

Q. There is no different division from Kansas City to San Francisco prevailing from Omaha to San Francisco, is there?

A. I think not. I think the Southern Pacific's proportion is the same west of Ogden from Kansas City as it is from Omaha.

Q. Mr. Severance spoke of the possibility of the Union Pacific cutting the rate to San Francisco on account of the possible controversy with the Southern Pacific over division of the rates on transcontinental business. Would not the Union Pacific suffer by a cut of that rate, as well as the Southern Pacific?

A. Necessarily.

Q. Would not you think that would be a very foolish enter-
3331 prise for the Union Pacific to inaugurate a cut of that sort——

A. Obviously.

Q. On account of any such controversy?

A. They wouldn't do it.

By Mr. SEVERANCE:

Q. They never have had any occasion to do it, have they, if the divisions have always been the same, and, as you say, have been more than fair to the Union Pacific?

A. I do not think they would have any occasion to do it. They may have a different view of it.

By Mr. LOVETT:

Q. Even if there should be a controversy over the amount of that division, judging it from the standpoint of the Union Pacific, you would not think they would attempt to deal with it in that way, would you?

A. By cutting the rates?

Q. Yes.

A. Indeed they would not.

By Mr. SEVERANCE:

Q. You have heard of rates to the Pacific Coast being cut, haven't you, Mr. Stubbs?

Mr. LOVETT. For that reason?

Q. You remember a rather merry rate war that you had after the Santa Fe opened?

A. Well, I was just thinking to answer. Open cuts of rates from the coast have been infrequent—that is, what we call cut rates—except in the case of the war with the Santa Fe in 1886.

Q. Yes; that is what I had in mind.

A. We would hardly call those cut rates. That was an open fight, you know.

3332. Q. Well, I am not using the technical terms that you use, perhaps, Mr. Stubbs. I was just using the language of the man on the street about a cut rate. The lowering of the rate, I meant. That is what I wanted to direct your attention to. There was a rather bitter war?

A. We had a very bitter war. And rates have been reduced in olden times quite frequently in competition with the Pacific Mail, in general, by all the lines; the constituent railroads in the line worked together on it.

Q. Yes, but that has been almost uniform.

A. But I differentiate between that and a cut rate, which would be cut by an integral part of a through line, an individual road.

Q. As a matter of fact, the rates for many years have necessarily been made by conference of the different lines interested, haven't they—the only way they could be equalized?

A. Always.

Complainant's Exhibit 150 (Stubbs) is as follows:

3333 COMPLAINANT'S EXHIBIT 150

(STUBBS)

# PROCEEDINGS AT HEARING BEFORE BOARD OF ARBITRATION ON QUESTION OF CANADIAN PACIFIC DIFFERENTIALS AT AUDITORIUM HOTEL, CHICAGO, OCTOBER 12, 1898

DECISION OF BOARD OF ARBITRATION

(See page 201 hereof)

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3335 **PROCEEDINGS AT HEARING BEFORE BOARD OF ARBITRATION ON QUESTION OF CANADIAN PACIFIC DIFFERENTIALS AT AUDITORIUM HOTEL, CHICAGO, OCTOBER 12, 1898.**

BOARD OF ARBITRATION: Edward S. Washburn, Chairman; Messrs. W. A. Day; J. W. Midgley.

REPRESENTATION: American Lines—Messrs. J. C. Stubbs, Paul Morton, W. H. Truesdale, B. Campbell. Canadian Pacific Railway—Messrs. Robt. Kerr, G. M. Bosworth.

QUESTION FOR CONSIDERATION.

At a meeting of executive officers of Trans-Continental lines held at Brown Palace Hotel, Denver, Colo., on August 22, 1898, the following resolution was adopted:

"Resolved, that provided the Canadian Pacific Railway will join with the United States Lines in a co-operative agreement designed to secure the maintenance of reasonable rates on the freight traffic interchanged with San Francisco, Cal., by other points in the United States and Canada, that the lines here represented will submit
3336 to arbitration, the question of whether the Canadian Pacific Railway is, or should be, entitled to a differential under the rates made by the United States Lines for the carriage of the freight in question, and if any differentials, what these differentials shall be. The Board of Arbitration to consist of three members, one to be selected by the Canadian Pacific Railway, one to be selected by the American lines interested, they two to select a third, and that the decision of two members of said Board of Arbitration shall be final, conclusive and binding upon all."

Mr. W. A. Day was selected to represent the American Trans-Continental lines on the Board of Arbitration; the Canadian Pacific Railway selected Mr. J. W. Midgley as its representative, and Messrs. Day and Midgley selected Mr. Edward S. Washburn as the third member of the Board.

Pursuant to the resolution above recited, a hearing before the Board of Arbitration was arranged to convene at Auditorium Hotel, Chicago, October 12, 1898, at 11 o'clock A. M.

The meeting was called to order by Arbitrator Washburn, who officiated as Chairman of the Board.

The appointment of Mr. E. S. Stephens, as Secretary of the Board, was announced.

3337 Arbitrator WASHBURN. Objection having been made to the sessions being in public, it has been decided that only railroad officials will be permitted to be present at the hearing.

The Board of Arbitrators selected to consider the question in dispute between the Canadian Pacific Ry. and the American lines as

regards differentials in freight rates have organized and are now ready to proceed with the case, but before doing so we would like an expression of opinion from the interested parties upon one point.

The resolution under which the Arbitrators were selected does not limit or restrict the arbitrators in any way as regards methods of gathering information from which to decide the case, and we would like an expression from the interested parties as to whether they prefer that we should decide the case upon the evidence and facts presented at this hearing, or whether, if the Arbitrators deem necessary after the hearing, they shall obtain information through other sources. Also whether they desire or prefer that we should or should not in considering the question, use any knowledge that we now have of the matters in dispute. I will first call upon the Canadian Pacific Ry.

Mr. KERR. Mr. Chairman, we regard this as a most serious matter, and we would like that every means be taken by the Arbitrators to get at all the facts in every way possible, not only through the means of such facts as may be presented here, but in any other way they choose. We want full light on the subject, and we want, of course, as much of the facts as are necessary in order to get at
3338 a proper decision of the question. Therefore, we think that the Arbitrators should be unrestricted in any way and should seek light from any source in order to guide them to a proper decision. Our idea with regard to the procedure might be this: We would like after putting in our oral evidence here to have the privilege of later submitting our full written statement in order that nothing may be left uncovered. Sometimes in excitement of a discussion points are left out here and there, which afterwards in other moments we see and we would like the opportunity, if after the close of the hearing it seems advisable, to put in a written statement of our case.

Arbitrator WASHBURN. Now, we will ask the representative of the American lines, if they have any preference on the points I have stated.

Mr. STUBBS. If the Board please, this question is submitted on a resolution passed at a meeting of the lines interested. The American lines and the Canadian line. That resolution states two questions that are to be determined by this Board. We think that it should be submitted and received by the Board of Arbitrators at this hearing. It is, as Mr. Kerr has well stated, a very serious question; at the same time it is not a new question. It is not a new question to the parties in contention. It is not a new question to the members of the Board. We have, after a good deal of wrangling among ourselves, finally reached the conclusion that there was but one way to determine this matter. That is by referring it to a Board of three disinterested arbitrators, before whom we should appear and
3339 make our showing for or against, as it may be, the questions stated in that resolution.

At the original meeting where this arbitration was decided upon it was manifest to all that it was so important that we ought to get it out of the way as soon as possible. We contemplated there that we might get this before the arbitrators and possibly reach a decision previous to October 10th, day before yesterday, so that following the determination of this board we might go about intelligently to adjust the rates and get upon a reasonable working relation that would be conducive to harmony and peace, just so far as that is possible between competing lines, but to follow the suggestion of the Canadian Pacific representative would make this an interminate contest. It would hardly be just to either side. We believe that if after the statement made here the board should feel that it required testimony in support of statements of alleged facts or should want further light upon the subject, they certainly could call upon the parties to appear and give that evidence, or produce the information, but I believe I express the view of the committee in charge of the American lines' case when I say that if it is possible we should close the matter here and get it out of the way. For my own part, it seems to me that the questions are clearly and explicitly stated in the resolution. What we have to submit to this board is there stated. There is no roving commission at all.

Arbitrator WASHBURN: As there is a difference of opinion between the contending parties, this is a matter that the board will
3340 have to determine later; but we hope that all the evidence that will be necessary will be produced at this hearing.

At a preliminary meeting of the board yesterday, to determine modes of procedure, and so forth, it was decided that we would not adopt anything more than necessary to bring the matter properly before the board, and it was decided that, as the Canadian Pacific Ry. has the affirmative side of this question, that company will open the case; that the American side will then reply, and that the Canadian Pacific will close the case; but only in their closing argument to answer points made by the American lines, not to introduce anything new. It was also decided to call upon the parties to the controversy, to present each its case in full, and make a full disclosure of its case in the arguments that will now be made.

We will now call upon the Canadian Pacific Ry.

Mr. KERR: Mr. Chairman, I will not take up the time of the arbitrators in any preliminary remarks, oratorical display, and all that sort of thing, even though I were equal to it. It is not applicable to the subject nor to the time and place.

The general principle of granting differentials to broken rail-and-water routes is admitted and applied as between American lines in various sections of the United States, as being the only means left under the law whereby weak routes may obtain a share of business, the law not permitting an agreement or combination whereby
3341 either physical division of tonnage may be made or a money pool, or any other grounds upon which broken rail-and-water lines can obtain a reasonable proportion of the traffic, as against direct

rail line competitors. This being the case, numerous rail-and-water lines have been granted and for years have worked under differential rates as against their all-rail competitors.

Later, I propose to show the great number in extant and the universal custom, law and rule, prevailing throughout the whole United States and Canada, whereby broken routes, rail-and-water, ocean-and-rail, river-and-rail, all have differential rates in order to enable them to compete with their direct rail rivals. I will go into the detail of this matter later on. I am now only sketching generally the principle.

The history of the Canadian Pacific differentials extends over a period of ten years. On November 5th, 1887, a meeting of the chief traffic officers of the Trans-Continental lines was held at the Grand Pacific Hotel, Chicago, at which it was decided to organize an association to be called the Trans-Continental Association, the organization to take effect December, 1887. The meeting adjourned to meet in New York for the purpose of having conference with the representatives of the Canadian Pacific Railway Company, which was had, and resulted in an agreement on certain differentials in favor of that road. On November 28th, 29th, and 30th, a general meeting was held in Chicago where through rates were agreed upon, and some of the Canadian Pacific differentials were fixed. The first differentials fixed ran:

3342

| | 1. | 2. | 3. | 4. | 5. | 6. | 7. | 8. | 9. | 10. | 11. | 12. | 13. | 14. | Classes. |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| From— | | | | | | | | | | | | | | | |
| New York | 30 | 25 | 20 | 15 | 15 | 12 | 12 | 10 | 7 | 5 | 5 | 5 | 5 | 5 | Cents. |
| Chicago | 20 | 15 | 12 | 12 | 12 | 10 | 9 | 8 | 6 | 5 | 5 | 5 | 5 | 5 | " |

The eastbound differentials from San Francisco to New York and Chicago were fixed on the same figures. A meeting was held at St. Louis on Dec. 19th, 1887, when the question of differentials for the Canadian Pacific Ry, to Detroit, Toledo and Buffalo not having previously been decided on, the chairman was authorized to base the differentials for Buffalo by making the Buffalo rate for them 90 per cent of the New York rate, and Toledo and Detroit 85 per cent of the New York rate. Then the question of the Canadian Pacific differentials on business between St. Paul and Minneapolis and San Francisco was brought under discussion when the following differentials were allowed to the Canadian Pacific from St. Paul:

| 1. | 2. | 3. | 4. | 5. | 6. | 7. | 8. | 9 and lower. | Classes. |
|---|---|---|---|---|---|---|---|---|---|
| 15 | 12 | 10 | 10 | 10 | 8 | 8 | 7 | 5 | Cents. |

The Northern Pacific Ry. claimed the same differentials through Tacoma by rail-and-water and their claim was allowed and agreed to. In connection with the formation of the association an agreement was

made with the Pacific Mail Panama Route whereby certain space was rented in their steamers; the association agreed to fill such space or to pay for it if not filled, the Pacific Mail agreeing that the Pacific Coast rates should be controlled by the American roads.

On May 17th, 1888, a meeting was held in San Francisco, when owing to the differentials awarded to the Canadian Pacific Ry., not giving that company a reasonable share of the traffic, they
3343 applied for an increase of differentials to the basis of 40 cents on first class and 10 cents on 10th class and lower between San Francisco and New York. A committee was appointed to consider the question, and brought in the following report:

"Resolved, that it is the sense of our committee that the differentials allowed the Canadian Pacific Railway Company should at all times be fixed upon such a basis as will secure to that company a fair and reasonable share of the overland tonnage, and that if the present figures do not accomplish that result, they should be so modified as to bring it about. To this end the chairman is authorized to negotiate for the American Lines with the Canadian Pacific Railway Company and make such changes from time to time as, in his judgment, are warranted, with the understanding that the same differentials shall apply to St. Paul and Minneapolis traffic via the Northern Pacific as may be awarded the Canadian Pacific Railway Company; it being understood that these differentials shall apply via the ocean routes only."

This report was adopted.

Now, gentlemen, here was a principle that was evolved by this committee right in the early history of our connection with the Trans-Continental Association that is very important. This committee, consisting of representatives of the Southern Pacific Company, the Atchison, Topeka & Santa Fe Company, and the Northern Pacific Company, advanced and accentuated in this formal resolution and report to the general meeting of the association, that the
3344 differentials allowed the Canadian Pacific Railway Company should at all times be fixed on such a basis as will secure to that company a fair and reasonable share of the overland tonnage. I would like the minds of the arbitrators to dwell somewhat upon this, in view of the fact that of late years we have been chased and harried in various ways in order either to force our company out of the business of this country, or to give up our differential rates. Of course, the one means the other. If we have to surrender the small money advantage that we now have to offer in order to secure a reasonable tonnage to our line, as an offset to the broken character of our route, then, if you do say we shall not have these differentials, you say in the same breath that the Canadian Pacific Company shall withdraw from the trade of the United States, and in doing that, of course, you will remove a competitor; you will remove a line that can be fairly claimed to have done good, and is of advantage, and great advantage, to the commerce of the United States.

I do not think that is a desirable object to attain, and we have a great deal of confidence, gentlemen, that you will not lend yourselves to attaining any such object.

This report of the committee that I have just read was duly adopted in the general meeting, giving the chairman authority to arrange with the Canadian Pacific for an arrangement and rearrangement, from time to time, of their differentials, in order that they shall have a fair and reasonable share of the overland tonnage,

and the chairman finding that the Canadian Pacific was
3345 justified in their application for an increase of differentials,

granted the same, and they were accordingly increased to the following basis:

| | 1. | 2. | 3. | 4. | 5. | 6. | 7. | 8. | 9. | 10. | Classes |
|---|---|---|---|---|---|---|---|---|---|---|---|
| From— | | | | | | | | | | | |
| New York | 40 | 35 | 25 | 20 | 20 | 15 | 15 | 12 | 10 | 7½ | Cents. |
| Buffalo | 32 | 27 | 23 | 18 | 18 | 14 | 14 | 11 | 9 | 7 | " |
| Detroit | 30 | 25 | 21 | 17 | 17 | 13 | 13 | 10 | 8 | 7 | " |
| Chicago | 25 | 21 | 17 | 14 | 14 | 11 | 11 | 9 | 7 | 7 | " |
| St. Paul | } 15 | 12 | 10 | 10 | 10 | 8 | 8 | 7 | 5 | 5 | " |
| Minneapolis | | | | | | | | | | | |

Arbitrator DAY. Mr. Kerr, what year was that, if you please?

Mr. KERR. That was in 1888. On May 17th, 1888, was when the San Francisco meeting was held at which the differentials were changed.

Arbitrator DAY. What was the name of the association?

Mr. KERR. Trans-Continental Association.

The eastbound differentials were practically the same with apparently some slight changes. Eastbound to Chicago—I do not know why that was, but Chicago appears here on the record eastbound as first class, 24 cents; second class, 19; third class, 16; fourth, 15; fifth, 13; sixth, 13; seventh, 13; eighth, 10; ninth, 9; and tenth, 7. There is a variation here in first and second class and third class and fourth class. This differential was worked under until July, 1889, when at a meeting held in Chicago beginning July 20th, the Southern Pacific

Company moved for a reduction of the Canadian Pacific differ-
3346 entials, they claiming we had carried an undue proportion of

wool from California—from San Francisco to the East. After considerable discussion pro and con they proposed and we accepted the following reduced differentials:

| | 1. | 2. | 3. | 4. | 5. | A. | B. | C. | D. | E. | Classes. |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Between San Francisco and— | | | | | | | | | | | |
| St. Paul | No change. | | | | | | | | | | |
| Chicago | 17½ | 14½ | 12 | 10 | 10 | 8 | 8 | 7 | 5 | 5 | Cents. |
| Detroit | 21 | 17 | 14 | 11 | 11 | 9 | 9 | 7 | 5 | 5 | " |
| Pittsburgh | 22 | 18 | 15 | 12 | 12 | 10½ | 10½ | 8 | 7 | 5 | " |
| Atlantic Seaboard | 28 | 24 | 17 | 14 | 14 | 12 | 12 | 8 | 8 | 5 | " |

Wool in grease, 7½ cents.

It will be noted that the understanding on which these differentials were granted was that if they gave the Canadian Pacific an undue proportion of tonnage the differentials should be reduced, as soon as it could be ascertained, to a point that would give that company a reasonable traffic. On the other hand, if the differentials as agreed upon did not give it a fair amount of traffic then they should be increased by agreement, as soon as possible, to a point that would accomplish that end. Therefore, the Canadian Pacific Company entered the Association on differentials that after a fair trial did not give them a reasonable amount of business, and on application the Trans-Continental lines allowed them an increase.

Again, in July, 1889, it being claimed that the increased differentials gave the Canadian Pacific an undue proportion of
3347 traffic, a change was again made in order to hold their proportion of tonnage at the proper figure: the first differential being fixed to run for three months. Subsequently, they were extended to October 1st, 1890, and as a matter of fact did extend until the end of the year. In the year 1891, a new proposition was made by the American lines to the Canadian Pacific, whereby the latter was to receive an allowance in lieu of their differentials. This allowance arrangement lasted through the year 1891, when the Canadian Pacific again reverted to their differentials, by resolution of the Association at the New York meeting, January 14th, 1892. At the end of 1892, the Trans-Continental Association was dissolved and the Canadian Pacific adopted the basis of 10 percent differentials, concluding that to be the fairest basis on which to work, as it had been demonstrated during the life of the Association that fixed arbitrary differentials did not work to the satisfaction of any one, but were a constant source of discussion and re-arrangement: therefore, by adopting the present scale, it being elastic, moving upwards or downwards with the regular changes in rates, the Canadian Pacific concluded it would prove much more satisfactory than the other plan of fixed differentials. Therefore, before entering the Association, we worked on the percentage plan. While in the Association we worked on the fixed arbitrary plan—specific—so many cents per hundred pounds, which was not satisfactory to anybody. During the years 1888 to 1892, inclusive, that question of differentials was never quiet: not that the Associa-
tion lines—the American lines—were unwilling that we should
3348 have a differential, not that they fought on the principle of our having or not having a differential, but the question was always, on their side, that we were getting too much, and on our side, that we were getting too little. Therefore, our experience in that respect, and I think the experience of most all the lines who are differential lines, or who have to deal with differential lines, is that the fixed differential is a source of worry and trouble all the way through, and that, if an equitable percentage could be struck which will rise and fall with the rates, it is more satisfactory, more proper and right than struggling with a fixed arbitrary figure that stands rigid under all conditions and creates trouble all the way through.

At the end of 1892 the Trans-Continental Association was dissolved, and since that time, having adopted this elastic scale of percentage, we have worked very close, and you might say as harmoniously as possible for rival lines to work together, although not now being in any of the Bureaus or Associations that are at present in existence. At every meeting of the lines comprising the Trans-Continental Freight Bureau we are represented. We are there by invitation, which is always sent and always responded to. We are there and sit in their meetings to discuss and give our views and we have always worked with the most perfect harmony. We have simply gone along taking our differentials of 10 percent which has been practically undisputed until within a recent period when it seemed to have become a burning question with some of our friends.

3349 The California lines in order to carry on their business formed the Trans-Continental Freight Rate Committee in 1893; the Northern Pacific, Great Northern and Canadian Pacific not being members. That committee comprised what is known as the California lines. The Canadian Pacific, Northern Pacific and the Great Northern were not members but they kept in touch with the Freight Rate Committee through the medium of the Union Pacific, by which means they received prompt information of the changes in rates, and were enabled to govern their rates accordingly and prevent mis-understandings and needless reduction in revenue.

This Freight Rate Committee was dissolved in 1897 and the Trans-Continental Bureau took its place with the Northern Pacific and Great Northern as members. The Canadian Pacific did not join the Freight Bureau, but worked in harmony with the members of the Bureau; attended all their meetings by special invitation, and governed its rates by the rates made by the Bureau, on the basis of 10 percent differentials. Then, in pursuance with this very interesting history of the Canadian Pacific in connection with the Trans-Continental Association we have to drop back a year. In March, 1896, a meeting of all Trans-Continental lines, including the Canadian Pacific, was held at the Windsor Hotel, New York, and an agreement made for the formation of a new association. Subsequently, a further meeting was held in Milwaukee, in April, where all details pertaining to the formation of the association were completed, and rates were checked in by the Freight Committee. But eventually all proceedings were stopped owing to the objection of the receivers of the Union Pacific.

3350 Now, that is the general history or sketch of the relations the Canadian Pacific Company has borne to the other Trans-Continental lines, both inside and outside of their Associations and Bureau. I do not know that there is very much for me to dwell on in that history and I will now proceed to deal with the question of differentials as applied in other sections of the country, showing that not only is the principle of differentials admitted and acted upon, but

that there are strong precedents, very strong, that support us in our contention that neither the Canadian Pacific line nor any other broken line of like character can hope to participate in any reasonable share or portion of traffic in competition with their direct all-rail rivals—the rail lines being almost exclusively shorter in distance, I think in every case—there may be an odd exception, but I think I am right in the general statement, in every case the rail lines are shorter. The time is shorter with the exception of two ocean-and-rail lines that I shall refer to later on.

In proof of the general principle of differentials as admitted and worked under as between numerous American lines operating both in water and rail routes, we submit a list of those now in operation. All the established lake-and-rail lines operating steamers on Lakes Huron, Michigan and Superior, have differential rates allowed them as against the all-rail lines, between the East and Milwaukee, Chicago, Duluth, St. Paul, Minneapolis and points beyond. The character of those lines is undoubtedly very familiar to you and I doubt whether it is worth while for me to take up your time or burden you
3351 with an enumeration of those various lines. They are very numerous and they supply a daily service—I do not think there is a day during the season of navigation but what steamers leave Buffalo for Lakes Michigan, Huron and Superior, so that the water carriers on the Lake supply practically a daily service during that season of the year. These lines operate rail between the Atlantic Coast points to the lakes, thence by steamer and then rail again wherever they are going to. Now the differentials accorded to these lake-and-rail lines as against their all-rail rivals average from 28 to 20 per cent below the all-rail rates. At present the tariff rates from New York to Chicago are:

| | 1. | 2. | 3. | 4. | 5. | 6. | Classes. |
|---|---|---|---|---|---|---|---|
| All-rail | 75 | 65 | 50 | 35 | 30 | 25 | Cents per 100 lbs. |
| Lake-and-rail | 54 | 47 | 37 | 27 | 23 | 20 | " " " " |

showing a range of differentials of from 21 cents per 100 lbs. on first class to 5 cents on sixth, equal to the percentage I have just named—28 to 20 percent. Also, the routes of the Atlantic Port lines have a differential. Their rates are first class, 65; second, 57; third, 44; fourth, 31; fifth, 26; and sixth, 22, showing a differential of 10 cents on first class to 3 cents on sixth, being a range equal to 13⅓ to 12 per cent differentials.

Arbitrator MIDGLEY. What do you mean by Atlantic Port lines?

Mr. KERR. The lines that operate, say, from New York to New London, Ct., by ocean and thence by rail.

3352 The present published rates from New York to Texas common points are:

| | 1. | 2. | 3. | 4. | 5. | A. | B. | C. | D. | E. | Classes. |
|---|---|---|---|---|---|---|---|---|---|---|---|
| All-rail | 190 | 158 | 133 | 113 | 99 | 95 | 85 | 73 | 60 | 52 | Cents. |
| Via Atlantic Port lines | 170 | 143 | 121 | 100 | 84 | 91 | 78 | 66 | 54 | 45 | " |

The differentials allowed to Atlantic port lines between New York and Texas common points range from 20 cents, first class, to 7 cents on Class "E," equal to from 10½ to nearly 13½, or 13.46 per cent. Then the rates via Gulf port routes are still lower, running:

| 1. | 2. | 3. | 4. | 5. | A. | B. | C. | D. | E. | Classes. |
|---|---|---|---|---|---|---|---|---|---|---|
| 155 | 133 | 113 | 103 | 79 | 86 | 75 | 63 | 50 | 42 | Cents. |

the differential ranging from 35 cents, on first class, to 10 cents on class "E," equal to from 19.23 percent to 18.42 percent.

Arbitrator DAY. Who enjoys that differential?

Mr. KERR. The broken water-and-rail routes as against all-rail routes from New York to Texas common points.

Then we have rates to Vicksburg and Natchez, via Atlantic port routes. I am reaching around here, gentlemen, in order to show you the ramifications and extent of country over which these differentials are applied, apparently all over, and as we hold rightly, so it should be in the case of broken routes that have to contend with all-rail routes.

The rates to Vicksburg and Natchez are:

| | 1. | 2. | 3. | 4. | 5. | 6. | Classes. |
|---|---|---|---|---|---|---|---|
| Via Atlantic Port Routes | 100 | 90 | 75 | 61 | 50 | 42 | Cents. |
| Via Gulf Port Routes | 86 | 81 | 68 | 56 | 46 | 41 | " |

3353 showing apparently a difference or differential in favor of Gulf Port routes as against Atlantic Port routes of from 14 cents on first class to 5 cents on fourth, and 1 cent on sixth class; the percentage range being from 14 percent to 8 percent and 2.38 percent. That is the high and the middle and the lowest.

Then we have a large number of lines operating to and from New York, Boston, Baltimore and Portland, Me., via Ocean-and-rail, as follows:

The National Despatch: Canada Atlantic: from New York via ocean to New London, Ct., thence rail. The Baltimore & Ohio Railroad: Canada Atlantic: Canadian Pacific Despatch; Cumberland Gap Despatch: Kanawha Dispatch; National Despatch; Norfolk and Western Despatch: Rome, Watertown & Ogdensburg Line, from Boston and Common Points, via ocean-and-rail.

Then the Cumberland Gap Despatch—the same Despatches really—Kanawha Despatch; National Despatch; Norfolk and Western Despatch from Boston via ocean-and-rail. Rome, Watertown and Ogdensburg Line; Great Eastern Line; Canadian Pacific Despatch, from Portland, Me., and points taking Portland rates.

From New York, Boston and Portland (Me.), the differentials allowed these lines are—that is ocean—from the starting point of the goods to the connecting point with the rail, thence rail to destination—the differential allowed these lines is:

| 1. | 2. | 3. | 4. | 5. | 6. | Classes. |
|---|---|---|---|---|---|---|
| 10 | 8 | 6 | 4 | 4 | 3 | Cents. |

the percentage ranging from 3½ percent to 12 percent.

3354 In order to accentuate this differential question, and to show and prove its general application and acceptance, we find here in the Joint Traffic Association proceedings of the Board of Managers, Sept. 15th, 1898, Rule 184, "Differentials Westbound, via the Chesapeake & Ohio Railroad, Norfolk & Western Railroad, and Baltimore & Ohio Railroad," which states:

"At a conference between Messrs. O. G. Murray and Albert Fink, April 27th, 1889, it was agreed that the following differentials below the established all-rail tariffs should be used by the Chesapeake & Ohio Railway, via their water-and-rail line on insured bills of lading:

| | 1. | 2. | 3. | 4. | 5. | 6. | Classes. |
|---|---|---|---|---|---|---|---|
| From— | | | | | | | |
| Boston and New York | 10 | 8 | 6 | 4 | 4 | 3 | Cents per 100 lbs. |
| Philadelphia | 8 | 6 | 4 | 3 | 2 | 2 | " " " " |
| Baltimore | 8 | 6 | 4 | 3 | 2 | 2 | " " " " |

Then it goes on to state that this order or resolution—rule, it is called—the above differentials shall be subject to change from time to time when either party calls for a change, and that the statistics of the relative amount of tonnage forwarded via the several lines shall be the basis of adjusting differentials from time to time in case of disagreement. In case of disagreement the question shall be decided by arbitration.

The foregoing water-and-rail differentials are also applied from all the cities named via the Norfolk & Western Railroad, and from Boston via the Baltimore & Ohio Railroad, and to points west of 71 per cent points.

3355 Then, under Rule No. 185, we have differentials from Boston via ocean-and-rail routes to Pittsburgh, and so forth, treated of, and it reads:

"The following agreement was reached at a conference held October 20th, 1893, between the Boston Freight Committee and the Gen-

eral Manager of the Merchants and Miners Transportation Company, and is still effective:

"'That to Pittsburgh and all points taking 60 to 71 per cent inclusive, of Chicago rates, the differentials of the Merchants and Miners Transportation Company and roads connecting therewith shall be:

| 1. | 2. | 3. | 4. | 5. | 6. | Classes. |
|---|---|---|---|---|---|---|
| 6 | 5 | 4 | 3 | 2 | 2 | Cents per 100 lbs. |

respectively, below the standard all-rail rates from Boston and Boston points.'"

Then we have Rule No. 186 which treats of differentials from New York via the Central Vermont route (National Despatch Line):

"The following differentials are applied by the Central Vermont route (National Dispatch Line) from New York via New London, insured, to the Detroit River and points west:

| 1. | 2. | 3. | 4. | 5. | 6. | Classes. |
|---|---|---|---|---|---|---|
| 10 | 8 | 6 | 4 | 4 | 3 | Cents per 100 lbs. |

except that slightly reduced differentials are applied to points taking 78 to 81 per cent of New York-Chicago rates."

3356 I do not want to weary you, gentlemen, by reiterating all these points. I think I have given you enough of these records to show that the differential as applied in the East is very general in its character; that the differential applied in the South is pretty general in its character; and I hope to show you before I finish, that the differential is pretty general all over, and that, apart from the equities and merits of the Canadian Pacific Ry. having differentials on this particular business, precedent after precedent has been established, and our reasons for asking a continuance of the established differentials on this traffic are at least equally as good as any reasons that can be advanced by those lines that do enjoy that privilege, and we think in most instances very much better.

The Chesapeake and Ohio have the same differential rate from Eastern Seaboard points to Chicago as the National Despatch, of which I have just been treating, these differences applying on the standard rates from the Seaboard points to the Mississippi River points. Now, a great deal has been said, chiefly on the outside, about the Canadian Pacific Ry. seeking by its long, circuitous and broken route to share in a tonnage as against more direct and shorter lines all-rail, and I propose to show to you gentlemen that not only have we a precedent on which to claim differentials, many of them, and that we also have numerous precedents to show that there are numerous broken circuitous water-and-rail lines operating all over the

country that are longer and more circuitous than ours, and still they do operate with more or less success, and among those lines we
3357 will be able to show you, I hope, that some of the roads, known as Trans-Continental lines, are engaged in operating broken, long, circuitous routes in competition with direct all-rail rivals. In saying this I do not wish to be understood as criticizing the right of any road to go anywhere, even with a broken and circuitous line, to seek for business, so long as they are satisfied that taking all the circumstances into account such business will afford them some small measure of profit. Therefore, I will take up a little of your time, if you please, on the question of distances over which these circuitous and broken routes operate.

The distance by the Chesapeake & Ohio road, Boston to Newport News, is 544 miles by water. Newport News to Chicago, 1071 miles, total 1615 miles from Boston to Chicago, against 1020 miles by the shortest all-rail line from Boston, showing the line via Newport News, 58 per cent longer. The distance by the Chesapeake & Ohio from New York to Newport News is 305 miles, to which add 1071 miles Newport News to Chicago, total 1376 miles against the shortest all-rail line of 912 miles, 50.87 per cent longer. Again the distance between Boston and Duluth by all-rail is 1382 miles, against 2195 miles via Newport News and Chicago, 58.82 per cent longer by the broken route.

The Southern Pacific Co., or System rather, in connection with the Morgan Line steamers carries business, via New York, New Orleans and Fort Worth, to Utah points at a differential rate. The distance from New York to Denver via water to New Orleans thence rail to Fort Worth is 3155 miles, against 1940 miles by the direct all-
3358 rail line, showing it to be longer via New Orleans 62.61 per cent.

Now, this is a case we would like to impress upon the minds of the Arbitrators as one of great importance and establishing a precedent, which we have never followed in its entirety, for claiming differential rates, in favor of broken water-and-rail routes. Here we have a line operated around through New Orleans to Denver, we will say, that is over 62 per cent longer in distance than the all-rail line and that line is operated under very heavy differentials: and bear in mind, gentlemen, that that line is operated and controlled by a company who at this present hearing is one of our chief opponents and who is here to tell you that the Canadian Pacific Company is not entitled to any differential rates in competing with them, and as their representative here is a gentleman of very frank and open disposition, I am perfectly sure he will admit to you and give you the reasons why, in opposing us and trying to take away our differentials, he should be willing to acquire and hold a relatively much greater differential as against his rail competitors into Utah and Colorado, around so long and circuitous route.

Now, the history of this differential enjoyed by the Southern Pacific

Co. on their New York-Colorado and Utah line via New Orleans, as reported to me runs as follows: When they opened their line some years ago they began by taking the canal-and-lake rates to Chicago and local rates of the line from Chicago to Colorado common points, and then charging 80 per cent of the canal Chicago rates added to the rates beyond which gave them a differential of

3359

| 1. | 2. | 3. | 4. | 5. | A. | B. | C. | D. | E. | Classes. |
|---|---|---|---|---|---|---|---|---|---|---|
| 43 | 35 | 32 | 22 | 17 | 14½ | 10½ | 13 | 13 | 13 | Cents. |

Now, I am also advised that although these differentials were based on the canal-and-lake rates, the Southern Pacific insisted upon applying them all the year round during the period when navigation by canal was closed—and very naturally their action in that respect caused a very great deal of trouble and friction. But in December, 1897, they got together and held a meeting and discussed the situation, and finally agreed that the following differentials under the all-rail rates, from New York to Denver, would be allowed to the Southern Pacific lines via New Orleans.

| 1. | 2. | 3. | 4. | 5. | A. | B. | C. | D. | E. | Classes. |
|---|---|---|---|---|---|---|---|---|---|---|
| 39 | 30 | 26 | 16 | 14 | 11 | 11 | 11 | 11 | 11 | Cents. |

Now, it has been maintained and stated very frequently, that whatever differentials applied in the East, in Trunk Line and Central Freight territory, that with the exception of the Canadian Pacific, that there was no precedent established west of Chicago—that there was no such thing as differentials anywhere west of Chicago; that the lines did not participate in them in any way. But we find in the face of these statements that these differentials accorded to the Southern Pacific Company on their New York-Denver and Utah points have been assented to by the lines west of Chicago, the lines east not participating in any way. Now, that being the case it seems to me it establishes a precedent and does away with the argument that in no instance, with the exception of the Canadian
3360 Pacific Company, are differentials allowed—acknowledged in any way by the lines west.

Now, having touched on the differentials enjoyed by the Southern Pacific on their Colorado and Utah line, I would like to point out that they do enjoy differentials via their Sunset line on Trans-Continental business, and by the list that I propose to submit to the Board, prove that on a very large tonnage, a very large proportion of their Trans-Continental business, via their Sunset line, they enjoy a higher differential than the Canadian Pacific Company to-

day. The Southern Pacific Company by their Sunset line, through New Orleans, have differentials averaging 10.94 percent from New York Pier to San Francisco, on numerous commodities, as against the all-rail lines from New York City, thereby enabling the Sunset line to control a very large tonnage from New York City and to reach out into the interior against the all-rail lines. We submit a list of the commodities and rates taken from the current tariffs published by the Trans-Continental Freight Bureau, showing differentials allowed to the Sunset line of the Southern Pacific Company. (Mr. Kerr here submitted to the Board the paper marked "Exhibit 1.") That list, gentlemen, speaks for itself and is abstracted from the current tariff of the Trans-Continental Freight Bureau, the Southern Pacific Company taking ground in their discussions with their associates that whatever rates are made from Chicago, if they are graded less than the rates from New York, that they, the Southern Pacific Company by their Sunset line will adopt from New
3361 York Pier—the Morgan Line pier in New York—the same rates that the other lines make out of Chicago to California points. In that way, as we show you, they obtain a differential greater than ours—the Canadian Pacific—and as you can see by looking over the list, it involves a very large tonnage, a very large proportion of the whole; it covers numerous staples. Yet, gentlemen, they are here to argue that the Canadian Pacific differentials should be abolished.

Now, just to step aside for a moment from the direct line, it may not be amiss to state that the Great Northern Railway, the great stickler against the Canadian Pacific differentials, are themselves today enjoying, and by consent, a differential below the Canadian Pacific rates, below the Southern Pacific rates, and below the Northern Pacific rates in connection with their Asiatic traffic. The Asiatic Steamship line known as the Nippon Yusen Kaisha Company, a Japanese line operating with the Great Northern Railway Company to and from Seattle and China and Japan ports, to points in the United States and Canada, have a differential as against the Canadian Pacific, the Northern Pacific, and the Southern Pacific of 16⅔ percent on silk traffic and 5 percent on tea and other merchandise. They enjoy this differential and by the means of it they are able to get their proper and reasonable share of traffic as against the stronger lines of the Southern Pacific, the Northern Pacific and the Canadian Pacific.

Arbitrator DAY. Between what points, Mr. Kerr?

Mr. KERR. China and Japan ports to all points in the
3362 United States and Canada.

Arbitrator DAY. Let me ask you where you get that information; what is the source?

Mr. KERR. By an Agreement to which we are parties.

Arbitrator DAY. Is that a public tariff, that you speak of?

Mr. KERR. No, it is a percentage tariff allowed by agreement, of

which I have here an abstract, and will read it to you so that you will——

Arbitrator DAY. Pardon me, but I do not want to break up your argument, yet what I want to know is if this is a tariff that is printed and filed according to law—filed with the Interstate Commerce Commission?

Mr. KERR. There is no such tariff—as I understand, tariffs are not filed with the Interstate Commerce Commission as between China and Japan ports.

Arbitrator DAY. This does not apply between Atlantic points and Pacific points?

Mr. KERR. No; it is eastbound; so far as we are concerned it is from China and Japan ports via Seattle and the Great Northern road to any point in the United States and Canada.

Arbitrator DAY. It is a through tariff; it is not a local tariff from interior points?

Mr. KERR. No.

Mr. STUBBS. Have you a copy of the Agreement? If so, I suggest you file it for the use of the Board.

Mr. KERR. I have not the agreement, but I have a copy here. It states here an Agreement dated Hong Kong, March 23rd, 1898,
3363 between the Trans-Pacific lines, Northern Pacific Company, Tacoma and Portland lines, Pacific Mail line, Occidental & Oriental Company to San Francisco, the Nippon Yusen Kaisha Company to Seattle, and the Canadian Pacific Railway for the purpose of advancing and maintaining rates on freight and cargo generally, from China and Japan to all points in Canada and the United States of America. The Nippon Yusen Kaisha Company, in connection with the Great Northern Railway, are enjoying the following differentials (I see this is not an abstract of the Agreement, but it is a statement).

Mr. STUBBS. I just wanted to get it before the Board, but I think you and I can agree upon it.

Mr. KERR. We can file it, of course. First, on raw silk cargo (these are the terms), the Nippon Yusen Kaisha Co. and the Great Northern Railway are allowed a differential of $1.00 per hundred pounds, equal to 16⅔ percent, the Nippon Yusen Kaisha Co. rate being $5.00 per hundred pounds, the other lines having $6.00 per hundred pounds on raw silk.

Arbitrator WASHBURN. May I ask why that was granted; was it because their line was longer than the other line?

Mr. KERR. Because their line was weaker, and slower time and poorer ships, less chance of doing business on equal terms and that was recognized—recognized by the Canadian Pacific and recognized by the Southern Pacific and Northern Pacific—all acknowledging that they were stronger lines and better able to secure and obtain traffic than that weak line with poor ships.

Arbitrator DAY. When was that Agreement entered into?

Mr. KERR. March 23rd, 1898.

3364 Arbitrator DAY. Where?

Mr. KERR. At Hong Kong.

Arbitrator DAY. By whom?

Mr. KERR. By the respective representatives of the lines. Second, on tea and all other cargo the Nippon Yusen Kaisha and the Great Northern Railway are allowed to charge a differential rate of 5 percent lower than the other lines, under the Trans-Pacific Agreement.

I was going to say, Mr. Chairman, and I would like to impress it upon the minds of you gentlemen, that not only did the Canadian Pacific enter into that Agreement to allow the weaker line a differential on traffic in order that they should secure their fair share of business to the United States and also to Canada, and bear in mind also that Hong Kong is a British Crown Colony and Canada a British Dominion—and there is no question raised, or distinction made as between one point to another in the British possessions, or one point to another from a British point to an American point. I just wanted to make that point because I will have further to say on that subject later on.

Arbitrator DAY. I would like to ask before going further, who are the parties to that Hong Kong Agreement?

Mr. KERR. The representatives of the Pacific Mail, the Oriental & Occidental Steamship lines, in connection with and as representing the Southern Pacific Co. on this side, and the representatives of the Northern Pacific Steamship line.

Arbitrator DAY. The point I was trying to get at is who are the parties to the Agreement.

3365 Mr. KERR. I am telling you.

Arbitrator DAY. You were speaking of representatives.

Mr. KERR. The men who signed the Agreement?

Arbitrator DAY. Yes.

Mr. KERR. I was just telling you. Which of course has been confirmed by the Executive Officers of the railway companies interested. The first party, as I say, was the Pacific Mail and the Southern Pacific Co., the second was the Northern Steamship Line and the Northern Pacific Company, and third is the Canadian Pacific Steamship Line and the Canadian Pacific Railway Company, with the Nippon Yusen Kaisha Co., a Japanese Company operated with and in connection with tne Great Northern Railway Company, and we three as first stated accorded to the weaker line this differential.

Mr. STUBBS. I would like to ask the gentleman whether he will close or whether he will take up all the afternoon or not. I suppose it is desirable to get through as quickly as possible.

Arbitrator WASHBURN. On the other hand, I think it is desirable, and my colleagues think the same, that each party to this arbitration should have the fullest opportunity to present its case, so that we may have all the facts before us.

Mr. STUBBS. The object of my question was to find out whether I should come here prepared to take up our case during this afternoon or not.

Arbitrator WASHBURN. I do not know whether any one else than Mr. Kerr proposes to address the Board or not.

Mr. STUBBS. I am the servant of the Board in this, and if
3366 you want to keep up until late, it is all right with me.

Mr. KERR. I am a slow speaker and a slow thinker.

Mr. STUBBS. I do not wish to hurry you at all; all day and all night, for that matter, will suit me. I have nothing else to do but attend to this.

Arbitrator WASHBURN. Will there be any one to follow you on your side of the case, Mr. Kerr?

Mr. KERR. Mr. Bosworth may have something to say.

Mr. BOSWORTH. I think not.

(At 1.10 p. m. an adjournment was taken to 2.30 o'clock p. m.)

AFTERNOON SESSION.

OCTOBER 12TH, 1898—2.30 P. M.

The Meeting being called to order by the Chairman, Mr. Kerr continued his argument as follows:

Mr. KERR. Mr. Chairman and Gentlemen: In closing at the noon hour I dealt with the question of differentials to the Great Northern road in connection with their Asiatic business. I now propose to show that the Great Northern and Northern Pacific lines enjoy differentials on Trans-Continental business from eastern points to the North Pacific Coast, Portland and North. By the tariff that I have here, numbered S. R. 128, Amendment No. 1 to Westbound Tariff No. 1-C: "Differential Rates via Lake-and-Rail applying during the season of Lake Navigation, via Great Northern Railway, Northern Pacific Railway, Oregon Railroad & Navigation Company, via
3367 Spokane and Wallula Junction, in connection with the Erie & Western Transportation Company (Anchor Line), Northern Steamship Company, Port Huron, Washburn & Duluth Line, Union Transit Company, Western Transit Company, Canada Atlantic Transit Company, Georgian Bay and Lake Superior Steamship Line and Eastern roads named on page 2 hereof." "From points in territory described below to North Pacific Coast Terminals, namely: Portland, East Portland, Albina and Astoria, Ore., and points north thereof, taking 'Terminal' rates (as described on pages 1, 2 and 3 of Tariff No. 1-C)." When the through all-rail class or commodity rate per 100 pounds is 75 to 79 cents, inclusive, the differential allowed to the Great Northern and Northern Pacific rail-and-lake lines is 5 cents, and they go on in an increasing scale that you can easily refer to, I do not need to burden the minutes with them, because they are right here. They go on in increasing scale, up to 25 cents per hundred. The same differentials are shown in Supplement No. 2 to Trans-Continental Westbound Tariff No. 1-C, Buffalo to Milwaukee (821 miles), and Buffalo to Chicago (889 miles), in connection with the Union Pacific, Atchison, Topeka & Santa Fe and other western roads.

Now, gentlemen, we maintain that on their own showing these lines who complain of the Canadian Pacific differentials, that they are, for

a large portion of the year,—that portion of the year when a very large, probably the largest tonnage moves, during open lake navigation—they are enjoying, by their broken rail-and-water route a complete system of differentials, every one of them, the Southern
3368 Pacific included, with the exception of their Sunset line, which, of course, cannot take business that way. They all get the benefit of these differential rates that apply in connection with the lake-and-rail lines.

We have now cited a sufficient number of cases of differentials as applied all over the various sections of the United States in connection with United States traffic. I now propose to show you that American lines enjoy a very large differential in connection with purely Canadian traffic, traffic shipped from one point in Canada to another, via American lines and their Lake connections, broken water-and-rail routes, and I hope also to show you that the average distance as between the points in Canada traveled by the Canadian Pacific and by the all-rail American route are practically the same. In fact, I think they are a little in favor of the American lines. We have here a memorandum accompanied by the tariffs that prove our statements that the following differential rates are enjoyed by lake-and-rail as against all-rail from Montreal to Winnipeg, and when I say Montreal, that covers everything west of Montreal in the province of Quebec and in Ontario, up to the Detroit River. The present rates, Montreal to Winnipeg, are (the ninth is not in there for the reason that it is live stock and of course it does not go by the lake):

| | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 10 | Classes. |
|---|---|---|---|---|---|---|---|---|---|---|
| All-rail | 198 | 170 | 135 | 105 | 88 | 80 | 70 | 70 | 62 | Cents. |
| Lake-and-rail | 143 | 123 | 103 | 87 | 72 | 70 | 55 | 55 | 47 | " |

showing a range of differentials from 55 cents first class to 16 cents, fifth class, and 15 cents, tenth class or lower.

3369 Then we have from Montreal to Kootenay points, British Columbia, Canada:

| | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 10 | Classes. |
|---|---|---|---|---|---|---|---|---|---|---|
| All-rail | 405 | 353 | 300 | 248 | 205 | 199 | 169 | 156 | 131 | Cents. |
| Lake-and-rail | 375 | 329 | 283 | 242 | 200 | 194 | 164 | 151 | 126 | " |

showing a range of differentials from 30 cents first class down to 5 cents on fifth and lower.

Arbitrator DAY. Mr. Kerr, where do lake steamers get that traffic?

Mr. KERR. They get it at Sarnia and at Owen Sound.

Arbitrator DAY. Is that the same on the Winnipeg traffic you spoke of?

Mr. KERR. Also at Parry Sound by the Canada Atlantic, thence to Duluth and thence by American lines on to destination.

Arbitrator DAY. On that lake-and-rail traffic from eastern Canadian points, from one Canadian point to another Canadian point, take the one you have illustrated from Montreal to Kootenay, is the lake traffic exclusively carried in Canadian or British bottoms or in American vessels?

Mr. KERR. It is carried in Canadian bottoms, in connection with either American or Canadian roads. We have our own line by lake-and-rail via Owen Sound to Fort William. The American lines, the Northern Pacific and Great Northern and also the Union Pacific (Yes, they can get in there via the Omaha), but the Great Northern and Northern Pacific—I cite them as the chief ones—they carry from Duluth on to Winnipeg, to Kootenay and the British Columbia Coast.

3370 Mr. STUBBS. Do I understand the Canadian Pacific Ry. carries the same differentials?

Mr. KERR. Certainly, certainly.

From Montreal to British Columbia Coast points the rates are:

| | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 10 | Classes. |
|---|---|---|---|---|---|---|---|---|---|---|
| All-rail | 325 | 283 | 240 | 203 | 180 | 173 | 138 | 113 | 108 | Cents. |
| Lake-and-rail | 315 | 275 | 233 | 202 | 17- | 168 | 133 | 108 | 103 | " |

giving a range of differentials of from 10 cents on first class down to 5 cents on sixth and lower.

Now, that brings out the fact that the American lines enjoy their share of purely Canadian traffic at differentials when they use a broken route as against the unbroken all-rail route. Now, there have been discussions and arguments both formal and informal on the question of American lines enjoying purely Canadian traffic and the point has been raised that, "yes, they enjoy Canadian traffic but on a strict equality with Canadian lines." To that we say, "Yes, because the circumstances are precisely similar. You have as good a line from Ontario and Quebec, all-rail, to those points named as we have; you have as short a line and in many cases shorter." On the average the American lines are shorter than the Canadian. Their time is just as good; their facilities are equal; their environments are practically the same as the Canadian Pacific and consequently they do not ask differentials any more than we do where our circumstances are similar in connection with American traffic. We run into Puget Sound. Our distances are relatively the same;
3371 may be, 100 miles or so different, something like that. We do not ask differentials there because we feel that we are on a parity with our neighbor, and there is no special ground for us asking a differential on Puget Sound business any more than there is a ground for the American lines to ask a differential on purely Canadian business.

Now, I just want to trouble you with a few of the distances here in support of my statement, and to, if possible, allay that ghost that has

been raised on various occasions, in answer to our statement that American lines enjoy Canadian traffic on a perfect equality, and later on I propose to deal with the subject at greater length. The distance from Toronto to Winnipeg by the Canadian Pacific is 1505 miles, by the route traveled and by which freight is hauled; by United States lines through Chicago and St. Paul, 1377 miles.

Arbitrator DAY. Is that by way of North Bay?

Mr. KERR. By way of Carlton Junction, the route by which we do our business.

Arbitrator DAY. That, you mean, is back towards Smith's Falls?

Mr. KERR. Yes, sir; around Smith's Falls. That is the way we do both our freight and passenger business. That is our route. We have got to go around that way. From London to Winnipeg the Canadian Pacific distance is 1620 miles; by the American lines through Chicago and St. Paul, 1301 miles. From St. Thomas to Winnipeg by the Canadian Pacific line the distance is 1626 miles;
by the American lines through Chicago and St. Paul, 1266
3372 miles. From Montreal to Winnipeg the distance by the Canadian Pacific line is 1424 miles; by the American lines through Chicago and St. Paul, 1710 miles. Now, you see that throughout the whole province of Ontario, which produces the largest proportion of traffic, in tonnage, going into the Northwest, the American line has quite an advantage over us in distance. On the other hand we have an advantage out of Montreal. Taking the average together, I think they beat us. Now, from Toronto to Nelson, B. C., which might be called the capital town—it is the chief town in the mining district of the Kootenay, the central point, the commercial center of that district, that great mining district. From Toronto to Nelson by the Canadian Pacific the distance is 2786 miles; by the American lines through St. Paul and Spokane 2586 miles. From St. Thomas to Nelson by the Canadian Pacific the distance is 2907 miles; by the American lines 2475 miles. From Montreal to Nelson by the Canadian Pacific the distance is 2705 miles; by the American lines, 2919 miles. Then take the relative distances to the Coast, Victoria, B. C., being a common point and center, the extreme outside point. From Toronto to Victoria by the Canadian Pacific, the distance is 3067 miles; by the United States lines, through Seattle, the distance is 2821 miles. From London to Victoria, the distance by the Canadian Pacific is 3182 miles; by the United States lines, 2745 miles. From St. Thomas to Victoria, by the Canadian Pacific, the distance is 3188 miles; by the United States lines, 2710 miles. From Montreal to
Victoria, by the Canadian Pacific, the distance is 2986 miles;
3373 by the American lines 3154 miles. So I do not think, from that showing, any argument would stand, if made, that the American lines should have a differential on Canadian business, any more than the Canadian lines should have a differential on Puget Sound.

Arbitrator DAY. Mr. Kerr, how much shorter would it be in the distance from Toronto to Vancouver, if you carried your traffic by

way of North Bay rather than back east to Carlton Junction; how much would it shorten the line?

Mr. KERR. 215 miles. But, of course, we must look the facts in the face, as they exist. We have got no line by North Bay, and do not expect ever to have one, and we are working to have our freight and passenger business run through Carlton Junction and Smith's Falls, a section you are no doubt familiar with.

Mr. Chairman, with your permission, I shall file these memoranda showing the differentials on Canadian business (producing paper marked "Exhibit 2"), and this as showing the relative distances between Canadian points (producing paper marked "Exhibit 3").

Having shown that there is a general system of differentials, allowed by the American all-rail lines to the broken water-and-rail routes, and in allowing such have admitted that there are good reasons for it, we claim that there are greater reasons why the differential rates should be continued to the Canadian Pacific rail-and-water line to and from San Francisco and the East. We operate a rail line to Vancouver, thence steamer to San Francisco. Our
3374 distance from New York to San Francisco is 4023 miles as against 3270 miles by all-rail, thus showing that we have a greater distance by 23 percent. From Chicago the Canadian Pacific distance is 3053 miles, as against 2357 miles by all-rail, making the Canadian Pacific line 21 percent greater in length. From St. Louis the Canadian Pacific distance is 3233 miles, as against 2433 miles by all-rail, showing that our distance is 32.88 percent greater.

Our steamer service is infrequent, that is between Vancouver and San Francisco, sailing only once in every five days. Our time is long, averaging—in fact, not averaging in our case—our minimum time from New York is 25 days and from Chicago 19, as against the average time of the all-rail lines from New York 19 days and from Chicago 14. The Sunset line from New York to San Francisco averages 14 days. In fact, I have been told that that is their outside, really; they do not ever take any longer time than 14 days and often less. The Santa Fe, in connection with the Mallory line, makes 15 days. Owing to the infrequency of our steamer sailings, goods often arrive at Vancouver right after the sailing of a steamer, and consequently lay in that port 4 or 5 days before they can go forward. The steamer route between San Francisco and Vancouver is a stormy one; steamers have to run along the Coast, in doing so they encounter a heavy beam sea which causes them to tumble and roll. Goods are handled from car into the vessel and again heisted out of the vessel at San Francisco. These various handlings coupled with stormy weather which frequently prevails makes freight liable to a
3375 large percentage of chafing and damage, whereas goods shipped by all-rail are loaded into a car and not disturbed until they reach their destination. The distance from Vancouver to San Francisco by sea is 840 miles direct, but the steamers we operate in our connection do not run direct. They first go to Vancouver and take on such freight as we have to offer them, then they run down into Puget

Sound and take on such further cargo as may be for them in the various ports in Puget Sound. They remain in Puget Sound about two days, then sail from Seattle to Victoria and thence direct to San Francisco. A steamer leaving Vancouver on the 1st day of October, that is with Canadian Pacific freight, will not reach San Francisco until the 7th, so that the time occupied for a ton of freight, from the time it leaves our car at Vancouver, is six full days before the ship reaches San Francisco. Now, the distance from Vancouver to Seattle is 150 miles and from Seattle to Victoria, 87 miles. The distance from Victoria to San Francisco is 760 miles, which makes a total distance that goods carried from Canadian Pacific points are carried by sea of 997 miles, say, in round figures, 1,000 miles those goods are carried by sea after they leave Canadian Pacific cars. Now, in the time made here, the Canadian Pacific Company ordinarily averages as fair time to Vancouver as the other all-rail lines to their various termini, that is, I think we get to Vancouver about as quick as the rail lines get to San Francisco, or the other lines, say, the Northern Pacific or the Great Northern get to Seattle and Tacoma, or
3376 Portland, as the case may be, but the great break and hitch is the water portion of the route. Say, it takes the direct lines 19 days to run from New York to San Francisco; we may do that in 19 days from New York to Vancouver and when we reach Vancouver, we may be just one day behind the sailing of a ship which results in a delay at Vancouver before the goods can go forward, of at least 4 days, to which add the 6 days which it occupies after the ship takes the goods before it reaches San Francisco and you have 29 days, so that when we make 25 days, it is when we make close connection with the steamer sailing. Now, these are all obstacles in the way of obtaining business; very serious obstacles. No man is going to ship his goods by a long broken route for the same money that he can have his goods carried by a short, direct and all-rail route or by another broken water-and-rail route that delivers his goods into San Francisco in one-half the time that the Canadian Pacific can do it. When you go to that man and ask for his business, you must have something tangible to offer him as an offset to such serious disadvantages and if you have not got an offset to offer him, do not waste your time in canvassing him or calling on him, because you will not get his business. I think that is very plain and a simple statement of facts that every one in this room knows to exist. Now, in the various discussions that have arisen on this subject, statements have been made in arguments that the Canadian Pacific by its broken route has got a differential on Trans-Continental business and why should not the Sunset route have a differential on its broken rail-and-water
3377 line? The answer to that is that the circumstances concerning each are entirely different. There is not the slightest similarity in the case. In the first place, they operate their steamers between New York and New Orleans, their water route being the initial line on which goods are shipped. Those steamers run to New Orleans

where cars are waiting cargo. That cargo is quickly transferred and dispatched over-land to San Francisco and there is no question of delay whatever. They make, as is shown, faster time, in fact about one-half the time that we can make and very much less than the all-rail. The Sunset line makes 26 percent shorter time than the all-rail.

Now, in connection with accumulating business by the Sunset line, their water line being the initial, it is well known that steamer lines in securing business are not at all particular as to classification or weight. That is the history of the manner in which the steamer lines carry on their business usually and shippers often think they see an advantage in using the water lines as against all-rail, in order to evade the classification and weight as much as possible. It is also well known that the Southern Pacific Co. are pretty well hedged around in California and in large sections of the state they enjoy a monopoly. This is particularly so with regard to San Francisco, as all lines entering the city, with the exception of the Canadian Pacific and the Oregon Railroad & Navigation Co., must use the Southern Pacific tracks. Being in this position, they are enabled to influence business in various ways to the Sunset Line, in which they have
3378 been very successful. Merchants are naturally chary of unnecessarily antagonizing a railroad company who has control of the business, and on the other hand, the Southern Pacific are in a position to offer various local inducements to merchants, thereby tying their business to the Sunset Line. This is one of the chief reasons why the Sunset Line has been enabled to hold such a large share of Trans-Continental business and proves that their circumstances are so entirely different from the Canadian Pacific that they are not entitled to differential rates as against all-rail lines, although, as we have already shown, they do enjoy differentials on numerous and very important lists of commodities.

It has been stated that the Canadian Pacific, being a long and circuitous route, between San Francisco and New York and other eastern points, are not entitled to participate in traffic against the short and direct line; but we have shown that much more circuitous and broken American lines do participate in traffic in competition with their direct all-rail rivals. Whatever argument may be advanced against long circuitous routes participating in passenger business as against the short direct lines, the same reason cannot be applied in connection with freight. The only point to be considered is, can a long and circuitous line obtain rates sufficient to leave a margin of profit and in that connection the question of balancing traffic east and westbound enters largely into consideration. At certain times the volume of paying traffic may be moving eastward, when it may pay the road to accept very low class freight westward at rates that under other conditions they would not be justified in doing. Again,
3379 a road may be capable of moving on its trains a much larger proportion of tonnage than its local business provides, to fill those trains to the hauling capacity of its locomotives. Such trains much be kept running with regularity in order to give a reasonable

service and if its regular business will not provide a sufficient tonnage equal to the hauling power of its engines, then every extra carload that can be obtained to fill up within the hauling power is so much gain, even at rates which under other circumstances would not be profitable. All these points must be carefully considered as the circumstances arise, in order that maximum results may be obtained. Consequently broken and circuitous routes are justified in seeking for business from all sources, provided the traffic is judiciously and intelligently handled and governed by circumstances that arise from time to time.

It will be noticed that in various places—that in the various plans formulated for the organization of trans-continental associations, the Panama route offers the basis from which all such organizations start, and the plans adopted from time to time have always been in the nature of a subsidy, or in fact a differential in another form. Now, this is a long, circuitous, broken rail-and-water route, operating its railroad through a foreign country. The basis of difference as between the Panama Route's rates and the Trans-Continental Association tariff is, under ordinary circumstances, about 30 per cent. In other words, the Panama Route make their rates under ordinary and similar circumstances—they are not doing it now—
3380 about 70 percent of the Trans-Continental Association rates.

The principle of subsidy or differential in dealing with them has always been advanced and acted upon, and it appears to us that the Canadian Pacific Company has as good ground for asking to be allowed to operate in American traffic, having differential rates, as the Panama Route or any of the numerous American water-and-rail lines who enjoy that privilege. Now, I do not think it is a breach of confidence to cite the remarks made by the president of the Union Pacific Company at the Denver meeting in August last, in connection with this question of Panama subsidy and the relations the Panama road bears to the Trans-Continental California lines. In discussing the question of gaining the co-operation of the Panama road, in connection with the proposed reformation of the Trans-Continental lines into an association, it was proposed to endeavor to subsidize the Panama line steamers operating between New York and San Francisco, via the Isthmus of Panama, and in the discussion, Mr. Burt, the president of the Union Pacific, said:

"I could not for the Union Pacific express an intelligent opinion on that matter"—(that is, referring to the subsidy proposed to be given to the Panama road)—"until I had a copy of the agreement and had time to study the general proposition. I think I understand but I could not express an intelligent opinion or bind our Company in any way, until I had carefully studied it. It seems to me another way of paying differentials. I presume the Canadian
3381 Pacific Company might be subsidized, and thereby secure maintenance of Trans-Continental rates—if not in the same manner, in some manner which would take revenue out of our treasuries and put it into theirs. I presume they are not anxious to per-

form the service but that they would be willing to accept the money and maintain the rates, or maintain the same rates. It seems to me that we are departing too far or getting entirely away from the idea which we started out with here and which was so clearly enunciated by some of the speakers on the subject of differential rates. I cannot regard this as anything else than a differential under another form. If we do this for the Panama Route, we may after a while have the Nicaragua Route, and that will not at all discourage the building of other routes or putting them on. After a while we will have to admit the claims of railroad lines which have part rail and part water routes from the Atlantic Seaboard to the Pacific, although these cases would not be exact parallels. It seems to me that we are entering upon a very broad and unknown expedition when we are going into anything of that kind, and I, for one, will have to study it very carefully before I give an opinion for our people. I do not say that we would not give our consent, but I would like to look around and see where we are likely to come out, and have an opportunity to talk with our traffic officials and our connections who
3382 would be interested in the adoption of any such policy."

Now, I will not burden you with quoting through this. I understand the arbitrators have a copy of it, but you will see that in following through the line of argument pursued there.

Arbitrator WASHBURN. If you desire to make that a part of the record I think you had better do so. To my knowledge we have no copies of that.

Mr. KERR. I supposed you would have, I did not know; I supposed it would be natural you would have a copy.

Mr. STUBBS. I propose to file one with the Board.

Mr. KERR. You will see that the general trend of the argument is that the proposed subsidy for the future and the subsidies that have been paid in the past to the Panama line are simply another form of differentials. There you have a broken water-and-rail route which these gentlemen are at all times willing to subsidize with hard dollars, are willing now, if they can make a bargain on which the lines could get together and conserve revenues, but at the same time they are unwilling to allow us a reasonable differential to overcome our disabilities. In our case, it is no question of rates. I do not think they will charge us, and if they do, I do not believe they can substantiate their charges, that we are rate disturbers. I am sure that they cannot prove that we are law-breakers and they come here to you and ask you to do away with our differential rates, in order that we shall be removed from the field as a competitor. Now, a good deal
3383 of talk has been made on the question of robbing the American workman by every ton of freight and every dollar of revenue earned by the Canadian Pacific Railway on American freight. The people who raised that cry do not stop to explain that from the districts out of which the Canadian Pacific obtain their largest tonnage of freight, that over half the distance that the freight is hauled it is carried on American Railways and by American ships. They do not

stop to explain that for about every dollar that the Canadian Pacific obtain on American business they pay it back many times over and over to the American people in other ways. They forget that the Canadian Pacific Railway Company is a very large purchaser on the American market, and that they spend millions in the year with the American people.

Arbitrator MIDGLEY. You spoke this morning about an allowance made at one time to the Canadian Pacific. Was that in the nature of a subsidy?

Mr. KERR. Yes, that was in the nature of a subsidy.

Arbitrator MIDGLEY. At so much by the month or per year as the case may have been.

Mr. KERR. During the year 1891 the California lines, or the Trans-Continental lines, rather, elected to pay the Canadian Pacific Company a subsidy as a matter of experiment. The proposition emanated from the American lines. The proposition was made and, after the usual discussion pro and con, an agreement was made whereby in lieu of the differential the Canadian Company should receive a cash subsidy. That agreement ran through the year
3384 1891 and expired with the year, when at the beginning of 1892 we again resumed work under our differential rates.

Arbitrator WASHBURN. During that time did you have in no tariffs?

Mr. KERR. Yes.

Arbitrator WASHBURN. Did you handle any business?

Mr. KERR. During that time we had equal tariffs with the American lines and during that time we handled comparatively no business. I might explain that it was agreed that whatever business the Canadian Pacific carried, the revenue derived therefrom should be credited up to this subsidy and during January we carried $18,000 worth of business. It took that long for the people to find out I presume, that they were not getting any special advantage on the Canadian Pacific road in the way of differentials. The agreed subsidy was $500,000.

Arbitrator MIDGLEY. That is per year?

Mr. KERR. For each year, yes, sir.

Arbitrator MIDGLEY. You said a moment ago that the earnings or revenue would be credited against the subsidy.

Mr. KERR. Yes.

Arbitrator MIDGLEY. That was the way on business put on the Pacific Mail Steamship Company's lines at the discretion of the railroads.

Mr. KERR. Yes.

Arbitrator MIDGLEY. And the earnings or revenue of your road during such time would be charged up against the subsidy?

Mr. KERR. Yes.

3385 Arbitrator WASHBURN. Were the gross earnings charged up against the subsidy?

Mr. KERR. I believe so in the case of the Panama Route; Mr. Stubbs or Mr. Morton or Mr. Truesdale can tell you. The gross earnings on any business carried by the Panama Route under the old arrangement were the gross earnings charged up against the cash subsidy.

Mr. STUBBS. Will you allow me to correct your statement?

Mr. KERR. Yes.

Mr. STUBBS. It was not a subsidy.

Mr. KERR. Space rental.

Mr. STUBBS. I will explain it fully when I get on the floor.

Mr. KERR. The Arbitrators asked for the information.

Mr. STUBBS. Whatever the steamers earned was credited to the guaranty.

Arbitrator WASHBURN. I think, Mr. Stubbs, we will wait for your statement, until you make your address.

Mr. STUBBS. If that is agreeable to the Board, I will do so.

Arbitrator WASHBURN. All we want is to get the information some time; that is all.

Mr. KERR. We earned that year, on business carried, $28,075.54.

Arbitrator DAY. During what time?

Mr. KERR. $28,075.54 during the year.

Arbitrator WASHBURN. Of that you earned $18,000.00 the first month?

3386 Mr. KERR. Of that we earned $18,471.64 in the month of January; in February we earned $6,453.85; in March $2,940.52; in April we did not get anything; in May we earned $180.53; in June $3.50; in July we did not earn anything; in August we earned $10.70; in September $14.80, and that settled it. We did not earn any more after that.

Arbitrator WASHBURN. Did you maintain agencies in San Francisco?

Mr. KERR. Yes, sir.

Arbitrator WASHBURN. During the entire year?

Mr. KERR. Yes, sir, we maintained agencies. We did not withdraw any agency.

Arbitrator WASHBURN. You used the same effort to get business?

Mr. KERR. I would not say that, naturally, but we did not refuse any business that came to us. We had the same facilities, our agents were out in the market working for other business. They would take San Francisco business at even rates, but as you see, they could not get it. The differential off, we were out, clean out of the business.

Arbitrator WASHBURN. They did solicit the business during that time?

Mr. KERR. Yes, in a line with their other business, a canvassing agent going around canvassing for other freight, naturally, if he heard of any business going to San Francisco, he would take it, he would ask for it, he would want it. "What is your rate?" "Our rate is the same as all-rail." "Oh, no, you cannot have it; we
3387 will give you the other, but we will not give you that."

Now it seems to me that the whole history, all the way through, indicates and emphasizes the fact, that a broken rail-and-water line of the same nature as we operate by the Canadian Pacific, cannot get business without some material advantage to offset the distance and other things.

The question of Canadian roads being permitted to participate in American traffic has been a subject brought under frequent discussion and in some quarters strong efforts have been made, through the press and various other means, to prejudice the rights and privileges of Canadian roads in that respect, the motive being to work up public opinion to a point that will enable our opponents to procure legislative action against us, in order that the Canadian roads be removed from the field as competitors in American traffic. But, in taking such action, our opponents apparently lose sight of the fact, or at least they do not touch upon it, that American roads participate in purely Canadian traffic as freely as the Canadian roads share in American traffic. In fact, they have received every encouragement from the Canadian government and in no case has any block been put in their way. American roads have received bonuses to aid them in building roads in Canada to act as feeders to United States lines, and they do carry a very large tonnage of traffic between Canadian points, through the United States. The tonnage cannot be ascertained. That is, it could be ascertained, but not in time for this hearing, because it would involve great clerical labor, for
3388 the statistics have never been put together. No records have ever been kept by either the Dominion government or the railways, but the Dominion government statistician, Mr. George Johnson, prepared figures for the years 1868 to 1894, showing the average value of goods carried by American roads from one point in Canada to another, through the United States to be $7,500,000.00 per annum. Taking the same basis of figuring, indicates the value for 1897 to be $8,000,000.00; that is, it will get at the value of the goods carried, but they cannot tell us the number of tons.

Arbitrator DAY. Is that the goods carried through the United States between points in Canada?

Mr. KERR. Yes, sir; goods carried by the American roads through the United States. The Northern Pacific; Great Northern; Michigan Central; Chicago & Grand Trunk; Wabash; Chicago & Northwestern; Chicago, Milwaukee & St. Paul; Burlington; Chicago Great Western; Spokane Falls & Northern, all participate largely in purely Canadian traffic, moving between the eastern points and the northwest and British Columbia, there being no cry of foreign corporations preying upon Canadian traffic; therefore, in all fairness and for the true interest of the United States, the Canadian roads should continue to be permitted to participate freely in the American traffic, conforming as they do, to the American laws governing its carriage.

In August, during the time of the Denver meeting, certain of the merchants of San Francisco, claiming that they represented the
3389 trade of San Francisco, addressed to the President of the

Canadian Pacific Company, Sir William C. Van Horne, a document which reads as follows:

"SAN FRANCISCO, CAL., *August 20th, 1898.*

SIR WILLIAM C. VAN HORNE,
*President, Canadian Pacific Railway Co.,*
*Montreal, Canada.*

DEAR SIR: At a meeting of duly authorized delegates from the principal jobbing interests and Associations of this city, held on the 18th of this month, the following resolution was unanimously passed:

Whereas, the present system of rate-making on Trans-Continental shipments to San Francisco enforced by the Canadian Pacific Railway is, in our opinion, prejudicial to the business interests of San Francisco and the Pacific Coast generally, inasmuch as said system occasions instability of Trans-Continental freight rates, thereby placing the value of our stocks of goods in jeopardy, and

Whereas, the other railways occupying a position, so far as San Francisco traffic is concerned, analogous to that of the Canadian Pacific Railway, are maintaining the rates adopted by the American Trans-Continental Railways as shown in the Trans-Continental Freight Bureau Westbound Tariff No. 1-C, be it

Resolved: That a Committee consisting of one from each and
3390 every jobbing interest represented at this meeting be selected by the Chairman to give expression to these, our views to the Canadian Pacific Railway Company, through its President, Sir William C. Van Horne, and to request that said Company adopt a system of rate-making to San Francisco that will relieve the situation of the present precarious conditions and maintain Trans-Continental freight rates on a firm basis, believing that such an arrangement will redound to the best interests, not alone to the mercantile community of the Pacific Coast, but to the Canadian Pacific Railway as well.

All of which is respectfully submitted, with the request that you kindly acknowledge receipt of this communication, and thereby oblige,

Yours, truly,

H. D. LOVELAND,
*For Wholesale Grocer Assn. of Cal.*
W. R. WHEELER,
*For Pacific Coast Hdw. & Metal Assn.*
CHAS. R. HAVENS,
*For Wholesale Dry Goods Traf. Assn., S. F.*
L. GUGGENHEIM,
*For Wholesale Drug Trade of California.*
A. G. TOWNE,
*For Wholesale Paper Trade of Pac. Coast.*
BRACE HAYDEN,
*Chairman of General Meeting.*"

Now, gentlemen, this is a document issued by the gentlemen named, who say they represent the trade of San Francisco and California. In some cases they cover the whole state; in
3391 other cases they are more modest and cover only San Francisco. And among other things they state that other lines are maintaining the published tariff of Trans-Continental rates and that the differential rates of the Canadian Pacific are a disturbing element in the market; that were it not for that, these gentlemen would have a very happy time of it. They would know just exactly what they had to pay, nobody else was reducing rates or carrying at less than the Trans-Continental tariffs, and, therefore, they desired a stability of rates that they might know just where they were all the time. Now, it seems to me an odd thing that some of these gentlemen while they were forwarding a statement of this kind to our President were at the same time very actively negotiating with our representative in San Francisco, with a view of breaking down his differential rates. In other words, he could not get their business at his regular differential rates because the other fellows were meeting those differential rates and knocking them out. Now, in a statement from our representative in San Francisco in this connection, he specifies Mr. Wheeler, who signs this document on behalf of the Pacific Coast Hardware & Metal Association and states that not more than two weeks prior to the date of this document he called upon our representative and informed him that he was figuring on having a car of enameled ware shipped to his firm from Wisconsin and desired our representative to name the lowest rate via our Vancouver route. Our man named him our regular differential rate of 90 cents per hundred pounds, carload. To this he
3392 remarked that he would be obliged to do better than that because the all-rail lines had made him a 90 percent rate already. And this is the immaculate gentleman who subscribes his name to a document asserting that the other lines were maintaining rates and the Canadian Pacific differentials were a disturbance to the market. Mr. Wellman, who is a director of one of these Associations, has asserted that he cannot continue patronizing the Canadian Pacific Company, owing to the all-rail lines meeting our differential rates; in other words, they meet the differential and then we do not get any business. Now, I am going to trouble you with the reply made by our Vice-president to this communication:

"MONTREAL, *29th August, 1898.*

BRACE HAYDEN, Esq.,
*Chairman of General Meeting,*
Messrs. H. D. LOVELAND, *Chairman Committee,*
W. R. WHEELER,
CHAS. R. HAVENS,
L. GUGGENHEIM,
A. G. TOWNE,
*San Francisco, Cal.*

DEAR SIRS: Referring to your letter of the 20th inst., addressed to the president of this Company in which you refer to a resolution passed at a meeting of delegates from the principal jobbing interests and Associations of San Francisco.

The preambles to the resolution as quoted in your letter recite the fact that the present system of rate-making on Trans-Continental
shipments to San Francisco enforced by the Canadian Pacific
3393 Railway is, in their opinion, prejudicial to the business interests of San Francisco and the Pacific Coast generally, inasmuch as the said system occasions instability of freight rates, thereby placing the value of your stocks of goods in jeopardy, and that the other railways occupying a position, so far as San Francisco traffic is concerned, analogous to that of the Canadian Pacific are maintaining the rates adopted by the Trans-Continental railways, and the resolution itself is in the nature of a request that this Company adopt a system of rate-making to San Francisco that will relieve the situation and maintain Trans-Continental freight rates on a fair basis.

I beg to say in reply that this company heartily concurs in the opinion that these periodical disturbances in rates are not only a source of serious loss to the railway companies but are injurious to general trade interests, and we shall be glad at all times to co-operate with you and others in endeavoring to secure something in the nature of stability.

We take exception, however, to the statements made in your resolution. The Canadian Pacific Railway has not now and never has had any system of rate-making different from that of the other Trans-Continental lines, and the instability of Trans-Continental freight
rates, past and present, cannot in any manner be charged to
3394 this Company. The rates to and from San Francisco and other points in California were agreed upon by the several railways and tariffs were published in accordance with that agreement. The Canadian Pacific, which is an important factor in all Pacific Coast business, was, because of certain disabilities under which it labored in competition with the all-rail lines, accorded the right by unanimous consent to quote Trans-Continental rates to and from California points on a basis 10% lower than the all-rail lines. The Canadian Pacific has done this and nothing more; indeed, it has lost thousands of tons of traffic because its traffic officers were not permitted to disregard the published tariff and quote rates sufficiently low to meet the improper and illegal concessions and reductions made by the other railways centering on San Francisco.

Surely your Committee is aware that the other railways occupying a position, so far as San Francisco traffic is concerned, analogous to that of the Canadian Pacific Railway, are not maintaining the tariff rates, and have not been for some time past. One at least of your Committee must have known this from the fact that when he had a carload of enamel goods to be shipped from Wisconsin, about two weeks before the date of your meeting, and was quoted by our Agent

in San Francisco a rate of ninety cents per hundred pounds,
3395 being our agreed tariff rate, he informed our agent that if the Canadian Pacific desired to get the business, they must quote a lower rate because the all-rail lines had made him a ninety-cent rate, a reduction of 10% from the tariff of the all-rail lines. We have in our possession the affidavit (??) of a prominent member of your Association, although not a member of the Committee, that he is unable to do any business by way of the Canadian Pacific, because that the all-rail lines are disregarding their tariffs and quoting differential rates. We know quite well that the unfortunate conditions to which you refer do exist, and we are in sympathy with your efforts to change them, but you will pardon me if I mention the fact that you are commencing at the wrong end. The remedy should be applied right at home. If the merchants of San Francisco will notify the Southern Pacific and all other rail lines they will decline to ship any goods over their lines at rates below the published tariff there will be no further difficulty.

It will be rather a novel manner in which to deal with this vexed question, but I have no doubt that it will be effective.

It has been the fashionable thing for many years with certain other railway companies to attempt to make the Canadian Pacific the scapegoat for the demoralization periodically resulting from their
3396 own unbusiness-like and dishonest practices, and for this purpose they have resorted to every avenue of publicity available from one end of the country to the other. It is, however, an established fact that whenever there has been a searching inquiry before any Commission or Traffic Association these charges have been exploded, and in no single instance has the Canadian Pacific been found to be the aggressor.

Yours truly,

(Signed) T. G. SHAUGHNESSY,
*Vice-President.*"

Now, as against this petition or communication forwarded to our President, as representing the trade of San Francisco, and in some cases the whole trade of California, we have a long list of letters here stating that without a differential inducement, we have no hope of getting business in San Francisco.

The Arnold Hardware Company, of San Francisco, write as follows, under date of September 13th:

"We hope that the report circulated that your Company is to be deprived of its differential rates into San Francisco is not true, as we are very much in need of such competition. You certainly can not expect us to route any freight traffic over your lines at the same rates as carried by all-rail lines, for the reason that a longer time is required in delivery, and the infrequent service by steamer from Vancouver to San Francisco. We would very much regret if this
3397 competition should be discontinued. Kindly advise us."

William Davis & Son, San Francisco, Manufacturers and Importers of harness, saddles and saddlery, write us: "We desire to patronize the Canadian Pacific Railway Company in freight matters into San Francisco. We like some competition—an escape valve of some kind—but we think since the route over your line is long and circuitous that your rates should be less anyway. If we have to pay your company the same rates as the direct lines, we could not promise you any business."

From M. Ehrman & Company, Importers and Wholesale Grocers: "Replying to your of even date inquiring 'if this company were deprived of its special differential rates on freight traffic westbound on the class of goods that are got in by your firm, could you consistently ship your freight over our line at same rates as by standard lines?' we would say that owing to the fact that it requires a longer time to deliver goods by your company than by all-rail lines, we can not consistently do so."

From W. P. Fuller & Company, Paints, Oils and Glass, San Francisco: "Replying to your inquiry as to whether we could ship freight over your road at the same rates as all-rail routes, we beg to say that taking into consideration the length of time required for delivery and the danger from damage and leakage over your road, owing to the transfer, we would not care to give you the business at the same rates."

3398 From George W. Gibbs & Company, San Francisco: "In answer to your inquiry of to-day as to whether we would ship by Canadian Pacific Railroad providing the rate is the same as American roads, we answer, no, for the reason that merchandise in transit via Canadian Pacific Railroad consumes about three weeks, whereas the American roads average delivery in about 15 days. The transfer at Vancouver from rail to steamer necessitates a certain peril to the class of material which we are in the habit of shipping by rail."

From E. A. Howard & Company, Carriage Materials, Hardwood and Lumber, San Francisco: "It is reported that your company will not be permitted its differential rates. Should such be the case, we cannot continue our present relations with your company. You cannot expect our business at even rates with the all-rail lines. It takes your company ten days longer to deliver goods here, and the infrequent steamship service between Vancouver and San Francisco will certainly compel us to ship by other lines.

We find your competition very necessary here, but at even rates you cannot secure any of our traffic, which we regret very much."

From W. H. Stanley, Pacific Coast Selling Agent, Eastern Manufacturers: "You will please be advised that it is rumored an attempt is being made to deprive the Canadian Pacific Railway of its differential rates of freight tariff for San Francisco. I hope that such is not the case and that you will be allowed the usual differen-

3399 tial, so as to enable the competition of your company to con-

tinue in making San Francisco delivery, as such competition is very much needed in the interest of trade.

Trusting that your company will be enabled to continue business here, as they are the only competitive company, I am,

Yours very truly."

From Stevenson & Company, Fancy Goods, Stationery, Cutlery, Notions and Toys, San Francisco: "We hope that the report circulated that your company is to be deprived of its differential rates into San Francisco is not true, as we are very much in need of such competition. You certainly cannot expect us to route any freight traffic over your line at the same rates as carried by all-rail lines, for the reason that a longer time is required in delivery and the infrequent service by steamer from Vancouver to San Francisco.

It would be very much regretted should such competition now offered by you be discontinued, as the trade circles in San Francisco are very much in need of the Canadian Pacific competition into San Francisco. Please advise."

From Woodin & Little, San Francisco, Gasoline Engines, Road Pumps, Windmills and Tanks: "It is reported that an effort is being made to deprive your company of the differential rate. We should be very sorry to see this, as we very often find it very important to our trade to avail ourselves of this 10 per cent less rate than on all-rail lines. Under the one rate we could not patronize your
3400 company, owing to the longer time it requires to deliver your goods here, and the steamship transfer from Vancouver."

From Phelps & Arnold, San Francisco: "We understand that an effort is to be made to deprive your company of its differentials on overland through freights. We sincerely hope that this may be avoided and that you will be able to continue to make us the usual 10 percent allowance from Trans-Continental tariff, otherwise it would be to our interest to ship entirely from the East via shorter and all-rail lines that are able to make better time and bring us our through freight in slightly better order, as one transfer and one extra handling is thus avoided."

Then we have merchants in Chicago and Milwaukee who do not agree with the statements made by these gentlemen of San Francisco, that the Canadian Pacific differentials should be done away with.

The Edward P. Allis Company, Milwaukee: "Referring to the question of differentials on traffic to San Francisco would state that if your company withdraws such differentials to San Francisco it will not be possible for us to give you any of our business, because the cost of boxing such articles as may be injured by sea-water would not warrant us in giving you such traffic. You are doubtless aware that when you ship by all-rail the entire distance to San Francisco our machinery can be loaded on cars at the warehouse and go through without transfer, but where your line is used and steamer beyond

3401 we have to make an allowance in cases of boxed articles that are liable to rust if they come in contact with salt water. So that if you desire to secure any portion of our San Francisco business you must not attempt to withdraw your differential."

The American Cereal Company, Manufacturers of Oatmeal, Flour, and Cereal products, Chicago, Ill.: "Answering yours of Sept. 13, relative to forwarding business via your line for San Francisco, we do not feel that we would be justified in sending business by your road if the present differentials were withdrawn."

N. K. Fairbank & Company, Chicago: "Replying to your favor of the 10th inst., we do not think that on San Francisco business from Chicago and St. Louis, we could consistently pay you all-rail rates, when you break bulk and use water for part of the distance; we would naturally expect some kind of a water differential."

National Linseed Oil Company, Chicago: "I am in receipt of your favor of the 12th of September, and have noted contents. In reply will say that if your differential should be withdrawn we could not consistently favor you with any of our business to the Pacific Coast, on account of the longer route and the water haul. Should the differential be withdrawn we will have to give our business to the all-rail lines."

The Schlitz Brewing Company, Milwaukee: "We refer to your communication regarding beer shipments to San Francisco
3402 via Vancouver. We are unable to ship beer to San Francisco via your line if rates are the same. Without your differential we do not think we can induce our San Francisco customers to allow shipments to come your way as it takes from 13 to 16 days for a car of beer to reach that point via Vancouver, and besides this there is three times as much handling of shipments via your line as there is if the shipment went via one of the direct lines. The beer has to be unloaded from the cars onto the boat, and unloaded again from boats at San Francisco which always causes more or less damage, and you can readily see why we cannot promise you any business without your differential."

Stein Hirsh & Company, Chicago, Corn, Wheat, Potatoes and Starch: "Replying to your favor of the 9th inst. During the past we have been giving you our shipments to San Francisco although many of our customers urged us to ship by other lines. We have tried to change their ideas, but could not do so except with the usual difference in freight. Owing to this fact we are sorry to say we could not very well route our shipments via your line without said differential."

Washburn & Moen Manufacturing Company, Chicago, Manufacturers of Iron, Steel and Copper: "In reply to your letter of September 9th, addressed to the writer, will say that as a general proposition it will be impossible for me to favor your line with any of our shipments to San Francisco, especially when contemplating the water haul on equal rate with the direct all-rail lines. This position we

think you will agree is a most natural one on our part, other-
3403 wise can assure you of our deep obligation to you and our high-
est appreciation for all favors that you have extended to us during the past."

The American Straw Board Company, Chicago: "Replying to yours of the 9th. There is a very serious objection to routing business Canadian Pacific on account of the delay necessary in getting goods through on the roundabout road that you follow, and for that reason we cannot give you any business at equal prices with the Southern Pacific or any of the other direct roads to the Coast."

American Steel and Wire Company, Chicago: "Answering your personal favor of the 9th inst., asking if we could continue to give you a share of our business to San Francisco in case your present differential of 10 percent over the all-rail routes were withdrawn. Under normal conditions I would say on an even basis you could expect very little tonnage from us because we find your route is too slow, and our shipments reach destination in much worse condition than when we ship by the direct all-rail routes. Our trade on the Coast object very strongly to our shipping via your line as it is. Our Pacific Coast Agent writes under date of August 27th as follows:

"'Regarding the various routes and advantages or otherwise the Canadian Pacific is decidedly objectionable, owing to the various handlings which rack and break up our kegs badly, and shipments arrive in bad form. This applies to both nails and wire. The direct all-rail routes, of course place stock here in the best condition.'

"This I think will fully answer your question."

3404 From Barrett Manufacturing Company, Chicago: "Replying to yours of the 9th inst., concerning San Francisco business, will state that your line is so much longer and requires at least five days more time than the all-rail route and owing to the fact that you transfer to a water line which damages our goods more or less, we certainly would not favor you with our business on an even basis against the all-rail lines.

"The policy of our institution is to ship all-rail for the reason that the goods reach destination in much better condition and quicker time. Unless there is enough difference in the charges to force us to ship via rail-and-water in order to market our goods against our competitors, we would use the all-rail route."

From Crane Co., Chicago: "In reply to the question asked in your personal letter of the 9th inst. beg to say that in the event of your not having any differential on San Francisco business, we could not, in justice to our branch house at San Francisco, favor you with a share of our business as against the direct all-rail lines. Even with your differential, our San Francisco people have frequently in the past, objected to shipments by your line, on account of a longer time en route, and the transfers."

From Robert Crooks & Co., Chicago: "Referring to your personal note of the 12th in connection with San Francisco business. Knowing as we do, that you at the present time enjoy a differential rate on account of the longer route, and the necessity of trans-shipping,
3405 I can state to you definitely that unless such a differential existed we could not afford to send a single package of our goods by your line, for if we could forward at the same rates all-rail, it would save three handlings, which is a very serious matter in connection with tin plates."

From Fraser & Chalmers: "Answering your letter of September 9th, regarding San Francisco business and business to points in California via San Francisco. We do not believe at even rates we could get any of our customers to consent to the shipment of their freight via Vancouver, thence via boat to San Francisco, as aside from the difference in time, this route would involve two transfers at least, which, with the heavy machinery such as we ship, is objectionable, whereas by the direct line there would be no transfer of carload shipments. In view of this we do not believe, if the differential is withdrawn, you could expect to do any of our business for California points."

From the Glucose Sugar Refining Company (W. J. Gorman, Traffic Manager): "Replying to your favor of the 9th inst. with reference to San Francisco business. In the event of your withdrawing your differential rate to San Francisco we will be unable to favor your line with any business to this point."

From Pabst Refrigerator Line (By T. F. Howe, General Manager): "Your favor of the 9th instant, at hand, asking if we would be
3406 agreeable to shipping beer to San Francisco at the same rates as via the direct lines. In reply would state that we certainly would not be in favor of making shipments via your line to San Francisco at the same rates as made by the direct lines."

From Swift & Company: "Answering your inquiry of the 9th; if the C. P. R. Line did not have a differential rate from Chicago and St. Paul to San Francisco, we would not be inclined to give you any business as against all-rail lines."

From St. Charles Condensing Co.: "Replying to your favor of the 9th, we should be sorry to hear that you did not have a differential to San Francisco as it would be impossible for us to give you any business to that point if we had to pay the same rate as the all-rail lines charge. The water transfer spoils our packages to some extent and we should not want to undertake it unless some saving were to be had, to say nothing of the longer time which often would be an important factor."

Mr. KERR (continued). Mr. Chairman, I will not be able to get through tonight. As I am not accustomed to talking so long at any one time my throat is getting pretty well played out. If it would be agreeable to the Board to adjourn until tomorrow morning—if not, of course I will continue. It is now 5 o'clock.

Arbitrator DAY. Mr. Kerr, you referred, as a part of your case, to an affidavit. Did you file it or did I overlook it?

3407 Mr. KERR. I have not filed it, I am looking for it now. It is an affidavit or a statement. The word "affidavit" is used in our representative's memorandum, but I question whether it is an affidavit really. It is not an affidavit. The word affidavit is used here in Mr. Shaughnessy's letter and the word "affidavit" was used in the memorandum of our San Francisco representative, but in reading it I qualified it by saying "an affidavit or statement," because I knew pretty well it was not an affidavit. It was a statement of some kind.

Arbitrator WASHBURN. Well, if you haven't it handy, perhaps we had better adjourn and you can hand it to us in the morning.

Mr. KERR. It would be a relief to us, sir, if you would adjourn.

Arbitrator WASHBURN. We will then adjourn until 10 o'clock tomorrow morning.

MORNING SESSION.

OCTOBER 13TH, 1898.—10 A. M.

The Meeting convened pursuant to adjournment.

Arbitrator WASHBURN. Mr. Kerr, I think at last evening adjournment you were looking for a statement that Mr. Day had asked for, a statement or affidavit.

Mr. KERR. Mr. Chairman and Gentlemen of the Arbitration Board: When we closed last evening, I had been citing the cor-

3408 respondence that had passed between certain San Francisco merchants and the Executive of the Canadian Pacific Company, and in reading the letter of our Vice-President in connection with a statement received from Wellman, Peck & Company, the word "affidavit" was used. The reason it is used in Mr. Shaughnessy's letter is that in a memorandum from our representative in San Francisco, he calls it an affidavit—I might say he mis-calls it an affidavit, and in that way the wrong term crept in. I stated last evening that before I found the document I felt pretty certain it was not an affidavit; it was simply a statement. Therefore, with your permission I will read and file the following communication (marked "Exhibit 4") from Wellman, Peck & Company, Grocers, San Francisco, to the representative of the Canadian Pacific Company at San Francisco:

"On account of other Trans-Continental roads meeting your differential rates, and as shipments routed by Canadian Pacific Railroad have always cost us ten percent less than when routed by other lines, we cannot give you the business we would like to.

Respectfully yours,

WELLMAN, PECK & CO.,
Per W. B. WELLMAN, *Treas.*"

Now, is that in line with the statements made by these gentlemen who say they represent the San Francisco trade, that the other lines were maintaining rates, their published tariff rates, while our differentials were a disturbing element on the market, and as they
3409 desired a stability of rates, they would like very much if we would withdraw our differentials—that is the inference of it, of course—and allow the other lines to carry all the business? Now, I do not suppose it will occur to the Board that this document is the voluntary, unsolicited act of this body of men, as certainly it does not occur to us in that light. This is the result unquestionably of the inspiration of other people, other railroad people, who are opposed to the Canadian Pacific Company maintaining their differential rates into San Francisco, and with the document itself, or a certified copy of it—anyway it bears the genuine signatures of the people—I also desire to file the reply of our Vice-President to this communication and also the further reply of those gentlemen to our Vice-President, under date of September 17th: (marked "Exhibit 5.")

"SAN FRANCISCO, CAL., *Aug. 20, 1898.*

Sir WILLIAM C. VAN HORNE, *President,*
*Canadian Pacific Railway Company,*
*Montreal, Canada.*

DEAR SIR: At a meeting of duly authorized delegates from the principal jobbing interests and Associations of this city, held on the 18th day of this month, the following resolution was unanimously passed:

Whereas, the present system of rate-making on Trans-Continental shipments to San Francisco enforced by the Canadian Pacific
3410 Railway is, in our opinion, prejudicial to the business interests of San Francisco and the Pacific Coast generally, inasmuch as said system occasions instability of Trans-Continental freight rates, thereby placing the value of our stocks of goods in jeopardy, and

Whereas, the other Railways occupying a position, so far as San Francisco traffic is concerned, analogous to that of the Canadian Pacific Railway are maintaining the rates adopted by the American Trans-Continental Railways as shown in Trans-Continental Freight Bureau Westbound Tariff No. 1-C, be it

*Resolved:* That a Committee consisting of one from each and every jobbing interest represented at this meeting be selected by the Chairman to give expression of these, our views to the Canadian Pacific Railway Company, through its President, Sir William C. Van Horne, and to request that said Company adopt a system of rate-making to San Francisco that will relieve the situation of the present precarious conditions and maintain Trans-Continental freight rates on a firm basis, believing that such an arrangement will redound to the best interests, not alone of the mercantile community of the Pacific Coast, but to the Canadian Pacific Railway as well.

3411 All of which is respectfully submitted, with the request that you kindly acknowledge receipt of this communication, and thereby oblige,

Yours truly,

(Signed) H. D. LOVELAND,
*For Wholesale Grocer Assn. of Cal.*
W. R. WHEELER,
*For Pacific Coast Hdw. & Metal Assn.*
CHAS. R. HAVENS,
*For Wholesale Dry Goods Traf. Assn., S. F.*
L. GUGGENHEIM,
*For Wholesale Drug Trade of California.*
A. G. TOWNE,
*For Wholesale Paper Trade of Pac. Coast.*
(*Committee.*)

BRACE HAYDEN,
*Chairman of General Meeting.*

MONTREAL, *29th August, 1898.*

BRACE HAYDEN, Esq.,
*Chairman of General Meeting,*

Messrs. H. D. LOVELAND, *Chairman Committee,*
W. R. WHEELER,
CHAS. R. HAVENS,
L. GUGGENHEIM,
A. G. TOWNE,
*San Francisco, Cal.*

DEAR SIRS: Referring to your letter of the 20th inst., addressed to the President of this Company in which you refer to a resolution passed at a meeting of delegates from the principal jobbing interests and Associations of San Francisco.

3412 The preambles to the resolution as quoted in your letter recite the fact that the present system of rate-making on Trans-Continental shipments to San Francisco enforced by the Canadian Pacific Railway, is, in their opinion, prejudicial to the business interests of San Francisco and the Pacific Coast generally, inasmuch as the said system occasions instability of freight rates, thereby placing the value of your stocks of goods in jeopardy, and that the other railways occupying a position, so far as San Francisco traffic is concerned, analogous to that of the Canadian Pacific are maintaining the rates adopted by the Trans-Continental railways, and the resolution itself is in the nature of a request that this Company adopt a system of rate-making to San Francisco that will relieve the situation and maintain Trans-Continental freight rates on a fair basis.

I beg to say in reply that this company heartily concurs in the opinion that these periodical disturbances in rates are not only a

source of serious loss to the railway companies but are injurious to general trade interests, and we shall be glad at all times to co-operate with you and others in endeavoring to secure something in the nature of stability.

We take exception, however, to the statements made in your resolution. The Canadian Pacific Railway has not now and never has had any system of rate-making different from that of the other Trans-Continental lines, and the instability of Trans-Continental freight rates, past and present, cannot in any manner be charged to
3413 this Company. The rates to and from San Francisco and other points in California were agreed upon by the several railways and tariffs were published in accordance with that agreement. The Canadian Pacific, which is an important factor in all Pacific Coast business, was, because of certain disabilities under which it labored in competition with the all-rail lines, accorded the right by unanimous consent to quote Trans-Continental rates to and from California points on a basis of 10% lower than the all-rail lines. The Canadian Pacific has done this and nothing more; indeed, it has lost thousands of tons of traffic because its traffic officers were not permitted to disregard the published tariff and quote rates sufficiently low to meet the improper and illegal concessions and reductions made by the other railways centering on San Francisco.

Surely your Committee is aware that the other railways occupying a position, so far as San Francisco traffic is concerned, analogous to that of the Canadian Pacific Railway, are not maintaining the tariff rates, and have not been for some time past. One at least of your Committee must have known this from the fact that when he had a carload of enamel goods to be shipped from Wisconsin, about two weeks before the date of your meeting, and was quoted by our agent in San Francisco a rate of ninety cents per hundred pounds, being our agreed tariff rate, he informed our agent that if the Canadian Pacific desired to get the business, they must quote a lower rate because the all-rail lines had made him a ninety-cent
3414 rate, a reduction of 10% from the tariff of the all-rail lines.

We have in our possession the affidavit of a prominent member of your Association, although not a member of the Committee, that he is unable to do any business by way of the Canadian Pacific, because that the all-rail lines are disregarding their tariffs, and quoting differential rates. We know quite well that the unfortunate conditions to which you refer do exist, and we are in sympathy with your efforts to change them, but you will pardon me if I mention the fact that you are commencing at the wrong end. The remedy should be applied right at home. If the merchants of San Francisco will notify the Southern Pacific and all other rail lines they will decline to ship any goods over their lines at rates below the published tariff there will be no further difficulty.

It will be rather a novel manner in which to deal with this vexed question, but I have no doubt that it will be effective.

It has been the fashionable thing for many years with certain other railway companies to attempt to make the Canadian Pacific the scapegoat for the demoralization periodically resulting from their own unbusinesslike and dishonest practices, and for this purpose they have resorted to every avenue of publicity available from one end of the country to the other. It is, however, an established fact that whenever there has been a searching inquiry before any Commission
3415 or Traffic Association these charges have been exploded, and in no single instance has the Canadian Pacific been found to be the aggressor.

Yours truly,

(Signed) T. G. SHAUGHNESSY,
*Vice-President.*"

THE PACIFIC COAST HARDWARE AND METAL ASSOCIATION,
*San Francisco, Sept. 17, 1898.*

(Copy)

"T. G. SHAUGHNESSY, Esq.,
*Vice-President, The Canadian Pacific Ry. Co.,*
*Montreal, Canada.*

DEAR SIR:—We are pleased to note that your Company heartily concurs in the opinion that these periodical disturbances in rates are not only a source of serious loss to the Railway Companies, but injurious to general trade interests as well, and we will appreciate your co-operation in the endeavor to secure something in the nature of stability.

We note that you take exception to the statement made in our Resolution concerning the system of rate-making to San Francisco via your line, and that you state that the Canadian Pacific Railway has not now and never has had any system of rate-making different from that of the other Trans-Continental lines.

3416 Our understanding of the case as set forth by your tariffs, is, however, to the contrary, inasmuch as you deduct 10% from the American Line rates—whatever they may be. If the American Lines reduce their tariff, you reduce yours correspondingly; if the American Lines advance their tariff, you advance yours correspondingly, maintaining in any event a differential via your line of 10% from the rates of the American Lines, thus forcing the latter to charge a rate of more than 11% in advance of your rates, or to meet your rates, thereby causing a rate war.

We note that you state that the right is accorded you by unanimous consent (presumably of the American Lines) to quote Trans-Continental rates to and from California points on a basis 10% lower than the all-rail lines. Our information on this point fails to corroborate this statement. It so happens that five of the

six gentlemen comprising this Committee were in attendance at the meeting of the Trans-Continental Freight Bureau, held in Milwaukee last May. We are informed, on what we consider unquestionable authority, that at that meeting a most earnest and vigorous protest was entered by certain representatives of the American Lines against the system of differential rates enforced by your road.

We note that you apparently fail to correctly interpret the analogy referred to in our letter of August 20th, wherein we state that,

"other railways occupying a position, so far as San Francisco
3417 traffic is concerned, analogous to that of the Canadian Pacific Railway are maintaining the rates adopted by the American Trans-Continental Railways, as shown in Trans-Continental Freight Bureau Westbound No. 1–C." To our knowledge, there are but two railway lines, whose position, so far as San Francisco traffic is concerned, is analogous to that of your road—viz: The Northern Pacific and the Great Northern Railways, both of which, as you are aware, terminate on Puget Sound, and use the steamships of the same company used by your road for conveying Trans-Continental freight to San Francisco. We reiterate that, to our knowledge, these railways have been, and are today, maintaining the freight rates to San Francisco as shown in Tariff No. 1–C.

In addition to the above lines there is another railway, viz., that of the Oregon Railroad & Navigation Co., whose position, so far as San Francisco traffic is concerned, is nearly analogous to that of your own line, the only difference being that the O. R. & N. Co.'s rails do not reach as far east, and they use their own steamers for landing freight in San Francisco. This company, as well as the two first mentioned, are, to our knowledge, maintaining full tariff rates to San Francisco. We would also call attention to the fact that the Southern Pacific Company does not claim any right to differentials via their Sunset Route, which, as you are well aware, involves a much longer sea voyage, and is quite as indirect a route to San Francisco as is your own.

3418 Concerning that part of your letter wherein you refer to one of our Committee, his reply to you, dated September 6th, 1898, fully covers and eliminates this as a subject matter of consideration.

We are thankful for the suggestion as to the application of the remedy for existing conditions, and would ask if it would not perhaps be well for the merchants of San Francisco to apply same by withholding their patronage from any Trans-Continental railway line, American or foreign, that insists upon a differential rate, thereby jeopardizing the stability of rates, and making the conduct of business in this city extra hazardous. We agree with you that this would be a novel manner in which to deal with this vexed question, and are glad to note that you have no doubt that same would be effective. Plainly speaking, we consider that "it is a poor rule that won't work both ways," and if in your opinion, it would be effective when applied to the Southern Pacific, and all other all-rail lines, why would it not be equally effective when applied to the Canadian Pacific Railway?

In our opinion, the Canadian Pacific Railway, and its connections, should be in equally as good a position to serve San Francisco in the carriage of Trans-Continental freight as is the Sunset Route, and, we are led to believe would, at equal rates, get a fair share of San Francisco business, but at differential rates we doubt if it will be able to maintain its past volume of business to this city.

3419 We have noted, by recent press dispatches, with no inconsiderable interest and satisfaction, that your road has agreed to the abolition of differentials on Trans-Continental passenger business, and sincerely hope that you will, in the immediate future, take a like stand as regards Trans-Continental freight traffic, believing that such a course would be to our mutual interest.

Hoping that we are not presuming too much upon your time and good nature, and that you will give this communication your kind consideration, we remain,

Yours very truly,

H. D. LOVELAND,
*For Wholesale Grocer Assn. of Cal.*
W. R. WHEELER,
*For Pac. Coast Hdw. & Metal Assn.*
C. R. HAVENS,
*For Wholesale Dry Goods Traf. Assn., S. F.*
L. GUGGENHEIM,
*For Wholesale Drug Trade of Calif.*
A. G. TOWNE,
*For Wholesale Paper Trade of Pac. Coast.*
BRACE HAYDEN,
*Chairman of General Meeting.*"

In that connection it is quite proper that I should file the original letters (marked "Exhibit 4½") received by the Canadian Pacific Company, letters from representatives and large business houses in San Francisco, in Chicago, in Milwaukee and in St. Charles, Illinois, who all take the opposite view of the case to that of the gentlemen who put in this petition (as representing the San Francisco trade) against our differentials. These letters that were read over to you last night, and are on the minutes, all express in a strong way, and with no uncertain sound, the desire of the trade—a large portion of the trade—that the Canadian Pacific position as it

3420 stands today, with its differentials in operation shall be continued and not disturbed.

Gentlemen, in weighing one, we ask you to weigh the other side of the evidence.

We desire to file:

Trans-Continental Association Tariff No. 6, Westbound, effective March 6th, 1888 (marked "Exhibit 6").

Supplement No. 1 to Westbound Freight Tariff No. 6, effective June 20th, 1888 (marked "Exhibit 7").

Supplement No. 8 to Westbound Tariff No. 18, effective August 20th, 1889 (marked "Exhibit 8").

Trans-Continental Association Tariff No. 36, Westbound, effective July 18th, 1892 (marked "Exhibit 9").

We desire to file a "Report of Discussion on Question of Canadian Pacific Differentials, at Meeting of Trans-Continental Lines, held at Brown Palace Hotel, Denver, Colo., August 22nd, 1898," (marked "Exhibit 10") and with that a copy of the resolutions passed, along with which we have prepared a few notes, giving easy reference to the points in the proceedings to which we call particular attention. We thought this was advisable in order that you gentlemen might not have to labor through the whole thing if you did not want to.

It may not be amiss, while we are right here, to say a few words with regard to a statement made at that meeting by the representative of the Union Pacific line, who said in his argument against the Canadian Pacific Company, that during the year 1891, when we were working under a subsidy—(we are not afraid to call it a subsidy; it was one, just as the Panama Route space rental, so-called, is a
3421 subsidy)—that during that year we had carried more than one-half the tonnage necessary,—the business necessary to earn one-half, 50 per cent of the subsidy that the lines agreed to allow us. And, although it is not on record the statement was assented to by other gentlemen who knew better. We will file with you the official statements of the Trans-Continental Association for the year 1891 covering this point, showing exactly what the Association paid us and showing also the amount of business that we carried during the year; the understanding being that whatever we carried, the revenues derived from that business would be credited up to the lines who had to pay the money over. In other words it would be deducted from the total amount to be paid in cash. There is one report missing, I think for the month of January. No doubt Mr. Countiss, if you deem it necessary can supply that from the records of his office. But we have the record here on this statement from our own Audit office showing for the month of January and for each month what we earned, what we carried, the revenue we received and the amounts we received each month from the Trans-Continental Association. We therefore file with the Board the proceedings of the Denver meeting (previously marked "Exhibit 10"), and we file the Trans-Continental records along with our office abstract for the year 1891 (marked "Exhibit 11"), when we worked under the subsidy from the Association instead of our differentials. The change from the differential to the subsidy as I stated yesterday was the offer and act voluntarily of the other members of the Association. We did not seek it. They came to us and made the offer and, as I said, after the usual business dis-
3422 cussion on points of that kind with which you are all familiar, the offer was finally made and accepted and worked under, each party keeping perfect faith with each other the whole year.

In case you may find it a handy means of reference on some points in connection with differentials that obtain by other lines cited yester-

day and gone into with considerable elaboration, I desire to file freight Tariff No. 9 (marked "Exhibit 12"), by E. W. Beedle, known as "Beedle's Freight Tariff." It is a small vest pocket affair used for ready reference. It is used by a great many traffic officials and is considered reliable in its information. It is dated March 11th, 1898.

In connection with the point I endeavored to make yesterday of the frequent sailings of lake steamers from Buffalo and Lake Erie ports, steamers operating in connection with railroad companies, many of them—I think most of them—owned by railroad companies, forming what is known as the lake-and-rail lines, I desire to file a letter from R. H. Hebard, General Manager of the Minneapolis, St. Paul & Buffalo Steamship Company, Buffalo, dated September 8th, 1898, (marked "Exhibit 13") which gives with a good deal of detail the operation of the lake steamers and shows or rather bears out my statement of yesterday, that Buffalo during the season of navigation has pretty nearly a daily sailing, a daily boat service westward into Lakes Huron, Michigan and Superior.

Before leaving the subject of differential lines and again referring to the point so often made by those who are opposed to us on this question, that whatever may be done in the east, in Trunk
3423 Line and Central Traffic Association rates in regard to differentials, they are not recognized out in the west by anybody, I endeavored to cite to you yesterday several cases to show that that position was wrong. Differentials do prevail out in the west and in the south, and in the east and in the north, and each point of the compass, whichever way you look, you are staring at a differential line somewhere, and just to further accentuate, we have the Morgan Line differential rate, via Missouri Pacific Line to St. Louis; we have Savannah line, working up to Kansas City. I do not want to dwell on these points or enlarge upon them, or any further take up your time; I thought I would just cite them and mention them to strengthen, if possible, our position and the statements we endeavored to make clear yesterday.

Now, gentlemen, with your permission, we get back to Canada. We have roamed all over the United States pretty much, now I am glad to get back home. In support of the statement made yesterday of the perfect freedom of working enjoyed by the American lines in Canadian traffic without bar, let or hindrance, I think I stated yesterday every important town in Canada and many that are not important, carry the signs of American Railroads, their offices being scattered on the main streets of said cities and towns; they are there doing business with perfect freedom; they are there under a welcome and no man dare or desires to make them afraid. They are there as I showed you yesterday, with differential rates; and as you walk along the streets you will find the old familiar names that are so familiar to you and to me and to the rest of us, of the "Burlington"; The Chicago & Northwestern; The Atchison, Topeka & Santa Fe; The Northern Pacific; the Great Northern; the Union Pacific; and so

3424 on—you can go to the end, it is simply a list of the eastern-middle states and many of the Western American lines. You will find them all there, not a word being said about preying or trespassing on Canadian traffic. In support of the statements I made concerning the value of the goods carried by American lines, from one point in Canada to another point in Canada, through the United States, I desire to file a letter (marked "Exhibit 14") from the statistician of the Dominion Government, Mr. George Johnson, who treats on the subject, and also a copy of an open letter from Mr. Edward Farrar, addressed to the Honorable, the Chairman of the Committee on Inter-State Commerce, United States Senate, and dated "Toronto, March 31st, 1897," wherein you will note the values—that these two together will give you the values and the manner in which those values are arrived at. The tonnage cannot possibly be ascertained as it involves too much clerical labor to get it ready in time for this hearing; in fact, it could not be gotten ready in time for this hearing by any possibility. It is a long job. I will have this typed for you, gentlemen. I meant to have it done this morning, but other things intervened. It shows the manner in which we arrive at the percentages and get at the value of goods carried, from those documents.

Arbitrator WASHBURN. It is a small matter. I do not think it is necessary to have it typed. Do you want that attached to the last document you filed?

Mr. KERR. If you please. I intended to have it typed. I do not like to present you with a rough thing like that.

3425 I desire to file the proceedings of Trans-Continental Association, General Meeting, New York, March 16, 1896, General Meeting, Milwaukee, April 1, 1896; Rate Committee Meeting, Milwaukee, March 30, 1896 (marked "Exhibit 15"). We file this record (referring to "Exhibit 15"), in order that the arbitrators may be possessed of all the facts in connection with the endeavor to re-form the Trans-Continental Association, in 1896, and for the further purpose of showing the manner in which our friends on the other side of this case desired to dispose of our differentials. We had a grave difference of opinion, in fact we had a disagreement on the manner in which these differentials should be made. The question as late as 1896, was not that the Canadian Pacific Company should have no differential by its broken line, but the question hinged on the amount of differential. The principle was not touched on, it was only a question of degree. And after a good deal of discussion, you will note the resolutions here that seem to have disposed of our case by putting in a scale of differentials beginning at 10 per cent and scaling down to 8 per cent. The basis of differentials was fixed on the class rates, and when this company had agreed to take that scale our friends endeavored to put the class rates on the basis that gave us 8 per cent, and then they fixed the commodity rates to suit themselves, with the result, as you can see, that as the tonnage carried consists so largely of commodities—I suppose the class rates do not represent more than 10 or 15 per cent—that by this process we

were put down on the basis of 8 per cent. When we came to assemble in Milwaukee and the plot developed, we very naturally entered our usual mild objection, which brought on further discussion, re-opened the question and finally we made a compromise. In the inter-
3426 est of peace and harmony the Canadian Pacific agreed to take 9 per cent, but all the same we felt we were not being done justice to and we felt then as we feel now, that we should not have been asked to lower our percentage of differentials below 10 per cent.

Chairman WASHBURN. That compromise was accepted by the American Association?

Mr. KERR. Yes sir; but it never went into effect for the reason that the Association was never formed owing to objections raised by the Receivers of the Union Pacific. The basis on which the Association was to have been formed fell through, namely: the arrangement for the Panama route space rental, and it never went into effect. The Association was never formed and we naturally continued as we are to-day on our 10 per cent basis.

I filed yesterday a list of so-called Pier rates enjoyed by the Sunset line of the Southern Pacific Railway Company—differential rates. The list of commodities, as you have probably noticed, is very formidable. We have no means of knowing what it represents in tonnage, as carried by the Sunset Line. So far, they have not taken us into their confidence in that respect. Perhaps they will take you gentlemen into their confidence and tell you what tonnage is represented by the commodities they carry under these Pier rates which give them a differential and enable them to reach back into the interior of New York and Pennsylvania. I think this very desirable information, because in the discussion in the Denver meeting the New York Pier rates were said to be put in there to take tonnage as the overland lines did not care about it,—low class, low quality,
3427 way down in the scale—something that only clipper ships and Panama routes would seek for, but the list does not seem to bear that out in its entirety.

I have a list of the Trans-Continental tariffs here (marked "Exhibit 16") that it might be well to file in order that you may have any information you desire to take from them.

Westbound Tariff No. 14, effective September 1st, 1888.
Westbound Tariff No. 18, effective January 1st, 1889.
Westbound Tariff No. 20, effective May 27th, 1889.
Westbound Tariff No. 22, effective October 1st, 1889.
Westbound Tariff No. 26, effective June 18th, 1890.
Westbound Tariff No. 30, effective January 15th, 1891.
Westbound Tariff No. 34, effective September 21st, 1891.
Westbound Tariff No. T-1, effective April 11th, 1893.
Joint Westbound Tariff of Northern Lines, effective Oct. 20th, 1894.
Westbound Tariff No. T-5, effective March 5th, 1895.
Joint Tariff of the Northern Lines, effective February 22nd, 1896.
Westbound Tariff No. T-10, effective February 22nd, 1896.

Sunset Route Tariff No. C–13, effective November 17th, 1896.
Westbound Tariff No. 1–A, effective June 24th, 1897.
Joint Tariff of the Northern Lines, effective August 15th, 1897.
Westbound Tariff No. 1–B, effective December 15th, 1897.
Westbound Tariff No. 1–C, effective June 25th, 1898.
Eastbound Tariff No. 7, effective March 10th, 1888.
Eastbound Tariff No. T–2, effective April 11th, 1893.
Eastbound Tariff No. T–7, effective June 17th, 1895.
Eastbound Tariff No. 3–A, effective January 10th, 1898.
Eastbound Tariff No. 3–B, effective July 16th, 1898.
Canadian Pacific Railway Circular No. 10, effective Jan. 5th, 1892.

3428 Arbitrator WASHBURN. Do these include all those?

Mr. KERR. Yes, sir. Now it occurs to me that the Board might desire to have copies of the proceedings of the Trans-Continental Association during its life,—that is during its term while we were connected with it. We have the volumes here and I thought that we might give you the references and if you desired to use them you can get them from Mr. Countiss' office; or if you prefer I will give you the volumes to be returned to me later as they are the only record we have.

Arbitrator WASHBURN. We think we do not need those, Mr. Kerr. If we want them, we can get them from Mr. Countiss; you need not leave your copies.

Mr. KERR. Shall I give you the references and cite them?

Arbitrator WASHBURN. If you please, yes, sir.

Mr. KERR. Record of Proceedings, Trans-Continental Association, Nov. 5th, 1887, to Jan. 31st, 1888.

Arbitrator MIDGLEY. That is when you began, or were allowed the differentials first?

Mr. KERR. Yes, sir; that is when we were invited to join the Trans-Continental Association. It was the period at which the Trans-Continental Association was re-formed. It had been an Association before, but had gone to pieces, had dissolved for some reason or another and this was the period at which they reorganized their Association and invited us to come in.

Arbitrator WASHBURN. Can you give us that reference on a sheet by itself?

Mr. KERR. Yes, sir.

Arbitrator WASHBURN. Instead of our having to pick it out
3429 from the proceedings.

Mr. KERR. Yes, sir.

The list of references (marked "Exhibit 17") was filed with the Board.

Mr. KERR. The several points I have endeavored to make in presenting this case may be summarized as follows:

First, I endeavored to treat of the general principle in connection with application of differential rates via broken rail-and-water routes.

Second, I dwelt with the history of differentials allowed to the Canadian Pacific since they were invited to join the Trans-Continental Association organized in November, 1887.

Third, I have explained the guarantee of an agreed amount during the year 1891 in lieu of differentials and the subsequent resumption of differentials.

Last, the substitution of a percentage scale of differentials in place of the fixed and rigid specific differential of so much per hundred weight.

I have also endeavored to give you a record of the differentials in use by various other routes and lines, ocean-and-rail, lake-and-rail, Trans-Pacific, between points in the United States, between points in Canada, and from Japan and China to points in the United States and Canada, the intention being to show the wide extent and universality of the rule. I touched on the point yesterday that the guarantee of a fixed sum per month or per year, or for any period, to the Panama route, is in reality a differential under a more agreeable name. And

I call your attention to remarks made at the Denver meeting,
3430 that after all, the Canadian Pacific differentials did not amount to so very much if they could only get the Panama route fixed. I called your attention to the disabilities of the Canadian Pacific under which they labored on account of the infrequent sailings of the Pacific Coast Steamship Company between Vancouver and San Francisco. It is a great disadvantage as to time and risk compared with the Sunset Route and the all-rail lines. We are not claiming that the risk of the Canadian Pacific water line is any greater than the risk of the Sunset Line, but the risk is greater as against the all-rail lines and the time is much greater as compared with the Sunset and with the all-rail lines.

Next, I have shown you that during the year 1891, when we changed from the differential to the subsidy, our differentials simply took on another phase and in accordance with our agreement in that connection we put our rates even with the rates of the other lines—the all-rail lines. We got no business. It may be said, and was said yesterday, that naturally under those conditions we did not work for the business. That is true. Our agents did not specially work, but the agencies were all open; our men were still on the street; our men were gathering up business for other directions and if a carload for California fell in their way—if they could get it at even rates, they gathered it in just as cheerfully as they would a carload of any other freight for any other point. But with the even rates nothing was ever offered to us other than what I have shown you, which does not amount to very much,—practically nothing. I do not know, gentlemen, that I can add very much more to the statements I have

already made. I have taken up a very large amount of your
3431 time, and I fear may have exhausted in a measure your patience, but as we regard this matter as one of the utmost importance we felt it was necessary that we should endeavor to cover every possible point that we could think of, in order that the fullest

statement of the case should be before you. I do not know that I have anything more to say other than to thank you for the patient and kind hearing you have given me.

Arbitrator DAY. I would like to ask you a question, Mr. Kerr. You touched on it in your summing up, but you did not go into it as fully as I would like to have had you. You were speaking about the volume of traffic that came to you during the period of time that you enjoyed the subsidy from the American lines, and you stated that at that time you maintained equal rates with the American lines.

Mr. KERR. Yes, sir.

Arbitrator DAY. And the total amount of traffic that you carried during the year was about $30,000.00 in revenue, or a little less.

Mr. KERR. $28,000.00 odd.

Arbitrator DAY. What was the total amount of revenues that your line enjoyed from purely United States traffic between points east of the Missouri River and California, in the year 1897?

Mr. KERR. That is a question that I cannot answer offhand, sir, but I will endeavor to get the information for you.

Arbitrator DAY. Can you tell me the total amount of interstate traffic, I mean either in tonnage or revenue, of the Canadian
3432 Pacific road, that you received during the year 1897? The total amount of inter-state traffic, purely United States traffic?

Mr. KERR. Not at this present moment, but I will give you the information.

Arbitrator DAY. Can you tell us whether the bulk of United States traffic that your line transports—I mean inter-state, not imported or exported by either of your two great ports, but inter-state traffic between the States—whether the bulk of it is between California points and points east of the Missouri River, or whether the bulk of it is between points east of the Missouri River.

Mr. KERR. Do I understand you to ask whether the bulk of it is, say from Chicago territory and westward-middle states, middle-west states, as against the Atlantic seaboard?

Arbitrator DAY. What I was endeavoring to get at was where you get the bulk of your purely inter-state traffic.

Mr. KERR. We get the bulk of our inter-state traffic, generally, in the middle states, that is, say from Pittsburgh west: Pittsburgh, Chicago and Missouri River.

Arbitrator DAY. And where do you deliver it to, the bulk of it, east or west of the Missouri River?

Mr. KERR. Oh, we deliver it out on the Coast.

Arbitrator DAY. The bulk of your traffic is California traffic, is that right?

Mr. KERR. Oh no; not the bulk. Are you treating now of our whole business, both east and west, or business merely on our eastern lines?

Arbitrator DAY. I asked you the questions separately, in
3433 order to separate it, but you were unable to answer the first question offhand; and then I asked you whether the bulk of your traffic was California traffic, the bulk of your inter-state traffic.

Mr. KERR. Oh no; not to the westward.

Arbitrator DAY. What percentage of your inter-state traffic is California traffic?

Mr. KERR. That I cannot say, offhand.

Arbitrator DAY. What is your impression?

Mr. KERR. As compared to what we carry to Puget Sound?

Arbitrator DAY. Yes; your entire United States traffic; what percentage of it is California?

Mr. KERR. I would not like to give you an offhand answer. I would rather give you a correct answer, and if you will give me a memorandum of those questions, I will give it to you before the session is over.

Arbitrator DAY. I haven't them written out; they just occurred to me.

Mr. KERR. Well, the notes are here and as I shall have those, I will see that you are answered.

Arbitrator DAY. I want to see if I understand your contention respecting the differential. Is it a part of your claim that you—I mean the Canadian Pacific line—that you should make the Trans-Continental rates for the American lines?

Mr. KERR. No; never.

Arbitrator DAY. That is not your contention?

Mr. KERR. No, sir.

Arbitrator DAY. Who should make them?

3434 Mr. KERR. The American lines should make the rates.

Arbitrator DAY. Then what is your precise contention?

Mr. KERR. Then our contention is that we go in on those rates on the basis of our differential, whatever that may be.

Arbitrator DAY. They make the rates and then you insist that you shall have a differential below those rates?

Mr. KERR. I do not know that we insist.

Arbitrator DAY. By "insist" I mean that is your contention. I am not endeavoring to use any word that is at all offensive. By "insist", I mean that is your position?

Mr. KERR. Yes, sir.

Arbitrator DAY. That the American lines shall keep a certain percentage above you, or you a certain percentage below them?

Mr. KERR. No; the principle is, that the American lines shall make the rates. They do so. We sit in council with them; we have done so ever since we have been outside of the Association. Every time a meeting is called, or nearly every time, we receive an invitation to attend; we always do so. They make the rates and we assent to them. We never object. Then we take our differentials, just as any other differential line does, out of New York, where there are agreed differential rates as between all-rail and lake-and-rail lines. The all-rail lines make the rates and then there are these fixed differentials that the lake-and-rail lines charge below that, in precisely the same manner that we do.

Arbitrator DAY. If I understand you then, your contention is that you shall have a differential and the American lines fix
3435 the rate?

Mr. KERR. Yes, sir.

Arbitrator DAY. They fix it at what they regard reasonable; high or low?

Mr. KERR. Yes, sir; that is it.

Arbitrator DAY. Now, I will ask you another question, if you please; is it a part of your case that you shall be allowed a differential under the rate on California traffic that is to be charged, by say, the Texas & Pacific?

Mr. KERR. Yes, sir; I should think so. What are the disabilities of the Texas & Pacific? If they are equal to ours, no.

Arbitrator DAY. But your contention is, as against the Texas & Pacific you are entitled to a differential on Atlantic Seaboard California traffic?

Mr. KERR. No, our contention is that whatever the agreed rates of the Trans-Continental lines may be, that we shall be permitted to charge a differential rate below those rates.

Arbitrator DAY. Do you regard that your line is at a disadvantage in respect to California traffic in its competition with the Texas & Pacific?

Mr. KERR. I do not know that the Texas & Pacific ever enters into our calculations at all.

Arbitrator DAY. Do you regard that you are entitled to charge a lower rate on California traffic than is charged by the Northern Pacific on California traffic?

Mr. KERR. No; if they use the water lines. We are on record, over and over again, that in the case of the Northern Pacific and
3436 Great Northern, that wherever they use the steamer line from Puget Sound to San Francisco, they shall have the differential, if they want it. But they are out of San Francisco business; they do not claim to be San Francisco lines; they do not work for San Francisco business. In other words, they have made a trade. They have differential rates over lake-and-rail lines up into Puget Sound, Portland, and points north of Portland, and they have agreed not to go into California.

Arbitrator DAY. Do you also have those rates?

Mr. KERR. If we use lake-and-rail, yes, sir. You understand we cannot use Canadian ships and our line—the Canadian Pacific line, steamer line from Owen Sound to Fort William, are Canadian registered British bottoms. They cannot carry inter-state freight.

Arbitrator DAY. And the converse of that is true: American ships cannot carry Canadian traffic?

Mr. KERR. The converse of that is true; yes, sir, except out on the British Columbia Coast, where there is an exception made and American ships are permitted to carry Canadian traffic. For instance, the Northern Pacific steamer, "City of Kingston," and American registered, American ownership, is permitted to carry Canadian goods

from Seattle or Tacoma to Victoria. They take those goods out of Montreal, Toronto, London, in Ontario and Quebec, and carry them into Tacoma or Seattle and transfer them to American ships and they are landed in Victoria. The exception is made there, too.

Arbitrator DAY. That is an exception?

Mr. KERR. Yes, sir.

Arbitrator DAY. That is made by the governing council, I suppose?

3437 Mr. KERR. Something of that kind.

Arbitrator DAY. As a part of your case you have charged the American lines with violating the law and you referred to an affidavit, and you subsequently stated that the affidavit was this statement or this letter of this party. Was there anything else that would respond to an affidavit, anything more than was contained in that brief letter?

Mr. KERR. You will remember, of course, that I explained to you exactly how the word affidavit came to be used.

Arbitrator DAY. Yes, you did.

Mr. KERR. I did not use that knowingly or willingly.

Arbitrator DAY. I do not mean to make any play on that.

Mr. KERR. It simply fell in the way explained.

Arbitrator DAY. We all understood it that way, that you relied on an affidavit, of making charges that the American line had violated the law.

Mr. KERR. That was the letter that Mr. Shaughnessy wrote.

Arbitrator DAY. Mr. Shaughnessy makes use of the statement in this letter that the American lines, or some of them, are violating the law—have violated the law in the way of cutting rates. Do you want to be understood as making that charge against all the American lines that do business out of San Francisco?

Mr. KERR. No, sir; I am making no charges at all.

Arbitrator DAY. Then will you specify why you introduced that? What is the purpose of the allegation?

Mr. KERR. Simply as part and parcel of the record of this case.

The point is this; these gentlemen of San Francisco make

3438 certain statements:—they make a statement that the American lines are maintaining agreed rates and that were it not for the Canadian Pacific differentials, the market in San Francisco would be steady and stable and they would know what they were about; could put proper prices on their goods and be sure that their next door neighbor would not undersell them to-morrow by reason of getting lower rates, and that the Canadian Pacific differentials were rate disturbers. That is the reason why we put that full record in; to disprove, and along with it we filed the letters that we received on the other side from merchants of equal standing with the gentlemen who signed the petition. It is all put in there intended to go together. We are making no charges; we are simply putting in such points as we think may be in support of our case.

Arbitrator DAY. The time that you devoted to that subject yesterday afternoon, without any doubt, impresses upon my mind—and I think it must have done so upon the minds of the other arbitrators, although I do not attempt to speak for them—but it did upon my mind, that you made that a part of your case; charges of violation of the law, that is to say that the American lines were soliciting and carrying traffic below their published tariffs. At that time I could not quite see that the allegation that the American lines were violating the law was germane to the matter we have to inquire into; but on subsequent reflection it came to my mind that there was an aspect in which it might be germane, and I want to get at precisely what you meant. And, I also felt that if there were any of these gentlemen who were not violating the law you should exculpate
3439 them, or in other words name the roads that are violating the law. That is all that I care to say.

Arbitrator WASHBURN. Does the Canadian Pacific Ry. desire to be heard further at this time? If not, we will then call upon the American lines to present their side of the matter.

Mr. STUBBS. Mr. Chairman, it is now twenty minutes to 12 o'clock; undoubtedly the Board will want to adjourn at half past 12 or 1 o'clock for luncheon, and while I am ready to proceed, I dislike to, because I will certainly not get under way before you will want to adjourn, and unless the Board has a decided preference or objection to adjourning until 2 o'clock so that I can begin and have some hours without interruption, I would prefer not to begin now, but I would like to have it understood that I am entirely in the hands of the Board in that respect, and will begin if you like.

Arbitrator MIDGLEY. Well, we will consult your wishes, Mr. Stubbs.

Arbitrator WASHBURN. We will adjourn, then, until 2 o'clock this afternoon.

AFTERNOON SESSION.

OCTOBER 13TH, 1898—2 P. M.

The meeting convened pursuant to adjournment.

Arbitrator WASHBURN. Mr. Stubbs, are you ready to proceed now?

Mr. STUBBS. Mr. Chairman, and Gentlemen of the Board: While I have been selected by the committee appointed at the Denver meeting to represent the American lines in the presentation of their case, and while all of the members are not present, I
3440 think it fitting that I should state that they all have contributed in the preparation of our case. All desired very much to be here, but having done their part, they have thought that they might well leave the presentation of the case in the hands of myself and the members of the committee that were resident in Chicago, or at least that they were so safe in it that they would not be justified in ignoring other important and pressing engagements that detained them.

Necessarily, the statements and arguments which we will submit have been largely prepared in advance in anticipation of the case that would be made by our adversary. I am not, nor is any member of our committee accustomed to this sort of work. This is the first time in my life that I have appeared before a board of arbitration or a commission to represent our own interests or the interests of other lines, unaided by counsel. It was very early agreed between the Canadian Pacific and ourselves that it would be better all around if we as traffic men, having to deal with this question in the future, having always handled it, knowing each other, should undertake to make the case before this Board. Naturally then, our case has been prepared without much reference to the order that would be pursued by the other side. It is customary in proceedings of this character for the negative before opening its case to briefly review the points made by the affirmative in its opening, but owing to my not being accustomed to this procedure and believing that we have pretty fairly covered all their points, I have decided that it would be better to go forward with the case as it has been written out and take up
3441 such points as have been made or presented by the Canadian line in the order, not as they were presented, but as they will fit in with the arrangement of our case, so that while I may take things up out of their order as prescribed by their case, I think before the statements or presentation is finished we will touch upon every point. Our statement was also prepared and well under way before we knew what the constitution of this Board would be, so that if there is anything in the opening which would seem to discredit the knowledge and intelligence of the railroad experts who constitute this Board, you will understand why it appears so. I will not attempt to omit it or wrest it from its logical connection; if I did I might become confused, so I shall go ahead in the order that the case has been prepared.

This contention is between the Canadian Pacific Railway Company, on the one hand, and on the other hand, what are known as the American Trans-Continental lines, being the transportation lines owned or operated by the following named companies:

The Atchison, Topeka & Santa Fe Ry. Co.
The Burlington & Missouri River R. R. Co. in Neb.
The Chicago, Rock Island & Pacific Ry. Co.
The Colorado Midland Railway Co.
The Denver & Rio Grande R. R. Co.
The Missouri, Kansas & Texas Ry. Co.
The Missouri Pacific Ry. Co.
The Northern Pacific Ry. Co.
The Oregon Railroad & Navigation Co.
The Oregon Short Line Railroad.
The Rio Grande Western Ry. Co.
3442 The St. Louis & San Francisco Railroad Co.
The Southern Pacific Company.
The Texas & Pacific Railway Co.

The Union Pacific Railroad Company.

The Canadian Pacific Railway Company will hereafter be referred to as the Canadian line; the other parties as the American lines.

The lines of all these parties are delineated on this map, ("Exhibit Z") in red. The lines of their several connections, for the purpose of illustration, are delineated on this map in blue. These connections (the blue lines), while used to make through routes and through rates between San Francisco and their own points, are not parties to the dispute, being supposed not to be interested. The fact of their non-interest is largely a supposition, because it must be that, since the claim is for a differential under the rates of the American lines—under their through rates, and as the through rates embrace the charge for the transportation service of these connecting lines, necessarily, they are interested. That is to say, that if a differential operates so as to turn traffic from any of these (blue) lines to this line (indicating on the map the Canadian Pacific Ry.), of course it turns it from these direct lines; but, from the beginning, it has been the custom for all the connections of what we call the transcontinental lines to leave largely, at the outset altogether, and even today, they leave largely to these lines, the question of determining what the through rates shall be. Heretofore, in all discussions and arrangements, contracts for the purpose of maintaining revenue have
3443 been entered into by these lines without much reference to their connections. At times their connections have been consulted and they have ratified or objected, as the case may be, but it has been common enough to justify me in saying that as a rule they are supposed not to be interested.

The contention is in respect to freight rates and freight rates only. That is to say, between, in either direction, San Francisco on the one hand, and on the other hand places in the United States and Canada east of an imaginary line, which is also shown on the map here in red, but in order to make it more marked, we have it in different colors (indicating on map). This line forms the eastern boundary of the Trans-continental Association. It will hereafter be referred to as the Missouri River line, as that is the common phrase with us in referring to it. It means that any business to or from San Francisco which passes this line—crosses it, en route, is subject to the Trans-continental Association, or was when it was alive, and is now subject to this controversy, no matter whether it originates in Florida or in Maine or in the Province of Quebec, or whether it originates on this line—whether it originates on it or goes across it from any of these points,—to or from San Francisco—it is the subject of this controversy. I think it unnecessary for me to describe this line any further than it is delineated on the map, although I have described it or written it out in my manuscript as it appears in the proceedings of the Trans-continental Association, and I will give it as written to the reporters so that the record may be straight.

At a meeting of the chief traffic officers of the American lines
3444 and the Canadian line at Denver, Colo., on the 22nd of August,

1898, the following resolution was unanimously adopted. (I omit the proviso.)

"Resolved, that the lines here represented will submit to arbitration, the question of whether the Canadian Pacific Railway is, or should be entitled to a differential under the rates made by the United States lines for the carriage of the freight in question,"—just stated as freight to or from San Francisco and these points—(pointing to map) "and if any differentials, what these differentials shall be. The Board of Arbitration to consist of three members; one to be selected by the Canadian Pacific Railway, one to be selected by the American lines interested, they two to select a third and that the decision of two members of said Board of Arbitration shall be final, conclusive and binding upon all."

It is in pursuance of this resolution that we are here. It presents two questions for determination by the Board.

First: Whether the Canadian line is or should be entitled to a differential under the rates made by the American line for the carriage of freight interchanged by San Francisco with places on or east of the Missouri River line.

Second: If it is so entitled, what shall these differentials be,—that is to say, in what territory shall its differential rates obtain against the American lines and in what sum shall consist the difference or differences in its rates compared to those of the American lines.

If the first question is decided in the negative, that decision will also dispose of the second question.

3445 In railroad parlance, when two or more carriers agree that a prescribed difference shall subsist between their respective rates, that difference is called a "differential" rate. When, however, this difference is made without agreement, it is called a "cut," and the lower rate is termed a "cut rate." This must not be confused with so-called differences in rates, for example the rates from the Atlantic seaboard around Cape Horn to San Francisco are lower than the rates across the continent or via the Isthmus. That is not called by railroad men a differential rate. The rates via the Isthmus of Panama are likewise lower than rates by rail. These differences originate in the main from the difference in the cost of carriage and are accepted as natural. There can be no "differential" in the sense that term is used by practical railroad men except by agreement, between, on the one hand, the carrier or carriers whose rates are the standard, or assumed to be the standard, and on the other hand, the carriers whose rates are lower than the standard. The term "differential" rate always implies an agreement between the lines whose rates are contrasted by the use of that term. One line may adopt a lower scale of rates than that which is in use by another line for its service between the same points and the line carrying the higher rates may for reasons sufficient to itself ignore the fact that the other line is carrying lower rates, yet in such a case the term "differential"

would not be applied by practical railroad men to the difference between the two sets of rates.

There are several kinds of differential rates. I have thought it necessary to explain this in brief, because the term is so com-
3446 mon that the idea is abroad that it is part and parcel of the well settled, well considered policy of railroad lines. Differential rates may be of different kinds, originating in various conditions and having different objects in view. For example, where several distributing centers of trade seek a common market of supply or consumption, the carriers, by agreement, sometimes fix different rates or establish a rule of difference to be observed in the rates to and from these different trade centers, respectively. An example of this kind of a differential is found in the rates from Chicago to Boston, New York, Philadelphia and Baltimore, respectively. The rates for New York being taken as the base, Baltimore and Philadelphia are made lower by an agreed difference and Boston is made higher by an agreed difference. Again, the rates from New York to Chicago, Cincinnati, St. Louis, and so forth, do, by agreement, bear a fixed relation to each other, the Chicago rate being the base, the respective rates to the other points being an agreed difference, lower or higher, as the case may be. As a rule, however, these differences in rates are governed in a greater or less degree by the difference in the cost of the respective service, as indicated by the length of haul.

There is another kind of differential, designed to put competing supply markets upon an equality, so far as it is possible, with respect to a common consuming market, having the same object in view as those just described, but differing in this respect, that the difference in the rate is purely arbitrary, has no demonstrable relation to the relative cost or length of haul of the respective parties who agree upon the differential, though when the entire hauls, that of the associated parties and that of their respective connections are com-
3447 bined, the factor of cost is traceable. An example of this kind of differential is found in Texas. Galveston is the base point and the rates from all Mississippi River crossings into Texas bear a certain agreed relation to Galveston rates to what are called Texas common points. The numerous cities competing for that trade, New Orleans, St. Louis, Kansas City, Louisville, Cincinnati, Chicago and so forth, necessitate this differential adjustment. It is competition of different markets and not competition of carriers which is the strongest force in creating the rate adjustment. To explain my reference to cost, this differential is agreed to by the Texas lines without consultation with and without any regard to their connections. For example, the differential as between New Orleans, Galveston and St. Louis is regulated, and rates for traffic from all these outside points (pointing to map) is agreed to by these Texas lines alone without consulting their connections. Measuring the differentials by the length of haul of the lines alone who agree to it, you cannot trace the factor of cost in their arrangement, but

when you measure the total haul, the total cost, by taking into consideration the connections, why, there is that element to be traced.

Another class of differentials exists, called "Insurance differentials." These exist in places where the competition is in whole or in part between a carrier by water and a carrier by rail. An example of this is found in Texas where the rates from New York via water by way of Galveston or New Orleans are lower than the ordinary all-rail rates. The difference in such cases is in a measure arbitrary.

3448 The aim, however, is to approximate the difference in rate to the cost of insuring, which cannot be done accurately, having some regard to the difference in the cost of transportation by water, as compared with the cost by rail.

Another example is found on the Pacific coast between San Francisco and Portland, and between San Francisco and Los Angeles, Santa Barbara and San Diego where the service can be done entirely by rail or entirely by sea. In this class of cases it is not unusual for the differential to be in favor of the stronger line—stronger in the sense that it carries the bulk of tonnage—that is to say, that notwithstanding that the steamship lines between New York and Texas are favored by the differential, they carry the bulk of the traffic. The rail lines do not demand and do not get a differential in order that they may have a fair share, a reasonable share of the traffic. Likewise, on the Pacific coast between San Francisco and Portland, at Los Angeles and San Diego, respectively, notwithstanding that the steamship lines are favored by agreed differential rates, they carry the bulk of the traffic. The weak lines in point of taking power carry the higher rates. It is worthy of note that these two examples (and doubtless other similar examples may be found), quite upset the common notions that water lines always work at a disadvantage against the competing rail lines; that they always require an artificial advantage in rates in order to successfully compete with rival rail lines, and before we close it will be shown conclusively that such exceptions also obtain as between mixed rail-and-water lines versus all-rail lines.

3449 It might be well to notice also that when the water line is the stronger, carries the bulk of the tonnage, it never concedes to the all-rail competitor any differential in recognition of said all-rail carrier's title or right to a share of the business, and the same is true as between the mixed rail-and-water line as against the all-rail line. Another example of this kind of differential is found in the lake-and-rail rates to Chicago from Seaboard cities. In the latter case, however, the principal railroad lines, by which I mean the Trunk Lines, own and operate in connection with their rail lines, the steamships which ply the lakes, and as the cost of transportation by water is less per unit of service as a rule, the difference in the cost of the service has something to do with creating the difference in rate and very much facilitates an agreement between the rival all-rail lines and the mixed rail-and-water lines as to what the differential shall be. But another very weighty factor in this case is the fact that the

lake-and-rail route is only a summer route. In winter it is frozen—no thoroughfare. In reference to my statement that these lake-and-rail lines, the steamship part of them, are owned by the Trunk Lines, I think I find in the Canadian lines argument of this morning acknowledgment of that fact. The representative of the Canadian line says:— "In connection with the point I endeavored to make yesterday of the frequent sailings of lake steamers from Buffalo and Lake Erie ports, steamers operating in connection with railroad companies, many of them—I think most of them—owned by railroad companies, forming what is known as the lake-and-rail lines."

Under this head, in the Texas case, it should be explained
3450 that the differential originated at a time when a majority of the lines entering the State of Texas from the North, either extended to Galveston or were controlled by ownership or leased lines that ran From Galveston into Texas, so that, so far as the earnings of the carrier were concerned, this question of difference in the rates to be charged, for example, from St. Louis and Galveston, respectively, was not one of much moment. Of late years, however, lines have been extended southward into Texas, whose owners or managers have no interest in the lines leading northward from Galveston. The consequence is that the differential basis of rates so long in use has been for several years the subject of constant dispute, and as a matter of fact has not been faithfully observed. To a great extent the differentials have existed merely on paper.

Another kind of differential is sometimes employed, although it is not regarded as a differential in the sense of the ordinary use of that term, namely: where a group of carriers concerned in a given business agree that one of those carriers may make certain rates between two given points as against a common competitor. An example of this is found in the case of the Trans-Continental lines, which permits the Morgan and Mallory Steamship lines and their connections west of New Orleans and Galveston, respectively, to make lower rates to San Francisco than the standard all-rail rates on certain selected commodities, peculiarly susceptible to carriage by sea, in order to compete with the rates via the Panama and Cape Horn routes. This is the case instanced by our Canadian friends, of the Sunset Route having a differential on San Francisco business. I call the attention of the Board to the fact that while it is stated that the Sunset
3451 Route, which means the Southern Pacific Route—for we claim that trade mark—is not alone in the enjoyment of these lower rates. The Cromwell Line, in connection with the Texas & Pacific, and the Mallory line, in connection with any of the rail lines from Galveston, particularly the Atchison, Topeka & Santa Fe Ry., which controls a line from Galveston to San Francisco, operating over the Southern Pacific 383 miles, by contract—which gives it, I think, an advantage over what it would have if it owned the line—enjoy that same differential, so-called. This is not a differential because the rail lines can, at their pleasure, make the same rates. Some of them do make the same rates. The reason why it is done is because of all this

competition by the all-ocean or the Panama route from New York, to meet which, if rates were made through Chicago, would involve reduced rates for all this intermediate territory (pointing to map). These lines do not want to reduce these rates; they would lose money if they did. What they would gain here (pointing to map) against these competitors would not compensate for the loss here (pointing to map). Therefore, they consent to the use of these commodity rates from the New York Piers of the Mallory line, of the Cromwell line, or of the Morgan line to San Francisco.

Arbitrator DAY. Mr. Stubbs, I do not know that I quite grasp that, Do I understand you to say that this is a concession to the part water lines in competition with the Panama and all-ocean routes, that these lines would carry all the traffic?

Mr. STUBBS. Let me finish the paragraph. The difference in
3452 the rates is permitted, not for the purpose of benefiting the Gulf routes, but for the purpose of shifting the burden of meeting competition of a low cost competitor on to those lines which are better able to bear it—that is, can bear it with the least inconvenience and loss to themselves. Perhaps I might give you an illustration. It may be treated of later on, but it will fall in here very well. At the time the Columbian line competition opened in 1893, all the railroad lines were forced out of the traffic, because the rates were so low that they could not compete with the rates made by the steamship line, except at a very large sacrifice on intermediate business which was only indirectly affected by competition from New York. But they threw the whole responsibility, the whole burden of meeting that competition, by carrying freight as low as 30 cents per 100 pounds from New York to San Francisco, on these Gulf lines, for they could do it; their intermediate business was not involved; it was involved, that is true, but it was so small compared with this volume of intermediate business (pointing to map), that they could afford to do it, and somebody had to take up the gauge of battle and conduct the traffic. Now, since that time, there has been no composition of the differences with the Panama road. They stand in the market ready to take business that offers, at any rate that will take it. There are certain commodities, which, not so much from their nature—not altogether from their nature—but from their point of origin, that are peculiarly subject to this water competition. The bulk of the traffic for San Francisco comes from points west of Pittsburg. These
lines running west (pointing to map) do not wish to carry
3453 lower rates from Pittsburg, or this intervening territory, than from New York over their own lines. If they put in these Pier rates from New York City, according to their policy, they would have to make these rates the maximum for all intermediate territory, and it would involve a loss which would not be compensated by the amount of traffic they would take. Therefore, they consent to this difference in rates. That is all there is to this story.

There is yet another class of differentials which originated in the opening of circuitous routes for competition in carrying trade estab-

lished on shorter and more direct routes. These, in the common language of the profession are termed "differentials in favor of weaker lines"—lines which, upon the merits of their service, cannot successfully compete for the business, but claim a share of it, as the reward of virtue, the price of maintaining reasonable rates. The differentials which are the subject of this controversy between the Canadian line and the American lines fall within this class. This class of differentials in great part, grew out of the formation of through lines between two points or territories by circuitous routes. In many cases the through line is made up of carriers none of whose lines were projected or constructed with a view of engaging in the traffic laid open to competition by the formation of a through line by combination between the several individual carriers.

For example, the Canadian Pacific road was not projected or built for the purpose of developing, fostering or sharing the carrying trade between San Francisco and the eastern part of the United States.

Nor, were any of the United States connections, running from
3454 from the border down into New England and the middle and southern states projected or built with any such purpose in view. Nor, were its connections at Gretna and at Minneapolis built with any expectation of participating in said trade. Nor was the Pacific Coast Steamship Line between San Francisco and British Columbia established with any such prospect or intention. After they were built and the various connections made, then, and not until then, it was seen that there was a business opened—if not opened, certainly more largely developed, more considerably fostered and sustained by other and more direct lines, which might be made more or less contributory to their lines if combined to make one through route. The route having been opened the newer and longer lines entered the field of competition against the older, shorter and more direct lines by cutting the latter's rates. When its cuts were met further cuts were made, which being met in turn the operation was repeated until the rates by all routes were see-sawed down to a level which not only made them unremunerative to any of the carriers forming in whole or in part any of the several competing lines, but sometimes the level was very much below cost. In a fight of this kind, paradoxical as it may seem, the stronger line always got the worst of it. The reason is apparent. The traffic was fixed to its route and any reduction from its rates in use previous to and at the time the competing line using the circuitous route entered the field as a competitor was a loss; the greater the reduction the greater the loss. The weaker or longer line, on the other hand, not having any busi-
ness at the outset had nothing to lose. Everything was gain to
3455 it which appeared to show an earning above the actual cost of handling the particular lot of freight. Quite a distinction between that and the average cost of handling all business. Such an unequal warfare could not long continue, and the common result was that the stronger line sought for terms and ultimately bought the weaker line off, either by paying it an agreed proportion of its earn-

ing under a pooling arrangement, previous to the enactment of the Interstate Commerce Law—or by agreeing that its rates should be maintained at a certain rate of difference higher than the rates of the longer lines. The latter has been the common practice only since the prohibition of pooling. Sometimes an agreement of this character has been reached between the opposing lines without first trying the arbitrament of war, the weaker line demanding a portion of the business or an adjustment of the rates that would enable it to carry some of the business and the stronger line or lines yielding, as a matter of expediency, without a fight. That was the case as between the Canadian line and the American lines. It is needless for us to represent to the Board that this class of differentials is and always has been obnoxious. They have been always, and continue to be, regarded as partaking of the ancient custom in certain countries of payments to certain men who were allied to robbers to be by them protected from pillage. They have been denounced as a public wrong and an abuse of corporate power in that they coerce shippers to use inferior transportation facilities and instead of promoting, were really in re-
3456 straint of trade. No carrier ever submitted willingly to that sort of an agreement. The submission has always been under protest and rarely, if ever, have such contracts been continuously performed in good faith. In support of these statements permit a reference to the findings of the Interstate Commerce Commission, expressed in annual reports and otherwise, after inquiry, namely:

[Third Annual Report Interstate Commerce Commission.]

"By traffic arrangement between American companies and Canadian companies differentials are allowed to the latter which furnish an inducement to shippers to patronize those lines for trade for which the quickest transit is not urgent. These differentials are conceded to avoid rate wars and they involve a diversion of whatever business the reduced rates may invite." (Paragraph 3, Page 60.)

[Fourth Annual Report Interstate Commerce Commission. November 29, 1890.]

"It is not uncommon to find that a road is able to compete for an important business, but is nevertheless at a disadvantage in the competition by reason of greater length of line or heavier grades or of other unfavorable circumstances, and that in consequence it is unable to obtain what it deems a fair share of business in open competition with rivals who offer the same rates at every competing point. It is therefore compelled, if it would share the business, to make
3457 lower rates and their rivals recognize this necessity and allow an agreed division of business between all competitors to be effected by giving the carriers thus unfavorably circumstanced what are called 'differential rates'. The conceding of a differential, however, is very likely not to be made willingly, but comes under the stress of compulsion at the end of a disastrous rate war. When once made there is constantly liability that under the feelings engendered by competition or from a conviction that it ought not to have been

granted, it will be dissented from and an unprofitable rate offered by competitors." (Pages 22 and 23.)

Further,—"The differential lines are those which on account of longer lines and differences in facilities or owing to their through routes being partly by water, or from other disadvantages might not command, at even rates with the more direct lines, an amount of tonnage which under the customary methods of determining such matters, would be considered a fair proportion." (Page 210.)

3458 The history of this dispute may be briefly stated as follows:

The Canadian line was opened for business in June, 1886. At that time all of the principal lines which are parties to this contention upon the side of the American lines were completed, and had been for several years engaged in the carrying trade of San Francisco, with the exception of the Chicago, Rock Island & Pacific Railway Company in respect to its line between the Missouri River and Denver; the Colorado Midland Railway Company and the Missouri Pacific Railway Company in respect to its line west of Kansas City.

These American lines were then involved in the most serious rate war of their experience; a rate war which had its origin in a claim of the same nature as the demand of the Canadian line in respect to all California traffic; that is to say, one of the American lines had demanded of the other lines an adjustment of rates or a guarantee of earnings greatly in excess of what it had been able to take upon the merits of its service under an equality of rates. The minimum rates caused by this war, which began in 1886, did not obtain all through 1887; a truce was agreed to some time in the spring of 1887, but rates were not and could not be restored to the normal basis immediately for several reasons, one of which was the uncertainty of the effect which the Canadian line entering the field of competition would have and the doubtfulness as to the disposition of that line to join in the necessary cooperation to avoid a continuance of the unprofitable rates for California business then prevailing on the American lines. Now let me digress for a moment. With respect to

3459 1886 and 1887 I wish to criticize a remark made by the Canadian line representative—I will not refer to it—to the effect that previous to its entering upon membership with the Trans-Continental Association it observed the percentage scale of differentials. It never had differentials; it was not in it. The rates were too low, and when there was a fight on it left the burden of the fight to the American lines. I read now from "Exhibit P;" it is the testimony in a report from a Committee—the Interstate Commerce Committee of the United States Senate Report for 1888, by an order of May 2nd,—that is the only date on it, May the 2nd, 1889:

"Sir William C. Van Horne, President of the Canadian Pacific Railway was before the Senate Committee. The Chairman asked Mr. Van Horne this question: 'I see by reference to your report of 1886 that in the first year of your through traffic your line succeeded in securing a considerable share of the through traffic in competition with Trans-Continental lines of the United States and mostly at re-

munerative rates; does that still continue?' To which Sir William C. Van Horne replied: 'We get considerable through passenger traffic, very little through freight traffic; it does not pay and we do not seek it.'"

Added to this was the fact that the Interstate Commerce law had just become effective and few of the railroads in the country knew just where they stood, or would stand under that law.

3460 An officer of one of the California roads was delegated to visit the headquarters of the Canadian line to confer with its principal officers and obtain, if possible, its promise to co-operate in an organization having for its object the making and maintaining of reasonable rates for the carrying of traffic between the Pacific Coast and the eastern parts of the United States. The result was a meeting of the Trans-Continental lines and a re-organization of the Trans-Continental Association. At this meeting the Canadian line demanded the right to discount the San Francisco rates of the American lines; indeed, this was understood to have been a condition prerequisite to its attendance upon the meeting and joining and co-operating with the other Trans-Continental lines. I am the officer who visited the headquarters of the Canadian Pacific line at Montreal to invite, as its representative correctly states, the Canadian line to join with the American lines in maintaining rates—to join in a co-operative association designed to maintain rates, but I had to couple my invitation with the assurance that we would in some way, how we did not know, because of the Interstate Commerce Law and the inhibition of pooling, but that we would in some way, probably by differential rates, compensate them, as the term goes, pay them for coming in and being good with the rest of us.

My interview in Montreal was with Mr. George Olds, then General Traffic Manager, and General Manager Van Horne, who was not at that time President, I believe. The principle of differ-

3461 ential rates had never before been conceded in Trans-Continental territory. All the American lines objected to it, but they were made to understand that the demand of the Canadian line was no more than what that line proposed enforcing, in so far as it could do so, in the event that the American lines undertook to co-operate without its assistance. In other words, they were given to understand that if rates were advanced to any reasonable basis the Canadian line would use the tariff of the American lines simply as a maximum from which to cut and that these cuts, if met by the American lines, would result in forcing the whole scheme of rates down to the level of the minimum cost; that it would be a continuation of the battle from which they had just emerged for an indefinite time, if indeed there would ever be an end to it. If it had not been for the restraining features of the Interstate Commerce law, the exact measures of which they did not understand, and which, to most railroad operating officers were far more menacing than they are today, they would not have yielded to the demand of the Canadian line for a differential. The adjustment of rates would have been, as it always

had been, on the basis of equal rates for all. Possibly a pool of earnings would have been made in which the Canadian line would have come in for a small share, but the pool would also have guaranteed a fair allotment of earnings to each and every other line as well as to the Canadian line, or they might have accepted the gauge of battle. It was argued, however, that the Canadian line was unknown to American shippers; that it was believed it would prove to be no thoroughfare during the winter months; that the fact that it
3462 was a foreign line and must carry goods under customs regulations, would be very prejudicial to it in the minds of shippers. These were the arguments that prevailed, because it was thought that at any reasonable difference in the rates, it would be impossible for the Canadian line to secure much traffic.

Upon the organization of the Trans-Continental Association at this time, the rates to San Francisco by the American lines were higher than the rates made to San Francisco by the Canadian line, by these differences:

From New York and common points, to San Francisco, first class, 30 cents, scaled down to 5 cents, the lowest class; the standard rates being, first class $4.00, scaled down to $1.10 for fourteenth class.

From Chicago and common points, to San Francisco, first class, 20 cents, scaled down to 5 cents, the lowest class; the standard rates being first class $3.25, scaled down to 88 cents for fourteenth class.

Later, from St. Paul and Minneapolis to San Francisco the difference, or differential, was, first class, 15 cents, scaled down to 5 cents, for the lowest class; the standard rates being $2.80, for first class, scaled down to 80 cents for fourteenth class.

These rates prevailed until May, 1888, when the Canadian line demanded that the differentials be increased to the scale of 40 cents for first class, down to 10 cents for the lowest class from New York.

The matter was eventually referred to the Chairman of the
3463 Association to negotiate with the Canadian line on this question, with the result that it was awarded a differential of 40 cents on first class, scaled down to 7½ cents on the lowest class, on business to and from New York. This was the transaction in reference to which our Canadian friends read a resolution that was passed at that session of the Trans-Continental Association. This was the resolution as read by our Canadian friend, and I take it to be correct, I have not tested it.

"Resolved, that it is the sense of our Committee that the differentials allowed the Canadian Pacific Railway Company should at all times be fixed upon such a basis as will secure to that Company a fair and reasonable share of the overland tonnage, and that if the present figures do not accomplish that result, they should be so modified as to bring it about. To this end the Chairman is authorized to negotiate for the American lines with the Canadian Pacific Railway Company and make such changes from time to time as, in his judgment, are warranted, with the understanding that the same differentials shall apply to St. Paul and Minneapolis traffic via the Northern

Pacific as may be awarded the Canadian Pacific Railway Company; it being understood that these differentials shall apply via the Ocean routes only."

That resolution was passed, but it was in pursuance of a contract, a contract that was made under the fear of the total
3464 destruction of our traffic unless we made it.

These latter differentials, continued in force until the middle of 1889, when, upon the demand of several of the American lines, they were reduced to the following scale: For St. Paul, from 15 cents first class, scaled down to 5 cents for lowest class; the standard rates being $3.50 first class, $1.00 lowest class. For Chicago, 17½ cents first class, scaled down to 5 cents for lowest class; the standard rates being $3.90 first class, $1.10 lowest class. For Detroit 21 cents for first class, scaled down to 5 cents for lowest class; the standard rates being $3.95 first class, $1.15 for lowest class. For Pittsburg, 22 cents for first class, scaled down to 5 cents for lowest class; the standard rates being $4.00 first class, $1.15 lowest class. For Atlantic Seaboard, 28 cents differential for first class, scaled down to 5 cents for lowest class, with a special differential of 7½ cents for wool in grease; the standard rates being $4.20 first class, $1.20 lowest class.

I have enumerated these differentials (and feel like apologizing to the Board for doing so), with but this object in view, to show that in no case was the Canadian Pacific line ever given a 10 percent differential. These last differentials prevailed until 1891, when in lieu of differential rates the American lines guaranteed the Canadian line $500,000.00, as gross earnings from San Francisco business for a year, the Canadian line to maintain an equality of rates with the American lines and the American lines to be credited by the Canadian line on their guaranty, with the amount of its gross
3465 earnings on all the San Francisco business it carried at equal rates, the balance or deficiency in the amount guaranteed to be paid in cash by the American lines. Under this arrangement the American lines paid the Canadian line the sum of about $472,000.00 for account of San Francisco business during the year 1891, that line having carried at equal rates business of the value of $28,000.00, in round numbers; business that sought its line without any effort at solicitation, without any of the measures which all the American lines did and were compelled to adopt and actively employ, in order to get and keep their traffic. Here is what the gentleman representing the Canadian line said on that subject (reading from transcript of Mr. Kerr's argument—see page 34 hereof):

"Arbitrator WASHBURN. Did you maintain agencies in San Francisco?"

"Mr. KERR. Yes, sir."

His agent did not work freight business, he was a passenger man; I defy the Canadian line to deny it. (Commencing again to read from transcript of Mr. Kerr's argument):

"Arbitrator WASHBURN. During the entire year?"

"Mr. KERR. Yes, sir, we maintained agencies. We did not withdraw any agency."

"Arbitrator WASHBURN. You used the same effort to get business?"

"Mr. KERR. I would not say that, naturally; but we did not refuse any business that came to us. We had the same facilities, our agents were out in the market working for other business.
3466 They would take San Francisco business at even rates, but, as you see, they could not get it. The differential off, we were out, clean out of the business."

"Arbitrator WASHBURN. They did solicit the business during that time?"

"Mr. KERR. Yes, in a line with their other business, a canvassing agent going around canvassing for other freight, naturally, if he heard of any business going to San Francisco, he would take it, he would ask for it, he would want it. 'What is your rate?' 'Our rate is the same as all-rail.' 'Oh, no, you cannot have it; we will give you the other, but we will not give you that.'"

Mr. STUBBS (laying aside the transcript from which he had been reading). I submit, where would the Union Pacific that makes in connection with the Central Pacific the shortest and most direct line, that is the oldest line to San Francisco—where would that company be today if their agencies were to carry out the program indicated for his agencies by Mr. Kerr in that testimony? Would it get any business that was competitive as between themselves and the "Santa Fe" or the Missouri Pacific or "Burlington" or "Rio Grande" or Rio Grande Western roads? In three months, notwithstanding all its natural advantages, more than 50 percent of its business would leave its rails; if it would get anything at all that possibly could go over another route. The Canadian line did not work for the business. It sat down on its subsidy and intended to do so when it was given
3467 to them and we expected it to do so. There has never been any test of what it can do at equal rates, but in this connection I would ask, what does it matter? Under the submission in this case, what does it matter whether it carried a dollar's worth of business, or $500,000.00 worth of business? What has that got to do with the submission in this case? It is a fact that it did not enforce its right to the business. Is there any other conclusion to be drawn than that this bargain with the Canadian line, this purchase of the neutrality of the Canadian line, shows the tremendous power of that company to destroy our business unless we bought it off? I have a statement (marked "Exhibit U") that was prepared by Mr. Countiss, which I will file with the Board: "Payments to the Canadian Pacific Railway Co. during the year 1891, as finally adjusted, based on each road's actual proportion of gross earnings from east and westbound California freight traffic, as provided by Joint Agreement between roads in interest, effective January 1st, 1891." This statement shows the amounts of the payments—the amounts paid monthly, by each particular line beginning with January and ending with December,

1891. The total earnings of the Burlington and Missouri River Railroad Company in Nebraska from all the California business—we cannot segregate the San Francisco business, the way the records were kept—was $192,926.24, yet the "Burlington" contributed $5,678.00 in order to give the Canadian Pacific $500,000.00. The total earnings of the Chicago, Burlington & Quincy R. R., in connection with the Burlington and Missouri River R. R., were $97,082.00 and it contributed $2,879.00. The combined contribution of the
3468 "Burlington" lines was about $8,500.00 and their combined earnings was about $289,000.00. They submitted to that tax in order to give the Canadian line $500,000.00.

Arbitrator DAY. What did you say the Burlington & Missouri River R. R. was?

Mr. STUBBS. The Burlington & Missouri River R. R. was $5,678.00 and the Chicago, Burlington & Quincy R. R. was $2,879.00, they should be read together, and the total earning of the Burlington & Missouri River R. R. was $192,900.00 and of the C. B. & Q. $97,000.00, making a total of about $290,000.00, and out of the gross earning of $290,000.00 from all California business, they submitted to a tax of something in the neighborhood of $8,500.00, in order to give the Canadian line $500,000.00. The Chicago, Kansas & Nebraska Railway Company's total earnings were $167,762.00 and the Chicago, Rock Island & Pacific $101,900.00, which made a total earning during the year from the California business—all California business—not San Francisco business, of about $269,700.00 and they contributed $8,000.00 towards giving the Canadian line $500,000.00 for being good. The Denver & Rio Grande Railway made a total earning of $180,000.00 and contributed $5,000.00 in order to give the Canadian line $500,000.00. The Rio Grande Western earnings were $228,500.00 in round figures, and it contributed $6,698.00 to feed and support the Canadian line. The Missouri Pacific Railway made a total earning of $109,300.00 and it contributed $3,261.00 in order that the Canadian Pacific might receive $500,000.00. The St. Louis & San Francisco road made a total earning of $86,700.00 and gave $2,591.00 to the
3469 Canadian line in order to swell its earnings to $500,000.00. The Great Northern Railway line, which I believe at that time was a connection of the Canadian Pacific, I am not sure, Mr. Kerr can correct me about that—its western business went out of this territory via the Great Northern Ry. through Gretna and up to Winnipeg. Its total earnings were $22,922.00 and it contributed $690.00 to the Canadian Pacific Railway to give it $500,000.00. Is it any wonder that the subsidy ceased with one year's trial? Is there any other conclusion to be drawn from that, than that it represents the tremendous force, the tremendous weight upon the minds of the officers operating those lines, of the threat, the fear of what the consequence would be if they did not buy the Canadian line's peace, its good will?

In January, 1892, the differential scale in force in December, 1890, was restored. Those were the low, reduced differentials that were agreed to at the San Francisco meeting, I think, in May, 1889, and

continued until November, 1892, when the dissolution of the Trans-Continental Association was forced by the withdrawal of several of its members. With the dissolution of the Trans-Continental Association, the differential with the Canadian line ended. Early in 1893 the Columbian Steamship line out of New York, in connection with the Panama Railroad Company and the North American Navigation company, operating a steamship line between Panama and San Francisco, began cutting rates, and initiated the most violent and longest war in rates that the Trans-Continental traffic has ever been subjected to.

That is the case I referred to by way of illustration a few
3470 moments ago. During this period the Canadian line was not much of a factor in the business between the Atlantic Seaboard and San Francisco. During 1893, 1894 and 1895, the California lines organized and maintained a semblance of an organization, for the purpose of protecting that portion of their traffic which was not involved in the war of rates with the Panama line. That was the traffic west of Buffalo and Pittsburg. This organization was called the Trans-Continental Freight Rate Committee. The Canadian line was not a party to it. That line made such rates as it pleased and its operations were ignored by the American lines in respect to San Francisco business. Why? The rates were so low that the Canadian line could not beat them. We could not agree with the Panama route, nor among ourselves, and get rates up. We had no use for the Canadian line. We let it go alone. In 1896 an agreement was attempted to re-organize the Trans-Continental Association. In order to accomplish this it was essential to make a contract with the Panama route; secondly, to come to some understanding with the Canadian line. The agreement failed of the necessary unanimous ratification for reasons which are not necessary to explain; indeed, I do not know that anybody can explain them, except the Union Pacific people and they never have, but all the necessary arrangements had been completed up to the final ratification. They included a contract with the Panama route whereunder the Trans-Continental lines leased from the Steamship Company sufficient space in their steamers to accommodate a stipulated tonnage. The Canadian Pacific demanded, as the price

of its co-operation in this agreement, a differential of 10
3471 percent, but finally consented to take 9 percent. The representative of the Canadian line, in his statement yesterday or to-day, alluded to a difference that arose between the American lines and the Canadian line, as between the New York meeting and the Milwaukee general meeting, and the later Milwaukee freight meeting. I do not consider it necessary to traverse what he said. I do not think the Canadian Pacific came out of that controversy with very much credit. As I have said, this agreement failed of final ratification, so that there has been no agreement, differential or otherwise, between the Canadian line and the American lines since 1892.

Arbitrator WASHBURN. Mr. Stubbs, I asked Mr. Kerr this morning, whether that concession of 9 percent—differential rate of 9 percent—

was agreed to by the American lines and he said it was, but that the agreement was never put into effect.

Mr. STUBBS. You understand, Mr. Chairman, how these things go; that we will get together and agree upon all details of a contract, but that at the last it must receive unanimous vote.

Arbitrator WASHBURN. I only mentioned that in connection with your remark a short time ago, that the percentage differential was never allowed them.

Mr. STUBBS. That is true.

3472 Arbitrator WASHBURN. Is it true that it was entered into?

Mr. STUBBS. It never was consummated.

Arbitrator WASHBURN. But it was agreed to?

Mr. STUBBS. Yes, it was agreed to, but—No, I have never said it was.

Arbitrator WASHBURN. I understood you to say so.

Mr. STUBBS. No, sir.

Arbitrator WASHBURN. I understood Mr. Kerr to say this morning that it was conceded to him by the American lines and I understood you to say that the agreement was never consummated.

Mr. STUBBS. The Chairman must be very well aware, I know, from his long experience in the business, that no agreement of that character becomes complete until the final vote upon the ratification of it. We never got the final ratification of all these details. The most that can be said is that, if the Union Pacific had voted, finally, to confirm that, it would probably have voted under a 9 percent. differential. That is the most that can be said in that direction. No one can say whether it was the 9 percent differential that moved the Union Pacific not to vote for it or not. No one can say that if the Union Pacific had voted for it, that some other company would not have failed to ratify it. So far as its binding effect upon either party is concerned, it is just the same as if the New York meeting had not occurred, or that the Milwaukee meeting had never occurred.

3473 As I have said, this meeting failed of final ratification, so that there has been no agreement, differential or otherwise, between the Canadian line and the American lines since 1892. I mean by that that since 1892 the Canadian line has never had a differential on San Francisco business. They have made a difference in rates, but a differential is essentially the product of an agreement and we have never agreed since that time to any differential rate with the Canadian line. There has been no time since 1892, during which any one of the American lines were violating any good faith or any agreement whatsoever with the Canadian line, or could not have made the same rates as the Canadian line. In practice, however, the Canadian line has followed the American Trans-Continental lines in the publication of tariffs, by discounting the latter's rates to San Francisco 10 percent, thus arbitrarily increasing the difference between its rates and those of the American lines on the lower classes, which cover the bulk of the tonnage, almost 100 percent as compared

with the difference prevailing by agreement in 1892. That the apparent difference between the published rates of the Canadian line and the published rates of the American lines was not in practice maintained, has been for a long time manifest to every one concerned in the business. I, myself, have received complaints from Vice-President Shaughnessy, of the Canadian line, alleging that he knew, as a matter of fact, that the American lines were not observing that differential, so-called by him. Rate cutting, open and secret, has been general and frequent and it is the judgment of the American lines that primarily the attempt of the Canadian line to carry
3474 lower rates was at the bottom of it, although it must be confessed that the action of the Canadian line will not account for all the rate demoralization in the Trans-Continental business. However, it had so much to do with it that the call for the August meeting at Denver, which adopted the agreement to arbitrate this question, a copy of which, I believe, was sent to the Canadian Pacific Ry., read as follows:

"Westbound rate conditions have become so demoralized by attempts to meet Canadian Pacific differentials that I think the domestic Trans-Continental lines should immediately decide upon a settled policy to be pursued uniformly by all, either to abandon sporadic efforts to equalize Canadian Pacific rates and strictly maintain published tariffs, submitting to large diversions to Canadian line, or to formally notify Canadian Pacific that United States lines will no longer submit to its demand that they shall make higher rates, and then proceed jointly by published rates to meet whatever action Canadian Pacific takes. The importance of this question merits the attention of the highest officers of lines engaged in California traffic with the east. Will you attend a meeting at Denver on Monday 22nd inst., for the purpose of discussing and disposing of this question?"

And this telegram met with a general response.

So much for the opening of the case. The first question sub-
3475 mitted to the Board is: "Whether the Canadian line is or should be entitled to a differential under the rates established by the other lines, meaning the American lines." Now we submit that a differential, in the sense used here, is a predetermined and acknowledged difference between the respective rates of two or more carriers by which the rates of one or more (usually denominated the "differential" line) are made lower than the rates of the others, commonly referred to as the "standard" lines. A differential is therefore for the purpose of competition and advantage in rates, an artificial advantage. Mr. Kerr in his statement calls it a money advantage. Its purpose is to force an arbitrary allotment of traffic, or, to use the language of the Interstate Commerce Commission, an arbitrary distribution of traffic. Here is what the Commission says on that subject:

"The purpose of a differential is undoubtedly to enable a line to participate in traffic which it could not obtain if it were compelled to compete at the same rate as its rivals. It is in its essence a device

for the distribution of traffic. At the basis of every inquiry into the reasonableness of a differential, therefore, lies the question whether the line claiming it is entitled to participate in the traffic involved." (Interstate Commerce Commission Opinion—" Canadian Pacific Passenger Differential," Page 8, Paragraph 2.)

That reference is to the typewritten copy that I had of that report and opinion, before I had received the printed copy. The
3476 Canadian line does not rest its claim that a difference should subsist between its rates and those of the American lines; that the latter should charge more than it charges for moving traffic between San Francisco and this eastern territory (pointing to map) upon the ground that it can perform the service at a less cost to itself than the cost to the American lines. On the contrary, its acknowledged grounds of contention indicate, prima facie, that its cost is greater than the cost to the American lines. It does not ground its claim upon the averment that the rates of the American lines are unreasonable and unjust to the public; nor that they prevent the largest and freest interchange of trade by the communities served by these carriers. On the contrary, it has confessed from time to time, and will not now deny that the rates of all the interested lines are unreasonably low. It simply avers that it presents certain physical characteristics which when contrasted with the physical characteristics of the American lines are objectionable to the shipper; that if these objectionable physical features are not in some way counterbalanced, it cannot participate in the subject traffic. As a counterbalance to the alleged physical difficulties, it demands that the American lines shall submit to its use of a differential. That is to say, that the American lines shall give it an artificial advantage in rates, as a means whereby to force traffic to follow its line as against the American lines. It justifies this demand by the assertion of a right to a fair share of the subject traffic. It does not define the term fair share, whether it is more or less than any part of the whole; whether it is one percent or more, or 99 percent or less. The Canadian
3477 line's claim for the artificial advantage of a differential is therefore a demand for the arbitrary allotment to it of some portion of the American traffic in which the American lines have the natural advantage which the Canadian line claims it lacks. The design of the differential is to turn the traffic from routes offering natural advantage to routes asserting natural disadvantage and its ultimate purpose is to assure to the Canadian line an arbitrary, but indefinite, allotment without interference of the American lines; in other words, to remove that share of the traffic from rail competition and allot it to the Canadian line. We meet this claim by the general averment that the Canadian line is but one of several lines engaged in the traffic which are in like manner entitled to an allotment; otherwise one line is protected by discriminating against the rest. Apportionment by arbitrary means that does not provide like adjustment for each of the other lines engaged in the traffic, cannot

be just and right. In any traffic, natural right is inherent in natural advantage. Natural advantage being urged against the American lines is an admission of their natural right in the traffic. If any arbitrary plan of allotment or distribution of the traffic be feasible, it cannot be right and just unless giving recognition to the natural rights of the American lines and protecting them therein. To proceed upon any other theory must sacrifice the natural right in the traffic of the lines having natural advantage, that the interest—not the right—of the Canadian line may be protected and advanced.

3478 The definition of the word "entitled," in the sense it is used in the Denver resolution, is "having a right or a just claim to." (Century Dictionary.) The submission to the determination of this Board proves that the asserted right is not absolute; otherwise they would not submit it to arbitration. The legal rights of the respective parties are defined by statutes; hence it must be that the term is used relatively, strictly in the sense of the term "equitable right," just and right under all the circumstances of the particular case, fair and equal. Under this exposition of the meaning of the terms employed, the first question may be restated, in order to present in its clearest form the issue raised, in the following language:

1st:—Has the Canadian line a right which is equally fair and just to all concerned, under all the circumstances, to a share of the San Francisco traffic which warrants it in calling upon the American lines to force an undefined part of that traffic to seek the Canadian line instead of the American lines, by demanding higher rates than are accepted by the Canadian line?

The right claimed, not being asserted as an absolute right or a legal right but an equitable right, must be determined by the circumstances and conditions surrounding and affecting the relations of both parties, the Canadian line and the American lines, to the subject traffic. Therefore, the Canadian line sets forth, as we have said, certain physical characteristics alleged to subsist with its line, which it denominates as disadvantages or disabilities, to counter-balance which

3479 it claims the right to an artificial advantage over the American lines in the shape of a differential. The physical disabilities alleged to subsist with the Canadian line by contrast with the American lines are—

That its line is a broken one, meaning thereby, partly by water and partly by rail, necessitating the transfer en route of goods from car to vessel and vice versa;

That its steamer service on the Pacific Ocean is infrequent, causing delays as compared with daily service offered by the American all-rail lines;

That it is the longest line between the Atlantic and Pacific seaboards, as against the Sunset line in particular;

That it has not yet demonstrated its ability to make time equal to the time made by the direct routes over the American lines and by the Sunset line;

That it carries the goods through a foreign country subjecting the merchants to annoyances, custom requirements and delays.

This last point, according to my recollection, Mr. Kerr has not treated. I gather this from our discussions in meetings on this subject. I have pretty generally used the words of the Canadian Pacific representative in stating their claims here.

3480 They (that is, these disabilities) are necessarily asserted to subsist with the Canadian line as against all the American lines—not against a selected one, or some, but against all of them; not against the all-rail lines alone, but against all of them. Therefore, we submit that the relative characteristics so asserted must be established conclusively; that the physical features set forth as comparative disadvantages must be proven to be peculiar to the Canadian line and to it alone among all the lines concerned; otherwise they do not adequately support its contention, if, indeed, they afford any support whatever. If like physical features are found to subsist with one or more of the American lines in the same or approximately the same degree, then in respect to them the Canadian line is under no disadvantage compared with the American line or lines possessing substantially the same physical features and is not entitled to a differential under their rates. If it is not entitled to a differential against some of the American lines, it is not entitled to a differential against any of them, for this is the submission in this case: "Is the Canadian line entitled to a differential under the rates of the other lines?" Not under the rates of one or some of the other lines, but against all of them. The other lines, the American lines, stand as a unit, as opposed to the claim of the Canadian lines. At the morning session, Arbitrator Day asked the Canadian line's representative the question: "Do you regard that you are entitled to charge a lower rate on California traffic than is charged by the Northern Pacific on California traffic?" and his answer was, "No, if they use the water lines,"—

3481 and yet his submission is that he is entitled to a differential under the rates of all the other lines.

Now, assuming, for the purpose of argument, that the conditions described do subsist with the Canadian line and for that reason that line cannot secure rightfully the traffic which belongs to it, we submit, for the consideration of the Board, that there is, among the American lines on our side, a number of lines which are broken in the sense described; lines which are subject to the same delays incident to infrequent steamer service; lines which are as long—and some of them longer—than the Canadian line; lines which, when measured by these alleged hindrances, cannot make any better time with freight than can be made by the Canadian line; that against these lines the comparative disadvantages alleged to characterize the Canadian line do not subsist; therefore, there are no inequalities or disabilities as between the Canadian line and these of the American lines, to counterbalance by a differential or any other device. It follows, that if per se the physical features set forth by the Canadian line as characterizing its line constitute sub-

stantial ground for a just claim to the artificial advantage of a differential as an offset to the facilities offered by other lines, these American lines may justly claim the same consideration. Their title to a differential is quite as good as that of the Canadian line, and to give the Canadian line on account of the physical characteristics referred to, any artificial advantage over them, would be unjustly discriminative and inequitable in the highest degree. It would be to declare that the Canadian line's right to participate in
3482 the domestic carrying trade of San Francisco is a prior right; its title a higher title, than the right and title of the American lines aforesaid. The Great Northern at Seattle, the Northern Pacific at Tacoma and Seattle, connect with the same steamers for San Francisco as the Canadian line connects with at Vancouver. The distance from Seattle is 804 miles as against 833 miles from Vancouver. These are distances that are taken from the official schedule of distances published by the Pacific Coast Steamship Company. The Oregon Railroad & Navigation Company connect at Portland, Oreg., with steamers for San Francisco which are owned jointly by the Oregon Railroad & Navigation Co. and the Pacific Coast Steamship Company. It also connects with the Great Northern Ry. at Spokane and with the Oregon Short Line Railroad at Huntington. Huntington is on the Oregon Short Line. The latter, in turn, connects at Granger with the Union Pacific; at Salt Lake with the Rio Grande Western, which, in turn, connects with the Colorado Midland, and Denver & Rio Grande, and at Pueblo, Colorado Springs and Denver, they connect with all these systems. The distance from Portland to San Francisco is 653 miles against 833 from Vancouver. These steamship connections which are actual, and not merely possible, form the following through lines to San Francisco, which correspond to the Canadian line in the respects described and are therefore justly entitled to every consideration as an offset to the alleged better facilities of other lines, that the Canadian line is entitled to on the same ground, namely:

3483

FROM MINNEAPOLIS.

First. The Great Northern R'y to Seattle and San Francisco.

Second. The Northern Pacific R'y to Tacoma, Seattle and San Francisco.

FROM OMAHA.

There are three routes from Omaha:

First. The Union Pacific Railroad via Granger, the Oregon Short Line Railroad and Oregon Railroad & Navigation Co. to Portland and San Francisco.

Second. The "Burlington," out through Denver, the Denver & Rio Grande, Colorado Midland, Rio Grande Western, Oregon Short Line Railroad and Oregon Railroad & Navigation Company to Portland, thence to San Francisco.

Third. The "Rock Island," following the same route through Colorado Springs and Denver, thence on via the Colorado Midland, Denver & Rio Grande, Rio Grande Western, Oregon Short Line and Oregon Railroad & Navigation Company to Portland, thence via Oregon Railroad & Navigation Company's steamships to San Francisco.

FROM KANSAS CITY.

There are three lines from Kansas City:

First. The Union Pacific Railroad through Denver, Cheyenne, Granger, Oregon Short Line to Huntington, Oregon Railroad & Navigation Company to Portland, thence via Oregon Railroad & Navigation Company's steamships to San Francisco.

3484 Second. The Atchison, Topeka & Santa Fe R'y to Denver, Colorado Springs or Pueblo, where they connect with the Denver & Rio Grande and Colorado Midland, in connection with the Rio Grande Western, thence via Oregon Short Line Railroad and Oregon Railroad & Navigation Company to Portland, thence via Oregon Railroad and Navigation Company's steamships to San Francisco.

Third. The Missouri Pacific Railway, the same way.

And now to illustrate: The Northern Pacific connections at Minneapolis, these blue lines (indicating on map), are identical with the Canadian line connections at the same point. South and east of Minneapolis, the Northern Pacific, the Great Northern, and the Canadian Pacific, its "Soo" line, all connect with identically the same roads. Therefore, with respect to all traffic moving via Minneapolis, to or from San Francisco, these two lines, the Northern Pacific—I might have said these three lines, the Great Northern, the Northern Pacific and the Canadian line—are upon an exact equality with respect to the service performed by their respective blue line connections. West of Minneapolis their respective physical characteristics compare as follows:

The Canadian line's mixed service via Vancouver is—

| | Miles. |
|---|---|
| Rail to Vancouver | 1,802 |
| Steamship to San Francisco | 833 |
| The entire service Minneapolis via Vancouver to San Francisco being | 2,635 |

3485 The Northern Pacific's service is—

| | Miles. |
|---|---|
| Rail to Seattle | 1,922 |
| Steamship to San Francisco | 804 |
| Total | 2,726 |

about 100 miles longer. Both lines have exactly the same connections at Minneapolis for all this traffic; and both lines have identically the same connections here (indicating on map). That is to say, they con-

nect with the same boats operated by the same Steamship Company. In other words, the same boats carry the same freight for both lines. Both lines use the vessels of the Pacific Coast Steamship Company for the Pacific Ocean service. Both lines are broken in the sense described. Both are alike subject to infrequent steamer service, but the Northern Pacific is the longer line, yet there is no good operating reason why they should not make equally good time. The contrast between the Canadian line's mixed service between Minneapolis and San Francisco, and the Northern Pacific's mixed service between the same points, will answer for a contrast between the mixed service of the Canadian line and the Great Northern, respectively, between the same points, as I have explained, save the immaterial difference of 104 miles in the length of the Northern Pacific and the Great Northern road, making the Great Northern a very few miles shorter than the Canadian line—I will give it to you, exactly; the Northern Pacific line is 91 miles longer than the Canadian line. The Great Northern is 13 miles shorter than the Canadian line between Minneapolis and San Francisco. From United States points through Minneapolis, obviously then, the Canadian line's mixed service

3486 is on a parity with the mixed service of the lines having terminus at Tacoma or Seattle, that is to say, the Great Northern and the Northern Pacific. Consequently, if the Canadian line is entitled to any differential as against the two lines named, it must be for its line east of Minneapolis. Having identically the same connections at Minneapolis as the Northern Pacific and Great Northern, there cannot be any difference as compared with those lines with respect to all this country. (Indicating on map.) For business from the seaboard, from Portland, Me., from Boston, Mass., from New York City, from Buffalo, from Baltimore, from Wheeling, from Pittsburgh, it has identically the same routes that the Northern Pacific and the Great Northern must use to get that business. If, then, for any part of this business, New England, for example, it chooses to use its routes via Sudbury and Montreal, through Ogdensburg, N. Y., or through Portland, Me., is it entitled to a differential because it elects to use those routes as against the very same connections of the Northern Pacific and the Great Northern, which are equally open to its use at the same rates, the same division of rates? If it elects to use that line and if it can establish that it suffers disability by using that line east of Minneapolis, does it not create the disability? And, if it creates the disability can it come to the Northern Pacific and Great Northern and ask them to compensate it for a disability of its own creation by a money advantage? The Omaha lines do not make the identical connections with those made by the Canadian Pacific at Minneapolis, but the difference in distance between these blue line points (indicating on map) and Omaha

3487 and St. Paul and Minneapolis, as the Board well knows, is not material, while the character of the service east of Omaha and east of Minneapolis is the same. Therefore, the Omaha lines (mixed rail-and-water lines via Portland), compete, or should compete with

the Canadian line upon equal terms so far as the service east of Omaha and Minneapolis, respectively, is concerned, for San Francisco's trade with this blue line territory. (Indicating on map.) West of Omaha, the service of the broken or mixed rail-and-water line, via Portland, formed by the Union Pacific, Oregon Short Line and Oregon Railroad & Navigation Company roads compares with the mixed service of the Canadian line west of Minneapolis as follows:

| | Miles. |
|---|---|
| Omaha to Portland, rail service | 1,823 |
| Portland to San Francisco, ocean service | 653 |
| Total | 2,476 |

As I have already explained, the service from Minneapolis via Vancouver, by the Canadian line, is 2,635 miles. The difference is 159 miles. Both lines are broken and are in the same manner subject to infrequent steamer service, while the difference in distances, 159 miles, ought not, as the Board well knows, to make any material difference in the time required for movement of the traffic between shipping point and destination. A comparison of the Canadian line's service west of Minneapolis, with the service of the broken mixed rail-and-water lines from Omaha via Portland, formed by the "Burlington," Rio Grande, Oregon Short Line and Oregon Railroad and Navigation Company's roads—(indicating on map) these lines are the
3488 B. & M. to Denver—Oregon Short Line—to Portland—will differ from that just made between the Canadian line and the Union Pacific line only in the respective distances between Omaha and Portland, the "Burlington" line being 367, and the "Rock Island" line 321 miles longer than the Union Pacific line, which would make them respectively longer than the Canadian line by 208 and 162 miles. Likewise the broken lines, mixed rail-and-water, from Kansas City, via Portland—I have already pointed them out—which lines serve the same blue line territory with facilities which are, for the most part, equal to those offered by the Minneapolis and Omaha lines, respectively, as before described, compare with the Canadian line about as the Union Pacific's Portland line does. The difference is in the mileage to Portland. This comparison shows the Kansas City lines via Portland, respectively, to be longer than the Canadian lines from Minneapolis as follows:

The Union Pacific line, total 2703 miles, by 68 miles.

The Atchison, Topeka & Santa Fe line, total 2813 miles, by 178 miles.

The Missouri Pacific line, total 2818 miles, by 183 miles.

From Portland the steamer sailings are, perhaps, more frequent than from Vancouver and Seattle, but that would count for very little against the all-rail lines' daily service, in that they sail once in three days against sailings every five days from Vancouver and Seattle—as stated by the representative of the Canadian line in his argument.

These comparisons are just and applicable to all the traffic
3489 which may, or can, move via Minneapolis, via Omaha, via Kansas City, to or from San Francisco, and the whole blue line territory shown on this map. Minneapolis, Omaha, and Kansas City, as the members of this board well know, are common base points for San Francisco rates—common gateways through which the San Francisco trade with this blue line territory moves upon an equality as to rate. Very much the largest share of the subject traffic passes through these gateways. The Canadian line uses its Minneapolis connections for all of its traffic with this entire blue line territory (indicating on map) except the Atlantic Seaboard; hence, with that exception, the Canadian line and the several American lines, so far as contrasted, are on a parity in respect to that part of their respective service or the service of their respective connections, east of these common gateways, so that the contrast of these lines west of these gateways is final and complete. The Atlantic Seaboard traffic is moved by the Canadian line via Sudbury and Montreal, Newport, Vt., and Ogdensburg, N. Y., but the American lines mentioned use the Minneapolis, Kansas City and Omaha gateways for that traffic also. That is, they use these gateways for New England and Middle States traffic as well as for this western traffic. The Minneapolis connections of the Canadian line, which are identical with the connections of the Great Northern and the Northern Pacific, are open to the Canadian line for Atlantic Seaboard traffic upon the same terms as they are open to and used by the Great Northern and the Northern Pacific and we make the point here that it follows, necessarily, that if the Canadian line elects to use the Sudbury-Montreal line instead, that is, instead of
the same connections which the Great Northern and Northern
3490 Pacific use via Minneapolis—that if it thereby incurs or subjects itself to any disadvantages or disabilities as compared to the American lines, those disadvantages are of its own creation and it cannot thereon build a just or reasonable claim that they should be counter-balanced by an artificial advantage in rates. We will proceed with the contrast, however.

From New England and Middle States territories, the Northern Pacific, Minneapolis-Seattle route is longer than the Canadian line's Vancouver route from all points save Philadelphia and Baltimore and in these cases the difference in distance is not material. It would be entirely overcome, and the comparison reversed, the Canadian line being shown as the shorter, if the Canadian line would use this line. (Indicating on map the line via Minneapolis.) The Great Northern, Minneapolis-Seattle route is longer than, or is practically the same length as the Canadian line's Vancouver route, except from Philadelphia and Baltimore, but these differences would be overcome if the Canadian line would use the same connections, they being equally open to it east of Minneapolis, as are used by the Great Northern. The distance is practically the same, possibly a little shorter, about thirteen miles, I think I stated, but as I said in the case of the Northern Pacific this distance would be overcome if the Canadian line would

use the same connections east of Minneapolis that the Great Northern uses. The broken routes via Omaha and Portland, Ore., compare with the Canadian line's Vancouver route, as follows:

3491 The Union Pacific-Oregon Short Line's Portland route is practically of the same length as the Canadian line's Vancouver route from Portland, Me., Boston and New York City and is only 260 miles shorter from Philadelphia, but these differences would be reduced to insignificance were the Canadian line to use its Minneapolis route. The "Burlington", Rio Grande-Oregon Short Line, Portland route is longer from all New England and Middle States cities, except Baltimore, where the difference is not material, and the conditions would be reversed by the Canadian line's use of its Minneapolis route. The "Rock Island's" Rio Grande-Oregon Short Line, Portland route compares the same practically as the "Burlington." The Missouri Pacific's Rio Grande-Oregon Short Line, Portland route compares practically the same as the "Rock Island's" route, and so does the "Santa Fe's" Rio Grande-Oregon Short Line, Portland route.

In the foregoing we have contrasted with the Canadian line eight of the American lines. There are no disparities in respect to their facilities, physical or other, on the eastern end,—say east of the Missouri River line; they are practically equal. On the western end, the extremes of difference are found to be American lines via Seattle against the Canadian line via Vancouver. The American lines' rail haul is longer by 91 miles. Their ocean haul is shorter by 27 miles. The American lines via Portland against the Canadian line via Vancouver; the American lines' rail haul is longer by 208 miles, ocean haul is shorter, by 180 miles. Equate the ocean haul with the rail

3492 haul by adding 15 percent to the ocean mileage (which is stated in geographical miles, while the rail mileage is expressed in statute miles) and the extremes of difference are found to be—American lines via Seattle against the Canadian line via Vancouver, (27 geographical miles) and the American line is longer by 60 miles. The American lines via Portland against the Canadian line via Vancouver and the American line is longer by one mile.

With perhaps the single particular of not being required to move their traffic through a foreign country, the characteristics of these lines are practically the same as those of the Canadian line. There is no natural advantage to counterbalance and an artificial advantage, a differential, against them in favor of the Canadian line, as we have averred, would be grossly discriminative and unjust, amounting to a declaration that the right of an alien to business in the United States is superior to the right of citizens. With respect to the disadvantage if it would be a disadvantage, by reason of having to transport the freight through a foreign country, which you will find given in the Denver discussion as one of the reasons why the Canadian line claims a differential and will also find it adverted to in the proceedings of the Trans-Continental Association or rather given in those proceedings by the representative of the Canadian line as one of the reasons,

and as an important reason, why it should be given a differential. With respect to that disadvantage, if it is one, it will be sufficient to say at this time that these American lines which I have described to you, when working with the Grand Trunk or the Michigan Central Railroad east of Chicago, as they all do to a greater or less
3493 extent, encounter the same disadvantage.

Arbitrator DAY. Or the Wabash.

Mr. STUBBS. Or the Wabash. These American mixed rail-and-water lines do not exist merely on paper. They are open and in daily use for both freight and passengers. They are effectively worked against the all-rail lines for San Francisco trade with Oregon, Washington, Idaho, Utah, and Montana. Some of them are preferentially worked for San Francisco's trade with St. Paul and Minneapolis and points farther east—the Great Northern works them. It matters not whether they have been worked more or less effectively for the subject traffic. The fact that the Canadian line has continuously, since 1893, been working openly on a lower scale of rates would alone be sufficient to account for their deficiency in that regard. The fact that they have elected to work upon an equality as to rate with the all-rail lines, regardless of the result upon the volume of tonnage open to their competition, is to our mind, very strong evidence of the injustice of the Canadian line's claim. If the Canadian line possesses a right to a share, defined or undefined, of San Francisco's trade, then these lines possess the same right to an equivalent share. If the Canadian line cannot obtain a fair share, whatever that may be, of that traffic at equal rates with the all-rail lines, then these lines cannot obtain a fair share at rates equal to those charged by the all-rail lines. If the Canadian line by the use of the differential can obtain traffic which it otherwise could not obtain, then a differential would force to these lines, traffic otherwise unobtainable. If the
3494 Canadian line, under these circumstances, is entitled to use a differential, then these American lines are entitled to use a differential. If these American lines possessing the same right, whatever its origin, whatever its scope, to share the traffic that the Canadian line possesses, presenting substantially the same physical features as those presented by the Canadian line, suffering the same natural disadvantages, if they be such, when compared with the all-rail lines, as are attached to the Canadian line; if these eight lines voluntarily forego the use of an artificial advantage to counter-balance the alleged natural disadvantages and not only voluntarily forego, but protest against its use, by themselves or any other line similarly circumstanced, is not that fact, for it is a fact, very strong testimony against the asserted right of the Canadian line to share the traffic;—against its being an equitable right, one that is equally just to all concerned under the circumstances of the particular case? If any one of them were standing—any one of these American lines that I have described, were standing alone against the Canadian line in competition for this trade, this question would never have reached the stage of arbitration. It would never have been raised. The

Canadian line would never have demanded a differential. Blot out from the map, remove from the earth's surface this single line of railroad (indicating on map) the Central Pacific between Ogden and Sacramento, the pioneer road—would any of these eight American lines entertain the proposition which is involved in the Canadian line's contention for a moment? Does the existence of the Central Pacific road and its operation as a part of a through all-rail
3495 line (in which some of the integral parts of the through lines via Portland, which are part water and part rail, are interested), alter the rights, the equitable rights of the Portland mixed lines as against the Canadian line or against any other competitor?

We contend that it does not—that as a matter of right, of equitable right, as well as a matter of law under Justice Brewer's decision in the case of the Chicago Northwestern, plaintiff in error, against John Osborn, and the same plaintiff in error against A. J. Junod (S. C. 52 Fed. Rep. 912), a through line is a line, is a unit, regardless of whether part of it may be used in forming another through line even if it be a rival through line. The reasonableness of this proposition is manifest. Any other view would deprive certain individual carriers, not only from participation in, but also of an opportunity to compete for a given traffic. To illustrate: If the Oregon Short Line (indicating on map), running from Huntington to Granger and to Salt Lake, were deprived of a connection for the purpose of making a through line to San Francisco, via Portland, with the Union Pacific at Granger, or with the Rio Grande Western at Salt Lake City, because those roads respectively had physical connection with the Central Pacific at Ogden, the Oregon Short Line would be deprived of all opportunity to compete for a share of the San Francisco traffic. Likewise, if the Rio Grande Western were denied, for through line purposes a connection with the Central Pacific at Ogden, on account of the latter's former connection with the Union Pacific in a through line which was ample to accommodate all the traffic, the Rio
3496 Grande Western, the Denver and Rio Grande and the Colorado Midland roads, would all be thrown out of competition for the California trade. The same reasoning would apply to the Canadian line's connections through Minneapolis and through Ogdensburg. Therefore, it seems conclusive to us that all of these eight American lines, part water and part rail, are distinct and separate lines just as the Canadian line is a distinct and separate line. For example, take the connection through Ogdensburg. The New York Central controls the Rome, Watertown & Ogdensburg Railroad, the traffic moves up out of New York over the New York Central or West Shore and up over the Rome, Watertown & Ogdensburg. If the Oregon Short Line is not entitled to make connection with the Union Pacific and Rio Grande Western, certainly the Rome, Watetown & Ogdensburg and the New York Central and West Shore are not entitled to form a connection with the Canadian Pacific. Therefore, as I stated before, it seems conclusive to us that all of these eight American lines, part water and part rail, are distinct and separate

lines, just as the Canadian line is a distinct and separate line. They are as much so now as they would be if the Central Pacific Railroad did not exist. Their relative rights and privileges as against the Canadian line are no more abridged by the existence of the Central Pacific road than are their duties as common carriers abridged by that fact.

We repeat that the issue presented to this Board is between the Canadian line on the one hand, and the American lines as a unit, on the other. If the claim of the Canadian line fails against one of the American lines, it fails against all of them. If the right of
3497 the Canadian line to a differential is not established as against the Northern Pacific, this Board will not award it a differential against the Northern Pacific, because it may be of the opinion that its claim is not unreasonable as against the all-rail line of the Central and Union Pacific. To do so would be to add to the disabilities of the Northern Pacific what is taken from the disabilities of the Canadian line. Will this Board work an injustice to the Northern Pacific in order to satisfy a claim of the Canadian line against the Union and Central Pacific all-rail line, no matter how reasonable such claim may be?

In May, 1888, the right of the Northern Pacific to make by its mixed rail and water line between Minneapolis and St. Paul and San Francisco the same rates as were made by the Canadian line between the same points was recognized and conceded by the Canadian line by vote of its representatives at a meeting of the Trans-Continental Association in San Francisco, but it long ago fell into disuse. The Northern Pacific found it would not work, for immediately upon the suggestion of the proposition the Oregon Railway & Navigation Co. came in and wanted the same advantage. Since then the Great Northern has been completed. Give the Northern Pacific a differential and can you withhold it from the Great Northern? Give it to the Great Northern and Northern Pacific and how can you withhold it from the Oregon Short Line and Union Pacific? If you give it to them how can you withhold it from the Kansas City lines? The Great Northern, Northern Pacific, Oregon Railroad & Navigation Co. in connection with the Union Pacific, which means the
3498 Union Pacific, the "Burlington," the "Rock Island," the Missouri Pacific, the Atchison, Topeka & Santa Fe, all in this market working a mixed rail-and-water line on a differential rate and where would rates be? How much business would the other lines get? What would the all-rail lines do with the San Francisco community, who began with the use of the Cape Horn route, accustomed to subdivide its business and to ship a large part by water around Cape Horn; accustomed to divide it between the Cape Horn sailing vessels and the Pacific Mail Company previous to the opening of the overland route; accustomed to put a large share on the sailing vessels, a small share on the Panama route and a still smaller share on the overland roads simply to avail themselves of differences in rates? Touch this question. Introduce differ-

ential rates with any of the American lines, and it must be manifest to any practical railroad man who knows the inter-dependence of those rates and those lines, that they will operate exactly as a cut rate. Let the rate be cut on the Great Northern and it goes down to the Gulf of California. Let it be cut on the Northwestern and it goes down to the Gulf of Mexico. Let it be cut on the New York Central and it goes down to Florida. You cannot stop it. An attempt to introduce differentials among the American lines will result in no difference at all in rates. All rail lines and the mixed rail-and-water lines will all be upon exactly the same footing.

It may not be amiss here, although I shall get to it later, to call the attention of the Board to the fact that there is a very small
3499 volume of traffic to be distributed over the various lines that can serve San Francisco. There is not a single line leading out of San Francisco—take the Central Pacific, take the Atchison, Topeka & Santa Fe, take the Oregon & California in connection with the Great Northern, or the Oregon Railroad & Navigation Co., or the Northern Pacific, or take the Southern Pacific line in connection with the Texas & Pacific, or take the Sunset line alone—any one of these lines can do the entire traffic and not tax the capacity of a well regulated, well conducted single-track road, which traffic now has to be divided with the Cape Horn sailing vessels, with the Pacific Mail, with all these various railroad lines. We have no great tide of tonnage that presses upon these roads here (indicating on map) at Chicago and at St. Louis. At certain seasons of the year when the capacity of them all is taxed, at a time when there is such a pressure in the grain trade that although the canal-and-lake rates from Chicago are lower, are recognized to be lower sometimes by a cent a bushel, can they not just as easily get the full all-rail rates as they can their lower differential rates? That is a question to be seriously considered when you talk about customs of other lines as precedents.

In reference to the equality of rates as between the Northern Pacific and the Canadian line, produced by vote in 1888, the Canadian Pacific concurring, that is to say, the Northern Pacific being given the same rates on business to and from Minneapolis via its ocean-and-rail line as the Canadian Pacific enjoyed by its ocean-and-rail line:
That action produced equality at that time. If equality of rate
3500 for San Francisco's trade with Minneapolis and St. Paul was just and reasonable, then, as between the Northern Pacific and the Canadian line, which the latter admitted by its vote just referred to, is it any less so now? If at any time there were just and reasonable grounds for placing the Canadian line and the Northern Pacific line on a rate equality for San Francisco-Minneapolis trade, would not the same conditions demand that the same equality of rate should subsist between these two lines for all San Francisco business moving via Minneapolis? If there is any disadvantage as between those two lines west of Minneapolis, I have demonstrated conclusively that the disadvantage is the Northern Pacific's and not the Canadian Pacific's. I have also brought to the attention of the Board, and the

Board's own knowledge supports it—that the Canadian Pacific's and the Northern Pacific's eastern connections at Minneapolis for this trade, are identical. Then, if the Canadian Pacific concedes that as for business between San Francisco and Minneapolis equality of rate is proper as between it and the Northern Pacific, how can it say that equality of rate is not proper between the Northern Pacific and the Canadian Pacific with respect to all this business passing through Minneapolis from Atlantic seaboard, Middle, Southern, Western or Southwestern states? I think I have dwelt enough upon the question of its own disability east of Minneapolis.

The mere purpose in itself of turning the traffic from the domestic to a foreign carrier does not give any title to a differential. On the most radical theory favorable to such title, the differential can
3501 be allowed as a matter of right and title, only when the disability is real, not optional.

If the contention of the Canadian line is not established against the Northern Pacific's broken line, how can it be established against the Great Northern's broken line? As I have explained, they have identically the same connections. The Great Northern line is a little shorter than the Northern Pacific, but not more than 13 miles shorter than the Canadian Pacific. It connects at Seattle with the very same steamers that the Canadian Pacific uses. Its line is broken, subject to infrequent steamer service, with consequent delays that are alleged to spring from that, in same manner and degree. If not established against either of the mixed rail-and-water lines via Minneapolis and Seattle, how can it be established against the mixed lines via Omaha and Kansas City, respectively, via Portland, via the lines that we have described?

We now pass from the American part water and part rail lines via Seattle and Portland, which work through Minneapolis, Omaha and Kansas City gateways, to the consideration of other American part water and part rail lines, whose ocean service is performed on the Atlantic side and which work via Mexican Gulf ports. Their San Francisco trade is confined almost wholly to that part of it which is done with the Atlantic seaboard territory. They are, therefore, much more restricted in the territory laid open to their competition than the Canadian line is. These lines, like the eight already reviewed, present physical features which are substantially similar to the characteristics of the Canadian line and pleaded by it in support of its contention. If there is a difference, it is of degree only,
3502 and in degree the advantage is with the Canadian line as compared with them. They are the—

| Southern Pacific "Sunset" Line: | Miles. |
|---|---|
| Morgan Steamship Line, New York to Algiers (New Orleans) | 1,800 |
| Thence via rail to San Francisco | 2,489 |
| Total | 4,289 |

| Texas & Pacific Gulf Line: | Miles. |
|---|---|
| Cromwell Steamship Line, New York to New Orleans | 1,800 |
| Thence via rail to San Francisco | 2,455 |
| Total | 4,255 |

| "Santa Fe" Gulf Line: | Miles. |
|---|---|
| Mallory Steamship Line, New York to Galveston | 2,300 |
| Thence via rail to San Francisco | 2,666 |
| Total | 4,966 |

They all do San Francisco business too at equal rates. They compare with the Canadian Pacific's line from New York in this wise:

| | Miles. |
|---|---|
| The "Sunset" line is longer by | 240 |
| The Texas & Pacific Gulf line is longer by | 206 |
| The Santa Fe Gulf line is longer by | 917 |

From the territory north, northwest and east of New York City, the difference in distance favors the Canadian line still more, because it takes the business up and forward directly by railroad, while we have to bring it down to New York and transfer it to steamer.

3503 From the territory west, southwest and south of New York City, the differences are the same as from New York City, as the traffic moves via New York City, to reach any of the lines contrasted.

Some of these Gulf lines have been engaged in the San Francisco trade for a period which antedates the opening of the Canadian line by several years, but they all work on the dead-level of equality as to rate, except in the respects which have been already explained. One of them, at least, has demonstrated that a mixed or broken line can successfully compete with the all-rail lines for California business. We refer to the "Sunset-Gulf" line, that great bug-bear of the Canadian Pacific. The success of the "Sunset" line in competing against the all-rail lines has been remarked by all who have been associated with or associated in this business for the last fifteen years. No one is more familiar with it than Arbitrator Midgley. It goes very far toward proving that it is not wise always to accept, as the product of knowledge and experience, the not uncommon notion that mixed rail-and-water lines cannot successfully compete at equal rates with all-rail lines, or that an artificial advantage in the shape of a differential or other device, is essential to participation in a common traffic by the rail-and-water lines as against all-rail lines. The success of the "Sunset" line, and the fact that our Canadian friends have been accustomed to cite it as a line against which, in particular, the Canadian line needed a differential, suggests the pertinency of a brief historical statement.

3504 The "Sunset" line was opened for San Francisco traffic in 1883. At that time its officers believed that it could not successfully compete at equal rates with the older and well advertised all-rail lines. Accordingly, they undertook to carry a lower scale of rates. There was an immediate and earnest protest by the all-rail lines. Within five months, less than five months, the "Sunset" line was obliged to adopt the all-rail schedule for California business and has since continuously maintained it, except at certain times when the violence of the all-sea competition temporarily drove the all-rail lines out of the business rather than involve their

intermediate traffic. To maintain itself, it improved the service. I am stating nothing now but what all those which are competitors with the "Sunset" line know. They have learned it by experience. It brought ship and car together, so that the transfer was as expeditious and as harmless to freight as the all-rail lines' transfer from car to car. It built large and fast steamships that reduced the sailing time between New York and New Orleans nearly one-half. It reduced grades, straightened its tracks, in one case shortening its line fifteen miles by bridging the Pecos River at enormous cost. It increased the speed of its trains and reduced the average time of crossing the Continent. It abolished overcharges which had been the rule. It promptly adjusted claims for loss and damage, previous delays in which had been a standing grievance with the California shipper. It earned the everlasting gratitude of the California shipper, and has since been fortunate in holding a fair share of its patronage, notwithstanding that during certain seasons cli-
3505 matic conditions are unfavorable, and that the all-rail lines now beat it by several days in the matter of time—the Canadian representative to the contrary notwithstanding—and are now and for several years have been equally prompt and efficient in their service in all respects. There was no such thing as an overcharge waiting six months before it was adjusted, or a loss and damage claim that was not paid promptly. Its managers, the managers of the "Sunset" line, seriously doubt if the line would have done nearly so well had it been allowed and continued to use a differential. They would have been apt to have folded their hands and trusted to a reduced rate to get the business.

The other Gulf lines, those of the Texas & Pacific, and the Atchison, Topeka & Santa Fe, respectively, have not been operated with the vigor that has characterized the management of the "Sunset" line. As a consequence, their respective participation in the subject traffic has been inconsiderable by comparison with the "Sunset's," and also by comparison with the more direct all-rail lines. Yet, equality as to rate has been the rule as between these several Gulf lines and as between them and the all-rail lines. They did not exact or ask a differential because they did not get what they supposed to be a fair share of the traffic.

Lest it be suggested from any source, to the minds of the Board, that the reason for the disparities between the other Gulf lines and the "Sunset" in the volume of traffic handled by each, respectively, may be the result of restrictions placed upon the Texas & Pa-
3506 cific by the Southern Pacific west of El Paso, and west of Mojave in the case of the Atchison, Topeka & Santa Fe, we submit that these lines have been continuously operated under contracts with the Southern Pacific that gave the same rights west of El Paso and west of Mojave, respectively, in respect to rates and the movement of traffic, as have been accorded the connections of the Southern Pacific, which, with it, form the "Sunset" line. Under these contracts they have had the right, so far as the Southern Pacific's con-

sent or interference was concerned, to meet, at will, the rates charged by any other through line, including the Canadian line, competing for the same traffic, and the Southern Pacific was obliged to share that rate on a prorata per mile basis of division. If the Southern Pacific did not, they had to go and take their chances before a Board of Arbitration as to who was right. That was the contract between both the Texas & Pacific and the Atchison, Topeka & Santa Fe. Notwithstanding, as we have said, they have elected to maintain equality of rates with the "Sunset" line, and with the all-rail lines. There must be some reason for this. Could there be adduced stronger testimony against the contention of the Canadian line that the physical characteristics pleaded by it furnish just grounds for its claim to a differential against any American line than this fact that these lines, carrying little or no business, comparatively speaking, and having these routes that I have described, still maintain equality of rates? Does it not illustrate what I have said would be the inevitable result if we introduced differentials into this business?

3507 All these Gulf lines present the same physical characteristics (some of them in an exaggerated degree), as are set forth as peculiar to the Canadian line. Undoubtedly they have equal rights with the Canadian line to have a share or a part of the traffic set apart for their exclusive enjoyment. By contrast the equities would be with the Texas & Pacific and "Santa Fe," rather than with the Canadian line, and we claim the same thing for the "Sunset" line. Having the same kind of a line, the same opportunities and the same necessities to obtain by fair means a reasonable share of traffic, a differential in their favor would operate to increase their respective takings in like manner and to the same extent that a differential in its favor would operate to increase the volume of traffic taken by the Canadian line. Having rights, equal to the right of the Canadian line, if the latter is, under all circumstances entitled to a differential, they are equally entitled to a differential.

Why is it that the Canadian line has not yet demonstrated the fact that it can make anything like the time in delivering to the east that the "Sunset Route" makes? We ask whether the Canadian line has ever tried to make time equaling that of the "Sunset." Has it built large and fast steamships of latest models to reduce the time of the sea-service? Has it scheduled its trains with special regard to San Francisco service? Has it improved the method of transferring from ship to car, so as to do it in the minimum time, or has it continued to use slow and antiquated vessels which serve many intermediate ports with much consequent loss of time,

3508 instead of running through direct from Vancouver to San Francisco, or prefecting its arrangement to use a rail connection? Has it scheduled its trains first with regard to San Francisco business, or has it given the preference to its way-traffic, and to its Oriental trade? It was opened more than ten years ago and has since been continuously operated. Has it improved

its service? In that regard, has it done anything like what the American lines have done, and which was equally possible to it? Rather, has it not depended wholly upon lower rates to secure traffic? Its rail-and-water line is shorter than the "Sunset-Gulf" line by more than 200 miles. The ocean part of its line is less than half as long as the ocean part of the "Sunset-Gulf" line. Why, then, in the name of all that is creditable in railroad management, has it not demonstrated that it can excel the "Sunset-Gulf" line in despatch? Is it not reasonable to require that the Canadian line should first do for itself what the "Sunset" line has done for itself before asking the American lines to help it against the "Sunset" line? If the "Sunset" line—a broken line—has demonstrated, by means which are as ready to the hand of the Canadian line as they were within the reach of the "Sunset" line, that it can command a share of the San Francisco traffic against the all-rail lines at equal rates, is it not unreasonable to assume that the Canadian line cannot do likewise? If the Canadian line will not first try the means employed by the "Sunset" line, what measure of justness and fairness to the American lines, or to the "Sunset" line, in particular, or to the public, which is deeply interested in securing efficient and
3509 adequate service, would there be in compensating the Canadian line for its remissness? Was not the Interstate Commerce Commission right in saying in the Passenger Differential case (page 9, paragraph 3):

"If the Canadian Pacific fairly can and fairly ought to make substantially the same time as is made by the American lines, then the fact that it does elect, at the present to use more time, ought not to weigh in its favor."

Who will deny the soundness of this reasoning? Apply it to the relative conditions affecting the ability of the Canadian line and the "Sunset" line, respectively, to perform equally good service, to make equally good time by employment upon the part of both of the same skill and energy. Then, if the Board please, what weight should be given to the Canadian line's plea in this respect as against the "Sunset" line or any of the American lines? Should the shareholders of the Southern Pacific, or other roads in the "Sunset" line, after having taxed themselves heavily to bring the "Sunset" service to the maximum of efficiency, on that account be subjected to another tax, an assessment which requires them to surrender a portion of their business to the Canadian line? The Interstate Commerce Commission justly says: "A differential is but a device to partition traffic." To suffer the Canadian line to use a differential against the "Sunset" is to turn traffic from the "Sunset" line to the Canadian line. It is taxing the "Sunset" line for the benefit of the Canadian line.

The builders of the Southern Pacific received no governmental
3510 or other aid, but a land-grant of doubtful value, by which I mean that much of it has been forfeited to the Government and there is doubt as to much that remains. The testimony of Sir Wm. C. Van Horne, President of the Canadian Pacific Railway, before

the Senate Committee on Interstate Commerce, shows that the value of the various aids received by the Canadian line from the Dominion Government was $35,000,000.00 in money, 18,000,000 acres of land, valued at $3.50 per acre, and 714 miles of road, which cost $35,000,000.00. Sir Wm. C. Van Horne acknowledges that for some of their land they received $3.50 per acre, and a statement that I saw (and which I cannot prove is from any authentic source, though it is said to have been compiled from official records), shows that the Canadian line sold their land, what has been sold, at prices ranging from $3.00 to $6.00 per acre. This testimony I refer to is in Report No. 847, 51st Congress, 1st Session, which I will file as one of the Exhibits.

The Southern Pacific shareholders have never received a dollar in dividends. The shareholders of the Canadian line were guaranteed and received for ten years, an annual dividend of three per cent. Manifestly, our poor Canadian friends ought to be further assisted; but ought they not to put their petition upon more substantial and creditable grounds?

Arbitrator DAY. You stated a moment ago that there was an annual dividend of three per cent guaranteed. By whom was it guaranteed?

Mr. STUBBS. It was guaranteed by the Government. I was under the impression it was a subsidy by the Government, but I find that the testimony of Sir Wm. C. Van Horne is to the effect that the
3511 money was deposited by the Company with the Government to provide for that dividend, but I did not go deep enough into it to be certain as to that. I did not think it was very important.

There have been filed with you the proceedings of the Trans-Continental Association, and of the Denver Meeting and various other documents, and if you examine those, you will find, as I have previously stated, that among the reasons urged why the Canadian line should have this differential, is the fact that they transported their goods through a foreign country under customs regulations. If the gentleman of the Canadian Pacific who presented its case here alluded to that, I did not hear it, but anticipating it, and knowing that the Board will find it in the record, I am persuaded to answer that point.

In respect to the annoyances and delays arising from customs regulation incident to moving domestic traffic through a foreign country and alleged by the Canadian line as prejudicial to it, we submit that they are largely imaginary, and the shipper is relieved by the carrier to such an extent that the alleged disadvantage is unimportant. Section 3006, of the Revised Statutes of the United States, confers the privilege of transportation through adjacent foreign territory of the products and manufactures of the United States from one port or place in the United States, to another port or place in the United States, under such rules as the Secretary of the Treasury may prescribe. This is the way it is done: When merchandise is offered for transportation from San Francisco to other places in the United

States, via Canadian Pacific Railway, delivery is made to the Pacific Coast Steamship Company. A shipper's part manifest ("Exhibit H") is presented at the Custom House by the shipper, or his agent, and duly sworn to. From this is made the special coastwise manifest ("Exhibit I"), and Shipper's manifest ("Exhibit J"). Certified copies of these are forwarded to Vancouver and to the port of re-entry into the United States. These three forms of manifest are the only customs papers required, and they are made out by the brokers employed by the Canadian Pacific Railway without charge to the shippers. When the steamer arrives in Vancouver, the merchandise is transferred to the cars under supervision of a United States Inspector, who fastens the cars with United States Government locks and seals. This Inspector detailed from the district of Puget Sound, is paid $3.50 per day, the United States being reimbursed by the Canadian Pacific Railway. At the frontier (Morristown, N. Y., or Portal, No. Dak.) the manifest accompanying the car is compared with that in the hands of the Inspector, and with the contents of the car, and if found to agree, the fastenings are removed, and the cars are thereafter free of customs control. No fees are paid. The broker's charges or salary, and the per diem of the Inspector are the only expenses, and these the shipper has nothing to do with. In the movement, westbound, similar papers are prepared and presented at Morristown, N. Y., and Portal, No. Dak., the cars proceeding under lock and seal to Vancouver, where the lading upon steamer is supervised by the Inspector stationed there.

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We contend that the deterrent effect of the necessary custom regulations upon the otherwise natural movement of traffic is immaterial. The American lines suffer it in like manner and degree when working as they do in connection with the Grand Trunk and Michigan Central, both of which lines have agents resident in San Francisco, actively competing for Trans-Continental traffic. The Michigan Central moves its great traffic between Chicago and Buffalo and points farther east or west under like customs regulations, in keen competition with the "Lake Shore" and "Pennsylvania" lines, which are free from such regulations, yet the Michigan Central makes no claim of disability on that account, and neither receives nor asks any compensating advantages in rates.

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Whereupon an adjournment was taken to 10 o'clock a. m., October 14, 1898.

3514

MORNING SESSION.

OCTOBER 14, 1898—10 A. M.

The meeting convened pursuant to adjournment.

Arbitrator WASHBURN. Mr. Stubbs, will you proceed with your argument?

Mr. STUBBS. Mr. Chairman, and Gentlemen, Members of the Board: I wish, first, to revert to an acknowledgment on the part of the Cana-

dian Pacific that their contention is for a differential under the rates of all the American lines. In answer to a question by Arbitrator Day, at the morning session yesterday, the Canadian Pacific representative answered, "No, our contention is that whatever the agreed rates of the Trans-Continental lines may be, that we shall be permitted to charge a differential rate below those rates."

In answer to a question from Arbitrator Day: "Do you regard that you are entitled to charge a lower rate on California traffic than is charged by the Northern Pacific on California traffic?" The reply was, "No, if they use the water lines. We are on record over and over again that in the case of the Northern Pacific and Great Northern, that wherever they use the steamer line from Puget Sound to San Francisco, they shall have the differential, if they want it. But they are out of San Francisco business; they do not claim to be San Francisco lines; they do not work for San Francisco business. In other words, they have made a trade."

He who affirms must prove. There is no trade; there never has been a trade between the Northern Pacific and the Great
3515 Northern on the one side, and the other San Francisco lines on the other side. They do work for San Francisco business. The Northern Pacific is in the trade and I may say daily takes business to and from San Francisco, using, however, for the most part, its all-rail line. The Great Northern takes business for San Francisco in connection with its ocean line from Seattle. It matters not how much they take, they are in it. But, assuming that all that is said by the Canadian line is true, how does it bear on this case further than to accentuate the position of the American lines, if, for any reason, the Great Northern and the Northern Pacific other than a trade, find that it is to their interest—and their interests are involved with the interests of the other lines—not to use a differential, because of consequences, the inevitable consequences to traffic as a whole,—what does that argue as against the claim of the Canadian line for a differential?

Reverting to what was said yesterday, as indicating the reason why a differential had not been used in favor of the so-called weaker California lines, let me repeat that I am talking to experts in the transportation business. Put a differential of 10 per cent on the Canadian line; put it upon the Great Northern Line; put it upon the Northern Pacific line, and I assert that you cannot refrain from putting it upon the Oregon Railroad & Navigation Co. and Oregon Short Line. The Kansas City gateway, the Omaha gateway, and the Minneapolis gateway must be upon an equality with respect to this business.
3516 No one would stand it. No line would stand any disparity between those gateways, and, especially is it reasonable, because all of those lines have like physical disabilities. Allow these lines, the Canadian Pacific, the Great Northern, the Northern Pacific, the Oregon Railroad & Navigation Co. with its Union Pacific, the "Burlington," the "Rio Grande," the Missouri Pacific and the "Rock Island" connections, to enter this territory with a 10 per cent differential, and what would be left for the line, the direct all-rail line via Ogden?

Where would the Santa Fe be? Where would the Texas & Pacific be? Where would this much vaunted "Sunset Route" be? Is it not apparent to every practical man that there would be no differential; that there could be no differential; that dead level of equality of rates would necessarily subsist? The only difference would be that instead of being upon a basis of reasonable rates, something that would afford reasonable compensation to the carrier and would contribute to the maintenance and stability of reasonable rates, we would all be down to the fighting basis, at cost, with no stability whatever to the rates. There would be open war until some one or more of the lines was exhausted, until stockholders and security holders stepped in and said—"Stop!" We would come out at the same hole we went in at just as in the case of the great fight between the "Atchison" and the other lines in 1886—dead level of equality of rates.

Reverting again to the comparison between the "Sunset Route" and the Canadian line: the "Sunset Route" competes in this New England territory, the great manufacturing center for cotton
3517 piece goods, domestics, boots and shoes, nails and many other commodities with which you are all familiar. It competes with the all-rail lines on a dead level equality of rates. The Canadian line takes up goods at Boston, or at any of these New England points or any of the interior New York points, in cars; transports them without breaking bulk to Vancouver, transfers them from car to ship and delivers them at San Francisco. The "Sunset" line and all the Gulf lines take these goods from Boston, as a rule, and put them aboard of the steamers of the Metropolitan Steamship Company; they are delivered by that company on their pier, in New York City; they are then lightered to the Mallory Steamship pier or to the Morgan Steamship pier, reloaded into the vessels of the Gulf lines, transported to New Orleans or to Galveston, then transferred from vessel to car, and carried to San Francisco. There is evidently a disparity between the ability to handle these goods; but in whose favor is that disparity? Is it the Canadian line?

I feel obliged to refer to a reference, or a statement made by the Canadian line, which I am sorry to have to notice. It seems to me it is beneath the dignity of this proceeding. I cannot see what the cutting of rates, or the maintenance of rates, between these lines currently, has to do with this proceeding. But it was deemed to be necessary by the Canadian people to refer to the "Sunset" line invidiously, I think, in order to account for the share of the traffic which it takes, which has nothing whatever to do with this controversy according to our construction of the submission. The advocate of the Canadian line says:

3518 "Now, in connection with accumulating business by the Sunset line, their water line being the initial, it is well known that steamer lines in securing business are not at all particular as to classification or weight. That is the history of the manner in which the steamer lines carry on their business usually and shippers often think they see an advantage in using the water lines as against all-

rail, in order to evade the classification and weight as much as possible."

Out of the abundance of the heart the mouth speaketh; but Brother Kerr forgot that on eastbound business his steamer line is the initial line. I have at hand a ready illustration of evasion of classification upon the part of the Canadian line, but I do not think it is fitting to introduce it here. He proceeds:

"It is also well known that the Southern Pacific Co. are pretty well hedged around in California and in large sections of the state they enjoy a monopoly. This is particularly so with regard to San Francisco, as all lines entering the city, with the exception of the Canadian Pacific and the Oregon Railroad & Navigation Co. must use the Southern Pacific tracks. Being in this position, they are enabled to influence business in various ways to the Sunset line, in which they have been very successful." (Thank him for that.) "Merchants are naturally chary of unnecessarily antagonizing a railroad company who has control of their business, and on the other hand, the Southern Pacific are in a position to offer various
3519 local inducements to merchants, thereby tying their business to the Sunset line. This is one of the chief reasons why the Sunset line has been enabled to hold such a large share of Trans-Continental business and proves that their circumstances are so entirely different from the Canadian Pacific that they are not entitled to differential rates as against all-rail lines."

I am not going to take the time of the Board in disputing such propositions, but for the sake of argument, suppose we admit that it is true—it is not true—but suppose that we admit it is true, that the Southern Pacific has a monopoly in California; that it has a tremendous leverage by reason of having hedged California in. By lease and by ownership the Southern Pacific controls about 3,000 miles of railroad in the State of California. Not all of them, but nearly all of those many miles of railroad have been built by the Southern Pacific Company,—by the men who control the Southern Pacific Company. In nearly every case in constructing these roads they crossed virgin soil tenanted only by the coyote and jack rabbit; they opened those valleys; they discounted the future by many years; they made this business. Shall they give it up to the Canadian line? Let them go down into Missouri with that same sort of an argument.

Now, again, returning to the question of the advantage to be derived by these Gulf lines, the "Sunset" line in particular, by underclassification of freight. From October, 1889, to January first, 1892, there was an inspection service at San Francisco over all the
3520 roads of all the Trans-Continental lines controlled by the Association, the inspectors were appointed by the Chairman of the Association, their salaries paid by the Association, they acted in complete subordination and under the entire, sole direction of the officers of the Association. From April first, 1893, to April 30th, 1897, under the Trans-Continental Freight Rate Committee, this system of inspection was employed for all the lines except the Canadian

Pacific, Northern Pacific and Great Northern. From June 1st, 1897, to date, the Trans-Continental Freight Bureau has directed and controlled inspection for all the lines except the Canadian Pacific. December 15th, 1897, less than a year ago, the Canadian Pacific was brought into the inspection. I do not think that has anything to do with this case, notwithstanding.

Resuming the argument where it was left yesterday, we ask what answer can be made to our showing in behalf of the American broken lines? Is it that they have alternative all-rail lines? There must be some answer to that question. Is it that they have alternative all-rail lines, that they elect to use them and thereby some of them are enabled to carry a share of the traffic with which they ought to be satisfied? To that supposititious question, our answer has been foreshadowed in part. It is that these American part water and part rail lines are through lines, de facto and de jure, open to the public use for transportation of freight between San Francisco and places on and east of the Missouri River line, as the Canadian line is open to such use; that they present physical characteristics differing so little from those presented by the Canadian line that they are equally
3521 available with that line; that their respective capacities to do that business are equal to those of the Canadian line; that the obligations of their respective Managers to secure all the business tributary to them or that can be made so at remunerative rates under reasonable conditions, are quite as binding as the similar obligations of the Managers of the Canadian line; that their respective obligations to connections and to their competitors are neither greater nor less than the obligations of the Canadian line to its connections and to its competitors; that their respective rights to share the San Francisco carrying trade are equal to and as sacred and inviolable as the right of the Canadian line; that each of these lines is a unit for this comparison with the Canadian line as in like manner and degree the Canadian line is a unit for comparison with the American lines; that they cannot be divided into their integral parts, their several constituent roads, without destroying the line, just as the Canadian line cannot be divided into its integral parts, its several constituent roads, without its destruction as a line. To say, that because the Union Pacific road is a part of an all-rail line between New York and San Francisco, or between Chicago and San Francisco, that it cannot also be part of an independent part water and part rail line, New York or Chicago to San Francisco, is equivalent to saying that because the New York Central or the "West Shore" is part of an all-rail line, New York to San Francisco, it cannot be part of a mixed water and rail line between New York and San Francisco, of which the Canadian Pacific is also a part: or that because the Chicago & Northwestern, or the Chicago, Milwaukee & St. Paul road, is part
3522 of a through all-rail line, Chicago to San Francisco, it shall not be a part of a mixed water-and-rail line between the same points, of which the Canadian Pacific is also a part. If this is sound reasoning, as we believe it to be, it necessarily follows that because one

of the constituent roads in a mixed line via Portland, or via Seattle, or via the Gulf of Mexico, is also a part of an all-rail line, the latter being a competitor of the former line for San Francisco business, and which carries a more or less considerable share of that business, that fact cannot be fairly used against the right of the mixed water-and-rail line as a unit to participate fairly in the subject traffic as against the all-rail line as a unit. This is obvious. Otherwise those parts of the mixed lines which were not also parts of all-rail lines would be completely cut off from any participation in the business. For example: Between Chicago and Atlantic Coast cities, the Baltimore & Ohio Railroad is a recognized standard all-rail line over which the standard rates prevail. It is also part of a rail-and-ocean line, and of a rail-and-lake line, respectively, over which differential rates are applied in competition with its own all-rail line.

Again: who is to decide for these several American lines what is or what should be a satisfactory share of the San Francisco traffic? Certainly not the Canadian Pacific. If the Canadian line is entitled to an undefined share of the traffic, which is equivalent to an unlimited share, then is there any limitation to be placed upon the shares of the several American lines, whether they be all-rail or mixed rail-and-water lines? The claim of the Canadian Pacific is made
3523 because of its so-called broken line. All of its alleged disabilities which were dwelt upon by our adversary arise from its use of this broken line. Why does it not use the all-rail line? In that case these troubles would disappear in a moment. If it elects to use a mixed water-and-rail line, can it be doubted it finds an advantage in so doing? Must we then as a matter of right superadd a money advantage? The Canadian Pacific has an all-rail line over which to work to and from San Francisco, just as it works between Minneapolis and Chicago and Cleveland, Ohio, and Tullahoma, Tenn., and Helena, Ark., over various connecting railroads. It uses its all-rail line as far as Portland, Oreg., and from Portland to San Francisco there are open to its use the identical railroad facilities that are open to and used by the Northern Pacific upon the same terms. In that event, as we have said, if the Canadian line elects to use its ocean line instead of its rail line, is it entitled to any consideration in the way of a differential or other device to maintain, or counter-balance, rather, the alleged disadvantages it is under by working its ocean rather than its rail lines? On the contrary, is it not manifest that there is an advantage, a real tangible advantage, resulting to the Canadian line by using the ocean line against the rail line? If there was not such an advantage, would it prefer the ocean over the rail line? As a matter of fact, we know that it uses the ocean part of its line from Vancouver instead of the rail line from Sumas, because there is an advantage in it.

Now, on the other hand, if the Northern Pacific elects to use the
3254 all-rail line from Portland against the ocean line from Seattle, or from Portland, the same choice being open to the Canadian line, does it by so doing give the Canadian line just

grounds for demanding a differential against it, or for saying that it ought to be satisfied with what it gets because it uses an all-rail line?

Again: The Canadian line works for the North Pacific Coast business; the business of Seattle, Tacoma, and of Portland—with all this blue line territory [indicating on map], upon a strict equality of rates with the Great Northern, the Northern Pacific, the Oregon Railroad & Navigation Company, and the Oregon Short Line.

Permit some repetition, as we wish this point to be understood; From and to each point in all of this blue line territory east of the Missouri River line, the Canadian Pacific, the Great Northern line, and the Northern Pacific line, the Omaha lines, and the Kansas City lines, respectively, via Granger and Pocatello, and via Ogden and Pocatello, work Portland business upon a strict equality of rates. This recognizes and establishes equality of rates as a principle between these interested lines for the rail service east of Portland.

Now, then, as we have shown that the identical roads and facilities between Portland and San Francisco are alike open upon equal terms to all the roads terminating on the North Pacific Coast; to the Great Northern, the Northern Pacific, the Oregon Railroad & Navigation Company, the Oregon Short Line and the Canadian Pacific, respectively, as part of their respective through all-rail lines to and from San Francisco, is it not manifest that they are upon the same
3525 equality with respect to San Francisco business, as subsists between them in respect to Portland business? If equality of rates is the rule with all these lines between eastern points and Portland, why should not equality of rate be the rule between them in respect to San Francisco business, the conditions and facilities south of Portland being identical for them all?

It may be that the Canadian line will give as a reason for not using the all-rail line, that the Northern Pacific between Seattle and Portland is not open to its use for San Francisco business upon reasonable terms, or upon terms which it can afford to pay. It pays the terms from all these points in this country [indicating on map] up to Minneapolis—local rates. But we ask in reply, why this reason does not apply to Portland business as well as to San Francisco business? I do not know that they make much use of that line, but it is open to their use and they maintain equality of rates. The Canadian Pacific line does use the Northern Pacific connection for Portland business, and does work upon an equality of rate with all the North Pacific Coast lines for Portland business. Whether it does or not, is of little moment. It is upon an exact equality with these lines south of Portland. Then why should it not work with them upon an exact equality as to rate for San Francisco business? I ask, in the second place, whether the Canadian Pacific has ever approached the Northern Pacific with a proposition to use its line between Seattle and Portland for business which San Francisco interchanges with all these eastern points, coupled with the withdrawal of its demand for a
3526 differential advantage on that business. We are informed and believe that it has never done so. But whether this is true or

untrue, we revert to the fact that it has established equality of rate basis to Portland for Portland business, which point it cannot reach all-rail except by using the Northern Pacific's road from Seattle. Then why should it not work upon the same equality of rate basis for San Francisco business over the line which the Northern Pacific uses between Portland and San Francisco and which is open to the use of the Canadian Pacific upon the same terms? We submit a comparison of the all-rail lines referred to—of the Canadian line, the Great Northern, and the Northern Pacific:

At Sumas (the International boundary line) the Canadian line connects with the Seattle and International Railroad for Seattle (125 miles).

Arbitrator WASHBURN. Is that road controlled by any other road?

Mr. STUBBS. No, sir.

Arbitrator WASHBURN. It is an independent road?

Mr. STUBBS. I understand it is an independent line and that the Canadian Pacific—you will find when you refer to the Denver Proceedings, that Mr. Kerr there says that the Canadian Pacific has a traffic arrangement with the Seattle & International road.

At Seattle, the latter connects with the Northern Pacific for Portland (185 miles).

At Spokane, the Great Northern connects with the rails of the Oregon Railroad & Navigation Company for Portland (449 miles).

3527 At Portland, both the Northern Pacific and the Oregon Railroad & Navigation Company connect with the Oregon & California Railroad for San Francisco (772 miles).

The business interchanged by San Francisco with New England and the Eastern Middle States, New York, Pennsylvania, etc., is fairly represented by the cities of Portland, Me., Boston, Mass., New York City, Philadelphia and Baltimore. The distance between San Francisco and the several eastern cities over the all-rail line described, will be found fully stated in "Exhibit N." According to this Exhibit, the Canadian Pacific has all-rail lines to San Francisco, as follows:

From Portland, Me., it is equal in length with the Great Northern and 125 miles shorter than the Northern Pacific.

From Boston it is 55 miles longer than the Great Northern and 62 miles shorter than the Northern Pacific.

From New York City its line is longer than the Great Northern and Northern Pacific by 163 miles and 46 miles, respectively.

From Philadelphia its line is 229 miles longer than the Northern Pacific line and 346 miles longer than the Great Northern's line, but this difference would be greatly reduced by the use of its line via Minneapolis.

From Baltimore its line is 385 miles longer than the Northern Pacific's line and 482 miles longer than the Great Northern's line.

These differences where they show against the Canadian line, would almost disappear if it would use its Minneapolis and "Soo"

3528 line route, using the identical connections for the business that

the Great Northern and Northern Pacific are obliged to use. Its percentage of the entire haul ranges from 70 per cent to 63 per cent while the Great Northern ranges from 48 to 45 per cent, and the Northern Pacific from 50 to 47 per cent.

Two factors of more or less relative advantage to the parties to this contention, or parties interested in the differential question are revealed by these comparisons:

First. The percentage of the entire haul performed by the interested parties.

Second. The length of the route, from start to finish.

The value of the first factor lies in this, that a line's ability to meet the demand, or secure the preference of connections—feeders—in the matter of division of rates, bears some relation to its share of the total haul, though we do not wish to be understood as saying that the share of the gross through rate taken by any of these lines is in the ratio of their respective haul to the total haul. For example: From Portland, Me., the Canadian line has the shortest line against the Northern Pacific, and besides, would receive, upon a prorata per-mile basis of divisions, 37 per cent more of the through rate than the Northern Pacific, with which to satisfy its connections. Taking 100 cents as the rate unit, it would have, in this case, 27 cents more than the Northern Pacific would have with which to pay arbitraries, or to persuade connections to give it the preference as against the Northern Pacific.

3529 Take, as another illustration, Baltimore. These are extremes that I give you. The Northern Pacific has an advantage over the Canadian Pacific, in length of line, by 385 miles, or 9½ per cent—assuming that the Canadian line will use its New York route—but the Canadian Pacific, upon a prorata per mile basis of divisions, would receive 21 per cent more of the through rate than the Northern Pacific would receive; or, to state it in another form, out of the through rate of 100 cents, Baltimore to San Francisco, the Canadian line would receive 13 cents more than the Northern Pacific, and would be by that much better able to satisfy its connections. If, on the eastern side, the Canadian line can go down into Tennessee and Arkansas, seeking business for which it has to pay, out of the short-line through rate to San Francisco, the published rates of connecting railroads for the haul of over 1,000 miles to Minneapolis, why can it not use the thousand miles of railroad necessary to connect it with San Francisco on the western side, no matter what the arbitrary is of the Northern Pacific? What becomes of its objection to using the Northern Pacific road from Seattle to Portland, because it cannot afford to? If the Canadian line elects not to do so, but for any reason chooses the steamship connection, in preference to the railroad connection, does it not thereby create whatever disability, if any, is attached to that choice? Is it under such circumstances entitled to a rate advantage over the Northern Pacific, the Great Northern, and others? It takes business from Tullahoma, and from Obion, Tenn.,

and from Helena, Ark.—takes it through up over this line (indicating on map)—pulls it away from the Kansas City, more direct route.

3530 We think these illustrations prove conclusively that the Canadian Pacific has, and can work an all-rail line to and from San Francisco, quite as advantageously as the Great Northern or Northern Pacific; that it has the same alternative in the use of an all-rail line as any of the mixed all-rail and rail-and-water lines possess and in that respect is under no disadvantage or disability whatsoever.

Though it seems unnecessary, it may be well, for the purpose of reference, to delineate, so to speak, the alternative all-rail lines of the Texas & Pacific and "Sunset." The detailed showing under this head will also be found in "Exhibit O," if you care to refer to it, showing the authority and how these distances are made up. These all-rail lines compare with the all-rail line of the Canadian Pacific as follows:

From Portland, Me., the Canadian line is longer than the Texas & Pacific line by 245 miles and shorter than the "Sunset" line, this line (indicating on map) by 168 miles.

From Boston, the Canadian line is longer than the Texas & Pacific line by 339 miles, and shorter than the "Sunset" line by 21 miles—(all-rail lines I am speaking of now).

From New York the Canadian line is longer than the Texas & Pacific line by 446 miles and longer than the "Sunset" line by 45 miles.

Arbitrator DAY. Are you speaking of all-rail, now?

Mr. STUBBS. All-rail lines altogether, now.

From Philadelphia, the Canadian line is longer than the Texas & Pacific line by 673 miles and 247 miles longer than the "Sunset" line.

3531 From Baltimore the Canadian line is longer than the Texas & Pacific line by 842 miles and 296 miles longer than the "Sunset" line.

We have a "Sunset" all-rail line as well as a "Sunset-Gulf" line. These wide disparities from New York, from Philadelphia and from Baltimore, in the distances via the Canadian line and the Texas & Pacific line, would, as I have heretofore explained with respect to the comparison with the Great Northern and Northern Pacific, be very much reduced if the Canadian line would use its Minneapolis route; use precisely the same line the Great Northern does, and which in part is used by the Texas & Pacific. The Texas & Pacific line is down through St. Louis, using the Trunk Lines up to St. Louis. The "Sunset all-rail" line is through Cincinnati and Louisville, thence over the Louisville & Nashville R. R. to New Orleans.

The highest percentage of haul is: for the Canadian line, 70 per cent, the Texas & Pacific 73 per cent, the Sunset 61 per cent. The lowest percentage of haul is: for the Canadian line 63 per cent, the Texas & Pacific 66 per cent, the Sunset 56 per cent.

The principal object of introducing this last comparison is to illustrate what little account is taken of differences in distances as between the American lines as affecting or creating differences in rates.

From the detailed statement found with "Exhibit O," it will be observed that the difference in the respective distances of the Texas &
Pacific and the "Sunset all-rail" lines, in favor of the
3532 former and against the "Sunset" (comparing these two domestic lines now)—is as follows:

| From— | Miles. |
|---|---|
| Portland, Me | 415 |
| Boston | 319 |
| New York | 421 |
| Philadelphia | 426 |
| Baltimore | 446 |

Yet these two lines work upon an equality of rates.

Compare these differences with the differences in the respective distances already shown of the all-rail lines of the Canadian line and the Great Northern, in favor of the latter, namely:

| From— | Miles. |
|---|---|
| Portland, Me | 2 |
| Boston | 53 |
| New York | 163 |
| Philadelphia | 346 |
| Baltimore | 482 |

(the differences as between the Canadian line and the Northern Pacific are less than these) and it will be seen that such differences in distance as exist respectively between the all-rail lines of the Canadian line and the Great Northern and Northern Pacific are not, either in theory or practice, regarded by the American lines as justifying a departure from what has always been, and is still believed to be, the necessary rule of equality as to rates for San Francisco business.

Take another example to illustrate the extreme in which difference in distance is disregarded by the American lines in their adherence to the equality of rate principle: The shortest all-rail line from the cities used in the previous examples to San Francisco is via Chicago,
Omaha, and the Union and Central Pacific. Adopting the
3533 Grand Trunk Route from Portland, Me., and the average of the distances over the principal lines from the other cities as the measure of distance east of Chicago; also the average of distances over the four principal lines between Chicago and Omaha to measure the haul between those points, the shortest through all-rail line will be found to be as follows:

| From— | Miles. |
|---|---|
| Portland, Me | 3,499 |
| Boston | 3,511 |
| New York | 3,344 |
| Philadelphia | 3,270 |
| Baltimore | 3,192 |

Compare these shortest all-rail lines among the American lines with the longest all-rail lines in same group, that is, among the American lines, which are:

| From— | Miles. |
|---|---|
| Portland, Me., via "Sunset" | 4,410 |
| Boston, via Northern Pacific | 4,387 |
| New York, via "Sunset" | 4,221 |
| Philadelphia, via Northern Pacific | 4,127 |
| Baltimore, via Northern Pac | 4,068 |

and the difference will be found as follows:

| From— | Miles. |
|---|---|
| Portland, Me | 911 |
| Boston | 877 |
| New York | 878 |
| Philadelphia | 857 |
| Baltimore | 876 |

These differences are more than 25 per cent of the total short line's all-rail distance, yet the necessity for maintaining for San Francisco business, the traditional policy of uniform and equal rates between all lines, whether all-rail or mixed rail-and-water, has been so urgent that the American lines have continuously and consistently disregarded them. They have in the same manner, since the enactment of the Inter-state Commerce law, disregarded the distribution of tonnage—whether one line got more or less, a large share or a
3534 small share, as a factor in determining the relation of their respective rates. In California freight traffic they have practically subscribed to the doctrine that a line is entitled to no less, and no more, than all it can secure by lawful methods on an equality of rate with its competitors. If, as is true, it is the traditional policy of the American lines as between themselves to recognize and practice equality of rates as the only reasonable and just rule under all the circumstances, to govern the relations of their respective rates for San Francisco traffic with this eastern territory, regardless of the characteristics of their respective lines, whether all rail or mixed rail-and-water, whether equal in length or widely differing, whether rich in local traffic or poor, whether relatively strong or weak, upon what equitable ground can the Canadian line maintain a demand or establish as a right that these American lines (many of whom present the same characteristics as are pleaded by the Canadian line in support of their demand), shall deal preferentially with a stranger, depart from a well-settled policy, do for it what they dare not do for each other, by giving it a rate advantage in the nature of a differential? Are we not stretching the limit of hospitality when we admit it to such a share of the business which we have developed, promoted and sustained (and which we must without its assistance, continue to promote and sustain), as it can do upon equal terms? Are we not—in pursuit of equity, that which is equally right and just to all concerned—by this showing, irresistibly led to the conclusion of

3535 the Inter-State Commerce Commission in the Passenger Differential case? We quote: "If this Canadian corporation comes into the United States to compete for traffic between points in the United States, it should be content to operate upon the same terms with its American competitors, unless those terms are clearly unjust and unreasonable. It ought not to come into this territory and insist upon a different order of things than it finds there unless its title to that demand is clear beyond question."

As near as I can judge, the Canadian Pacific rests its claim almost wholly upon custom, upon precedent, as between the American lines. If I were an arbitrator in this case, I might say that it had made out a case but not this case. It has been urged in support of the contention of the Canadian line, that it is customary among rail carriers to accord differentials to so-called weaker lines, meaning carriers partly by water and partly by rail.

For the purpose of reference and illustration we beg to file with the Board a statement of all the freight differentials now in effect throughout the country according to the records of the Inter-state Commerce Commission, prepared by the Secretary of the Commission. Although his letter stated that the list covered all, I do not think that it includes all. It is marked "Exhibit K." But, in order to make up any deficiency in that respect, I also beg leave to file Central Freight Association Circular, dated Chicago, November 26, 1897, publishing rates to and from west bank Lake Michigan, which are not shown in Secretary Moseley's statement. The latter is marked "Exhibit k–2."

3536 I also desire to file with the Board a statement of the existing freight differentials in the territory of the Joint Traffic Association, as shown by its records furnished by Mr. George R. Blanchard, Commissioner. It is scheduled as "Exhibit K–3."

In respect to these customs the Canadian Pacific representative says:

"Later, I propose to show the great number in extant and the universal custom, law and rule, prevailing throughout the whole United States and Canada, whereby broken routes, rail-and-water, ocean-and-rail, river-and-rail, all have differential rates in order to enable them to compete with their direct rail rivals. I will go into the detail of this matter later on."

He did go into the detail of it. Now, under the common law, the common law of England which has spread throughout that Empire over all its Provinces and Colonies and because of its wisdom has been adopted by almost every State in this American Union,—custom is limited. Customs are territorial. Custom must be universal; it must be of ancient origin; so long in the past that the "memory of man runneth not to the contrary." We contend, therefore, that the use of this class of differentials is restricted to certain territories and to conditions which destroy its validity as a general rule applicable to other territories and all conditions. As we have already amply illustrated differentials are not now used and have never been

used by the American lines between themselves for San Francisco business, with the single exception of the Northern Pacific to
3537 Minneapolis, which was dropped very suddenly, although the respective physical characteristic of these lines differ widely, presenting every feature of relative advantage and disadvantage that enters into the alleged reasons for the use of differentials in other territories. They are not used in the Southeastern Mississippi territory on business to and from Ohio and Mississippi River crossings, from Cincinnati to New Orleans, where the opportunities for mixed-rail-and-water lines are frequent. They are not used for San Francisco traffic with Montana, Utah and Colorado, as between the all-rail lines and the mixed water-and-rail-lines. There is much valuable business in Montana, Colorado and Utah, competed for by these direct Central Pacific, Union Pacific, Denver & Rio Grande lines and by the Oregon Railroad & Navigation Co. and Oregon Short Line, and for Montana by the Great Northern and the Northern Pacific, as well as the Oregon Railroad & Navigation Co. and Oregon Short Line, but we all work on a dead level equality of rates. In the use of differentials, as in the classification of freight, in the relation of the rate charged and the differences hauled, in the method of their association and co-operation, each group of carriers serving different territories is a law unto itself. It would not be argued that because the Central Freight and Trunk Lines use the Official Classification that the Trans-Continental lines should adopt it and abandon the Western Classification which they regard as more suitable to their traffic; or because the first class rate from New York to Chicago is 75 cents per hundred pounds, that the Trans-Continental Lines should charge at the rate of 75 cents per hundred for hauling
3538 first class freight 900 miles; or that because the Central Freight and Trunk Lines maintain a large and extensive organization, to maintain just and uniform rates, having Commissioners, Joint Commissioners, Boards of Managers, Boards of Arbitrators, that the Trans-Continental Lines should effect and maintain the same kind of an organization. We submit that it would be as reasonable to argue in this manner as to contend that because differentials are used in other territories for reasons and purposes that may be wholly justifiable to the carriers interested, that their use should be recognized and adopted as of right,—not expediency—as of right between the American lines on the one hand and the Canadian line on the other hand, in favor of the latter. The policies of the railroads, in dealing with each other, as connections or competitors, have not graduated from the formative period, nor by age, uniformity, or universality of use have they been hardened and polished into traditions and customs having the force of law.

Again, we submit that the use of differentials by other lines is of no value as a precedent in this case, because that use is the product of an agreement between the lines interested. The term itself, in railroad parlance, necessarily implies consent. It may be, and according

to the dictum of the Inter-state Commerce Commission is, in all cases, "Consent against the will," which leaves the consenting party with regard to the question of right or title, "of the same opinon still," but whether the agreement is founded upon an acknowledgement of the
right of the differential line or lines to participate in the traffic,
3539 or upon an involuntary concession, as a matter of expediency,
that it or they may participate in the traffic, its existence always depends upon agreement between the interested parties. In the case at bar, the essential factor of consent, agreement, is absent.

The American lines deny the right of the Canadian line to participate in San Francisco business unless it can do so upon equality of rate with them. They refuse to concede the Canadian line a differential as a matter of expediency, and are here to try the question of the Canadian line's right to share the traffic if a differential is necessary to enable it to do so. We are not here to try the question whether it is expedient to give the Canadian line a differential in order that it may share in the traffic. That is not the question submitted for determination by this Board. Therefore, we submit that the absence of consent, or agreement, nullifies the customs of other lines in other territories as precedents in this case. We further submit, that because differentials in other territories are the product of consent or agreement, it will be found that they are uniform in their application to all lines interested in the same business, which are alike circumstanced. By referring to "Exhibit K," it will be observed that the differential rates in use from Western points to Seaboard territory, to Boston and Providence, via rail-and-ocean, are used, alike, by seven different lines to New York and Jersey City, and to Philadelphia via rail-and-ocean, by four different lines. In like manner, from Boston to Western points, via ocean-and-rail, they are used by eight different lines,
from Providence by five different lines, from New York City
3540 by five, and from Philadelphia and Baltimore by three. The
lake-and-rail and rail-and-lake differentials, as between Detroit and Toledo and Seaboard cities, in both directions, are applied, not by a single line, but by all lines via Cleveland and via Sandusky. Likewise, the differentials from Atlantic seaboard points to Texas points are applied to all lines via Atlantic Ocean and Gulf ports, differing in amount as between the Atlantic Ocean and the Gulf ports, it is true, but that is because there is a material difference in the Ocean service. They are the same via all the Gulf ports, via New Orleans and the different lines,—via Galveston and the different lines. Likewise, the differential rates from Atlantic seaboard points to Colorado points and Utah points, via Atlantic and Gulf ports, apply by all the several lines, whether through New Orleans or whether through Galveston. All the broken lines—mixed water-and-rail lines—use the same differential, regardless of whether they have an all-rail line or not. For example, the Union Pacific Denver & Gulf road forms a part of the Union Pacific all-rail line from New York to Colorado, and also a part of the mixed rail-and-water lines via New Orleans and via Galveston from New York to Colorado; the

latter taking a differential against the former. The Chicago, Rock Island & Pacific, and the Atchison, Topeka & Santa Fe, respectively, participate in both the all-rail lines, via Chicago, and the mixed water-and-rail lines via New Orleans and via Galveston, from New York to Colorado and Utah, the latter being so-called differential lines. Again, the lake-and-rail differential rates to North Pa-
3541 cific Coast terminals apply through Lake Huron and the Straits of Mackinaw, via Chicago or Milwaukee, and through Lakes Huron and Superior, via Duluth, via Port Arthur, via Gladstone (the connection of the "Soo" line) and via West Superior. That is to say, they apply, alike, over all the rail lines west of Chicago, Milwaukee, West Superior, Port Arthur and Gladstone, in connection with Lake Steamer lines east of the Junction points named, and every one of these rail lines west of said junctions has rail connections making through all-rail lines over which they can work the same traffic.

There is no disparity; every rail line to the North Pacific Coast participates in these differentials. If they choose to work with lake connections, the Union Pacific, via the Oregon Short Line, the Union Pacific, over the Ogden, Central Pacific and what is called the "Shasta Route" to Portland; the "Burlington" and the "Rio Grande," over the Oregon Short Line or over the Central Pacific and the "Shasta Route," as well as the Canadian Pacific via Port Arthur, in connection with the "Soo" line from Gladstone, or in connection with the all-rail lines from Chicago and Milwaukee—all have the same rate. There is no inequality.

In some cases these differentials are allowed in part to cover the marine risks which the shipper takes. This is true of the differentials between the Atlantic Seaboard and Texas, and of those between Lake Michigan ports and Atlantic Seaboard, and of the lake-and-rail differentials between North Pacific Coast points, and the territory east and south of the lake ports, etc., but it is not true of the differentials between western points and Atlantic Seaboard
3542 territory and the South-eastern territory in which cases the carriers relieve the shipper of the marine risk and give him lower than the standard all-rail rates. Customs that differ in these important respects can hardly be said to have the uniformity necessary to create a valid rule for the following of other territories. The Canadian Pacific cited also a differential as against the Great Northern lines contention or position in this matter, in respect to Asiatic tonnage. He did not file the contract. It did not occur to me that that had anything to do with this case, or I should have brought a copy of the contract along. It relates to Oriental traffic, Asiatic traffic, eastbound, only; that is, inward to the United States, that is conducted by the Pacific Mail Steamship Company via the Port of San Francisco, the Occidental & Oriental Steamship Company via the Port of San Francisco, the Great Northern Steamship Company, or rather the Nippon Yusen Kaisha Company—the English of which is the Japan Mail Steamship Company—in connection with

the Great Northern, the Northern Pacific Steamship Company, in connection with the Northern Pacific and the Canadian line's steamers through the Port of Vancouver. Not only now, but for all time in the past, ever since that traffic was orginally diverted from the Panama Route by the Pacific Mail Co. to the Central and Union Pacific line, the rate-making power has been lodged, necessarily lodged, in the steamship companies. We have to compete with the Suez Route and with vessels running around the Cape of Good Hope, and have never been able to take half the tonnage that goes into the United States and Canada; even with the multiplica-
3543 tion of lines of late years, we have not succeeded in diverting all this tonnage to the Pacific ports. Necessarily, the handling of these rates must be left with the agencies at Hong Kong and Yokohama and Nagasaki and other ports there. All we have to do, that is so far as the roads which I am connected with are concerned, is to accept what rates are brought to us, to honor their bills of lading. This contract that is referred to is a contract between the steamship lines, except that the Central Pacific and Union Pacific and its connections, the Atchison, Topeka & Santa Fe, etc., are obliged to accept any rate that is found necessary to take that business. They are not parties to it. They are not signatory parties to the contract. Speaking for the lines via San Francisco, I never was consulted as to whether that contract should be made or not. I received a copy of the contract after it had been made. It originated exactly as most differentials are originated—by the laying on of a line which had to be advertised, which had no business, but which was not particularly weak in any other respect, as compared with the older lines. That line said, "Give me some of this business or I will knock down your rates." The effect of that kind of competition was to bring the silk rates from $8.00 per cwt. down to $3.00 per cwt.,—was to reduce the average rate on tea from $3.00 per cwt. down to as low as three-quarters of a cent a pound or 75 cents per cwt. The Canadian Pacific Steamship Line, the Northern Pacific Steamship Line, the Occidental & Oriental Steamship Company and the Pacific Mail Steamship Co. naturally wished to stop that sort of business, so made this agreement. They made it just as soon as they
3544 could. It was a case of the stronger lines going to the weaker line and giving it an advantage in order that their business might not be totally—almost wholly—destroyed. The Nippon Yusen Kaisha, when entering upon this business, adopted the same tactics that the Canadian Pacific adopted when it first entered the same business. The Canadian line, at the outset, pursued the same tactics, which was simply the knocking of the bottom out of rates, and, primarily, it is responsible for the reduction of the rate on tea from $3.00 to 75 cents per hundred and for silk from eight cents to three cents per pound. Afterwards, the Northern Pacific, which first entered the Oriental trade by using sailing vessels, but afterwards put on a line of steamers, or to state it more correctly, afterwards hired the Agent, whom the Canadian Pacific had successfully em-

ployed to bushwhack the American lines in Asia—hired him away from the Canadian Pacific, Mr. Dodwell, the shrewdest and sharpest man in this traffic in Asia, who employed steamships and began the same tactics against the American lines in connection with the Northern Pacific that he had formerly used in connection with the Canadian Pacific. Then, and not till then, was the Canadian line ready to talk about an agreement to keep up rates. Meantime it had secured a large portion of the traffic; had diverted it from San Francisco to its own line. It wanted to keep the business and wanted to get reasonable rates out of it. Later, as I have said, when the Japan Mail Steamship Company laid on its steamer line, it followed in the footsteps of the Canadian Pacific and the Northern Pacific, began to cut rates. Meantime the Northern Pacific, having secured a portion of this business, had become anxious to preserve it
3545 for its line, and to get better rates out of it. Out of this experience came this agreement,—that is to say, the Canadian Pacific Steamship Line, Northern Pacific Steamship Line, Occidental & Oriental Steamship Co. and Pacific Mail S. S. Co., all agreed that it was better to co-operate, to maintain rates, than to continue cutting against each other, but in order to make the co-operation effective, it was necessary to bring the Japan Mail Steamship Co. into the compact. The Japan Mail Steamship Co., being a new line and claiming that that was a disadvantage against the older lines, demanded the right to make lower rates. The other steamship lines yielded simply because by no other means could reasonable rates be had. That, briefly, is the history of that case.

Arbitrator DAY. Who are the signers of that contract, Mr. Stubbs?

Mr. STUBBS. Well, for the Pacific Mail and the Occidental & Oriental Steamship Companies, the General Agent over at Hong Kong or Yokohama.

Mr. KERR. It was signed at Hong Kong.

Mr. STUBBS. Then Mr. Van Buren was the man. And for the Northern Pacific, Mr. Dodwell, and for the Japan Mail Steamship Co., I do not know.

Mr. KERR. By their Manager over there.

Mr. STUBBS. Now, I will venture to say that the Denver & Rio Grande, the "Burlington," the "Rock Island," and the Union Pacific and "North-Western," our connections, who participate in that traffic, do not know that there is any such agreement, which confirms
3546 that what I have stated is true, that it was made over there as between the steamship lines.

In "Exhibit K" will be found a statement that the rates between San Francisco and points on and east of the Missouri River—"Exhibit K" is a statement made up by Secretary Moseley of the Interstate Commerce Commission, I did not know where else to get it. In "Exhibit K" will be found a statement that the rates between San Francisco and points on and east of the Missouri River via Canadian Pacific Railway and Pacific Coast Steamship Co. are 10 per cent less than the rates via American lines. It so appears because that is the

form in which the Canadian Pacific publishes its San Francisco rates. The American lines have not conceded the Canadian Pacific a 10 per cent differential, nor any differentials whatsoever since 1892. They have not a differential to-day. They may make a difference in rates, but it is not a differential. A differential requires an agreement—consent. As we have already stated, the Inter-state Commerce Commission has repeatedly characterized the purpose of a differential as essentially a device for the distribution of traffic. That that is the purpose we think is obvious and that it is equally obvious that the existence of a differential depends upon an agreement between interested carriers. It follows then that an agreement between two or more carriers that one or more of them shall use differentials against the others in competing for a given traffic, is an agreement between the same carriers to distribute the same traffic between them. The lawfulness of such agreement is therefore doubtful, and we ask whether the questionable practice in this respect of other lines
3547 in other territories can create a rule, an equitable rule to be followed by other lines in respect to other business? Wednesday morning the Canadian Pacific advocate said:

"The law not permitting an agreement or combination whereby either physical division of tonnage may be made or a money pool, or any other ground upon which broken rail-and-water lines can obtain a reasonable proportion of the traffic, as against direct rail line competitors. This being the case, numerous rail-and-water lines have been granted and for years have worked under differential rates as against their all-rail competitors."

In this language he confesses that the differential has the same object as a pool. Its object, its very essence is the distribution of traffic. For example: the Canadian Pacific says, "We can't get a fair share of this traffic unless we have a differential: ergo, the American lines must give us a differential so we can get a fair share of the traffic." That means, that we must force onto its lines a fair share of the traffic; that means that we must allot to it a fair share of the traffic; that we must give to it a share of the traffic that it can enjoy exclusively and without interference from us.

It is not at all doubtful that pools of freight and pools of earnings between carriers are expressly forbidden by the Interstate Commerce law. Nor is it open to question that such pools are devices pure and simple to distribute the subject traffic, or the earnings therefrom which amounts to the same, among the lines parties to the pool.
3548 Their purpose is identical with the purpose of the differential. They were prohibited by law in response to a popular demand, and notwithstanding that the consensus of opinion among experts in transportation and legislative regulation thereof is that the inhibition of pools was a mistake:—that to legalize pooling would be the longest step Congress could take toward making the Interstate Commerce Act what it was designed to be and what it is certain yet to become unless our political organization proves a failure, a wise and beneficent (to public and carrier alike) regulator of com-

merce between the States, public opinion seems to have crystallized against them. A pool of freights would be far less obnoxious to the shipping public, if for no other reason, for this reason alone, that it leaves the shipper, who cares nothing about what the carrier does with the freight money after he has paid it, free to use the line he prefers to ship his goods over, without the constraint imposed by an unfavorable difference in rates. If the pooling of freight is so obnoxious to public sentiment as to make it impossible by legislative sanction, can it be said or fairly presumed that the use of the more inequitable device of differentials to accomplish the same end is less offensive to the public and a less dangerous expedient for the carriers to adopt?

For these reasons, therefore, we submit to the Board that the customs of other lines in other territories in respect to the use of differentials are of no value as precedents; are not safe guides to aid or lead the Board to a just determination of the question submitted; I will recapitulate them, namely:

3549 First, the differential is not used by all lines in all territories where the conditions measured by the circumstances governing their use in some territories are substantially similar.

Second, in the territories which do employ them they are uniformly applied to all lines interested which work under substantially the same circumstances and conditions, or to put it in another form, which are alike in their disabilities as compared with their all-rail competitors. In this case, the Canadian line stands alone among all the lines interested in the San Francisco trade in its demand for a differential; and not only that, but it also demands that it alone shall enjoy the differential—for that is the submission—regardless of what Mr. Kerr says in his statement here about his willingness to give the Great Northern and the Northern Pacific a differential—it stands alone and demands that it alone shall enjoy the differential, regardless of the fact that many of the American lines present the same unattractive features which are pleaded as reasons why the Canadian line cannot participate in the trade unless accorded a differential. Take the examples that have been given. We are willing to stand upon the showing of differentials. We are willing to take the case as made out by the Canadian Pacific representative and stand before this Board on that. Has he given you one example of ineffable cheek on the part of an American line asking for an exclusive differential against the Canadian line or against another American line? Take the Canadian examples that he gave in response to a question from me on the Kootenay business: "Don't you make the same dif-

3550 ferential rate by your mixed water-and-rail lines?" The answer was: "Certainly." Where is the advantage or the disadvantage on the part of any of the competitors? The case is analagous to the case which I have lately illustrated to the North Pacific Coast. Think of it. In this case he comes in and says, we alone want a differential against the American lines on San Francisco business because differentials are made to all these lake ports in connec-

tion with all the lake lines to the North Pacific Coast. He admits enjoying the same rate that every other line works on in that territory; he admits that they work upon an equality of rates to the North Pacific Coast by all-rail; he admits that they work upon an equality of rates to the North Pacific Coast by lake-and-rail.

Third, getting back to the question of custom, the nature of the differential is not uniform as between different territories. Uniformity is essential as well as age to make a custom valid as a precedent. In some respects it is in whole or in part compensatory for the marine risk to which the shipper is subjected. In other cases, it is independent of or super-added to the assumption of this risk by the carrier.

Fourth, there is a reasonable assumption that the differential is repugnant to the spirit of our laws and obnoxious to public sentiment.

Returning to the doubtful lawfulness of pools which, if judicially determined, might include differentials because the latter, like the former, are essentially a device for the distribution of traffic between competing carriers, we do not wish to be understood as ac-
3551 knowledging that the legislation which forbids pools in which there is reason to fear differentials may be included, if the issue is made and the question judicially determined, is founded on right principles, nor that public sentiment behind that legislation grew from dispassionate and reasonable inquiry into the nature of and effect upon the public interest of lawful pools. On the contrary, we believe that pools between railroads which could be enforced by law, would be no less beneficial to and productive of the public interest, than they would be to the carriers; but we must take conditions as we find them. The point is, pools being forbidden by law, if differentials are essentially devices to accomplish the same end, and are objectionable to the shipping public, can it be said that any line is entitled to a differential? If the question submitted to this Board were, "Is the Canadian line entitled to a pool of freight with the American lines?" is there any doubt that the board would promptly answer in the negative, if on no other ground, upon the ground that the law forbids it. If it has no right or title to demand a pool, has it any right or title to demand any other less defensible device to secure the same end? If its title to a differential were undisputed upon other grounds, would not the fact that it is in its essence a device to distribute traffic between competing carriers inject a fatal flaw?

The American lines protest against the use of differentials as a means of removing or equalizing, as the common phrase is, relative transportation disabilities, on the ground that equalization, merely, is not their real purpose. Their real object is to divert traffic from its natural to an unnatural channel. To accomplish this end, there is, and must always be, a surplus of benefit or advantage over
3552 and above the level of equality of service, to win the shipper from his accustomed and otherwise preferred line. They are, therefore, designed to give the so-called weaker lines a substantial though artificial advantage over the Standard lines in respect to the

subject traffic and we protest that the Canadian line has in no sense a right, legal or moral, absolute or equitable, superior to ours, in respect to the carrying trade of San Francisco.

We protest against their use on the ground of inequity. This is apparent from the occasion of their use. The line which demands a differential from its competitors, by that demand confesses that its route is one that the business will not naturally follow. It asks, therefore, an adjustment of rates that will force the business out of its natural channels. To force business from a natural to an unnatural channel, cannot be fair or equitable in any respect. It is not fair or equitable to the carrier, which is by this device deprived of its business. It is not fair to the shipper who is thus forced to use a route which he would not choose but for this device.

We protest against them on the ground of inadequacy. If it be assumed, for the purpose of argument, that some portion of a common traffic, in the sense that it is open to the competition of all, ought to be of right secured to each and every line, even if it is necessary to force it out of its natural channels, then we aver that no differential or scheme of differentials has been devised, or can be invented which will distribute said traffic fairly between all parties. To do so, it must be made to act automatically, increasing its force and power
3553 of diversion as circumstances require, until a fair share of the traffic is secured for the differential line, then ceasing to operate further than is necessary to maintain the distribution thus effected. A rate that will induce a merchant to ship a certain amount of one class, or of all classes of goods over a differential line, will influence him to send all, or the greater part of the same class or classes of goods over that line. If a differential of five cents will turn one lot of nails, or one lot of cotton piece goods from its natural route, it will divert all of those goods from the same route. The differential lines assume at the outset that they are entitled to all the business obtainable under the differential as fixed, no matter how large a share of the whole it may prove to be. Per contra, the standard rate lines from the beginning assume that the differential lines are entitled to no more of the business than the differential, as fixed, diverts to their line, be it so small that the earnings therefrom will not pay for the publication of the tariffs. Between these extremes there is and always will be constant friction, which tends, inevitably, to the very rate disturbances the device was invented to prevent. Here in the territory where differentials are most in use, east of Chicago, in the Trunk Line and Central Freight Association territories, we all know that they are not maintained, except, perhaps, during a period when the pressure of tonnage upon all lines is equal to or above their capacity. When tonnage is slack, when the boys are on the streets hustling for business, to get something to fill their cars, away goes the differential. Those are the conditions that exist between Chicago and New York and other Atlantic
3554 Seaboard cities to-day, and are simply a repetition of what annually occurs, notwithstanding the magnificent organization

that they have down in New York for the purpose of maintaining rates. Mr. George R. Blanchard, who, by reason of his long incumbency of the Chairmanship of the Central Traffic Association, and the Joint Traffic Association, respectively, within whose territories the differential is in most common use, together with his great ability, qualifies him to speak with authority on this subject, says, of differentials:

"Their primary object being to secure to the weaker lines, only fair shares of a specific business contested for. I have already recorded my judgment, that in the first instance what is a fair share is undeterminable and usually unacceptable in its result, and, secondly, that no scales of differentials have ever accomplished their purpose. If a differential line gets less traffic than such rates were intended to divert, it proceeds to help itself. They either divert too much traffic away from the first lines, or too little."

I confidentially submit that expression from Mr. Blanchard, whom we all know, as being what every expert traffic manager will testify to. Get him on the stand, under oath, or not under oath, and ask him for his candid opinion as the result of his observation and experience, and that will be the answer.

We protest against the use of a differential by the Canadian line, on the ground that its effect will be unjustly discriminative against places. It would make lower rates to San Francisco than to other California and Pacific Coast common points. From the opening of the first over-land line it has been the custom to make the same
3555 rates to and from Sacramento, Marysville, Stockton and San Jose, as were made to and from San Francisco. These points are connected with San Francisco by water lines of transportation and can use the ocean routes with but an immaterial difference in cost as compared with San Francisco's cost in using the same routes. When the rail lines were opened, connecting Portland, Seattle and Tacoma, and Los Angeles and San Diego, directly with eastern cities, the same principle of equality of rate with San Francisco was adopted, and has since been maintained with but very little variation. By the use of a differential on San Francisco business, the Canadian line upsets this custom, destroys the long-established and just relations of the rates of common points to San Francisco, and introduces a discrimination that we regard as unjust to the common points and as a disturber of several commercial conditions. Moreover, this discrimination is not invited by the merchants of San Francisco.

We object to the use of a differential by the Canadian line, because it has no right to preference over any of the American lines, no superior right, no higher title to either a fixed and determined share of the San Francisco carrying trade, or to an unlimited, undefined share of that trade, than is possessed by each of the several American lines which stand opposed to it in this case. If by restraint of law, or for any other reason, we are debarred from distributing this traffic among ourselves in equitable and satisfactory proportion, if we submit to these restraints, why should not the Canadian line likewise submit?

If we, as between ourselves, submit to the rule of rate equality, regardless of its effect upon the volume of the traffic we respectively
3556 carry, is it unreasonable that we should ask the Canadian line to likewise submit to the rule of rate equality? In order to recognize the claim of the Canadian line in this case, we must admit that the Dominion Government of Canada has created a superior being in respect to the domestic commerce of the United States, than the beings created by the United States government, and the several State governments; a being with higher rights and superior title.

To the suggestion that our record is against us, that the American lines have established a valid precedent for the claim of the Canadian line by hitherto conceding what it now asserts as its right, we reply that we are entitled to the consideration of the question submitted as from the beginning, because:

First, this is the first time that the question of the right or title to a differential of one line against others competing for the same trade has been referred to a disinterested tribunal before which the parties could appear disarmed of all arguments save the justice of their cause, whose deliberations would be calm and dispassionate and whose decision would be given without fear of loss or hope of gain, after a patient hearing of both sides; the first time that the question has been submitted to the judgment of a tribunal whose conclusions will establish a sufficient precedent or valid rule.

Second, the American lines have never admitted the title or right of the Canadian line to a differential under their rates, but, on the contrary, have protested against it, and submitted to it only under the constraint of fear that the value of their San Francisco business and other intermediate and dependent business would be destroyed.
3557 Under the first head, we aver that originally, when the American lines yielded to the demand of the Canadian line for a differential, the question submitted and determined by the parties themselves, under the influences of hope of gain, if the differential was granted, and the fear of almost incalculable loss were it denied, was: "Is it expedient to give to the Canadian line a differential?"

The American lines were never even asked to admit the title and right of the Canadian line to that advantage over them.

Under the second head, we submit that the American lines consented to the freight differentials enjoyed by the Canadian line previous to 1893, at the same time under same conditions, and for similar reasons, that they consented to the passenger differentials so lately investigated and pronounced against by the Interstate Commerce Commission. Here is what the Commission says under that head:

"The first transcontinental association was formed in 1886."—(In that respect they have made a mistake. It was a reorganization in 1888, following the freight war with the Atchison people.)—"Although the evidence is not very clear, we are inclined to think that the Canadian Pacific was from the first a member of that Association."—(It was; from the first it was a member of the reorganized Association.)—"Mr. Eustis, who was at that time general passenger agent

of the Chicago, Burlington & Quincy Railroad, and who in that capacity participated in the discussions which led to the formation of that Association, was of the opinion that the Canadian Pacific only came into it upon condition that it should be allowed the differ-
3558 ential which it then had upon Pacific Coast business. The parties who represented the Canadian Pacific in these negotiations were not before us, but we are inclined to think that the recollection of Mr. Eustis is substantially correct."

"The Canadian line was insisting that it was entitled to this differential. It had apparently for two years actually enjoyed it."—(That is a mistake, as I showed you yesterday.)—" It may be doubted whether it could have obtained by that route and at that time any considerable part of the business without it, and it is hardly probable that it would consent to become a member of an association with power to fix its rates, every other member of which would be opposed to a differential unless it was understood either expressly or tacitly that it should continue to enjoy one. This, however, was against the earnest protest of the American lines, which had always insisted that the differential was unjust and only consented to it as a matter of expediency."

The speaker conducted the preliminary negotiations with the Canadian Pacific Railway Company, visiting Montreal for that purpose, and he avers—and Mr. George Olds, the General Traffic Manager at that time will not deny, that from the very start, the Canadian line demanded either a guarantee of earnings or its equivalent, and upon that condition and that only, sent its representative to the meeting of the Trans-Continental Association. The conclusions of the Inter-State Commerce Commission in this respect are undeniably correct, as will further appear from the records of the Trans-Continental Association. We quote from Proceedings of Trans-Conti-
3559 nental Association at Chicago, in July, 1889, only seven months after the agreement granting to the Canadian line its first differential and while the whole matter was fresh in the minds of everyone connected with it. At this meeting Mr. Stubbs stated his views, and no one will deny that they fairly represented the views of all the American lines, in the following language; I do not think there is any one will deny that Mr. Stubbs on that occasion was the spokesman for the American lines:

"I am not unwilling to place my views on record, regarding the position that lines, associated together as we are, should occupy in respect to this business, and my views are founded on the practice that we have pursued in the past, and that is, that each line should take and be satisfied with only what it can fairly secure upon an absolute equality of rate. The reasons for withdrawing from what had been the rule in the Trans-Continental Association, were peculiar when we gave or agreed to give the Canadian Pacific differential rates. Not only since the reorganization of this Association, but previous, our Association had been made up of lines that presented varied characteristics in respect to their taking power. There were lines

in the Association that labored under, with respect to some business, greater disadvantages than the Canadian Pacific labored under—lines who felt themselves entitled to a differential rate, and yet the opinion of the Association was decidedly against it, and we had, up to the time that the Canadian Pacific was invited to join the Association, set our faces against it. There is no need of my recapitu-
3560 lating the circumstances under which the Trans-Continental Association was reorganized. Everyone here understands just as well as I do the conditions then existing that moved us, and influenced us, to offer the Canadian Pacific a differential rate. The conditions have changed, very materially. I believe they ought to take their position in this association just as the other lines do, be content with what they can take on an equality rate. In respect to certain territory they have a better line than some others. Their line has been thoroughly advertised. Prejudice against that line, owing to the idea that it was a bad winter line, has all been dissipated. The prejudice that some of us worked against it very materially, because it was a foreign line, has all been removed, if it ever existed. It has demonstrated its ability to take freight between the Pacific Coast and Atlantic seaboard in time equal to the best time made by any of the other lines. They have demonstrated that they have as good a winter line as any other line. They are as free from the casualties that interrupt and impede transportation of any kind of freight, that great prejudice in the minds of shippers, as any of the rest of us. They have some advantages that the rest of us cannot enjoy." (Trans-Continental Association Proceedings, Chicago, July 23rd, 1889, pages 96 and 97.)

And again, from the Proceedings of the Trans-Continental Association, March 18th, 1890, Mr. C. S. Mellen, then representing the Union Pacific Railway, now president of the Northern Pacific Rail-
way Company, speaking of the Canadian Pacific differentials,
3561 says:

"I believe they are only a necessity, so long as a line shows itself weak and as a bar to demoralization. It is a stand and deliver policy and we deliver the differentials to prevent worse trouble."

The fact that on former occasions the American lines submitted to what was believed by them to be an unjust and unreasonable demand upon the part of the Canadian line should have no weight with this Board in determining its present title or right to the advantage it has forced the American lines to give it in the past. As well might it be claimed that a man who, through weakness of judgment, fear of bodily harm, or of damage to his name or fortune, once having yielded to the unjust demands of another person or a superior power, has thereby established a precedent which, regardless of his personal or property rights, can be pleaded before a Court as a reason why he should continue to submit to the exaction. We repeat that the American lines have heretofore yielded to the demands of the Canadian line under protest and through fear that unless they did so their property and their business would be destroyed. They have never

admitted the Canadian line's title or right to what it claimed or what has been surrendered to it. They have not only denied it, but have sought, and were seeking at the time the reference of the question to this Board was proposed and accepted, through the law-making power, the administrators of the law, through Congress, the Treasury Department and the Inter-state Commerce Commission, to restrain the Canadian line from all interference with the busi-
3562 ness which is the subject of this controversy. Therefore, we claim that the question submitted, the one we are discussing is an original question and should come before this Board de novo; that the Canadian line has the affirmative of the question and should be required to show its title to the claim for a differential regardless of the past; that it should be required to establish to the satisfaction of this Board that its right to engage in this business is paramount to the right of the American lines, or, in view of the unsubstantial nature of its showing in respect to its disability, as compared with conditions subsisting with the American lines, if such a paramount right is not inherent with the Canadian line, upon what ground can it establish its claim to an artificial advantage over the American lines? While we contend that constraint was the dominant factor influencing the American lines to make the original concession to the Canadian line, there were subordinate considerations which assisted in determining their choice between the expedient of a differential to that line and the alternative of unrestrained, unregulated competition, the effects of which were so much feared. These considerations were:

First, that the Canadian line was unknown to American shippers. It had not been advertised.

Second, it was believed that its location through the extreme northern part of the continent would make it no thoroughfare through the winter, and

Third, that its being a foreign line, having to carry domestic traffic under customs regulations, would prejudice it very much in the minds of American shippers.

Fourth, its own road, or roads under its control, did not penetrate the United States at any point.

3563 Fifth, it had no physical connection with American roads at Sumas, hence could not make an all-rail line. All traffic from the Northwest and the States south of the Great Lakes and west of the Allegheny Mountains seeking its line, had to move via Winnipeg.

The statement of Mr. Stubbs at the Trans-Continental Association meeting held at Chicago, July, 1889, made in the presence, and as we have said, while the recollection of the representatives of all parties was vivid and accurate, for only seven months had elapsed since the arrangement with the Canadian line had become effective, proves that the first, second and third of the considerations cited, were those which in point of secondary influence induced the American lines to experiment with the differentials rather than encounter a disastrous rate war. Speaking to the proposition to reduce the differentials then

in use by the Canadian Line, Mr. Stubbs said—and here I repeat in part what I have just quoted, but I do it to accentuate this point:

"Every one here understands just as well as I do the conditions then"—(seven months previous)—"existing that moved us, and influenced us, to offer the Canadian Pacific a differential rate. The conditions have changed, very materially. I believe they ought to take their position in this Association just as the other lines do, be content with what they can take on an equality rate. In respect to certain territory (New England) they have a better line than some others. Their line has been thoroughly advertised. Prejudice
3564 against that line, owing to the idea that it was a bad winter line, has all been dissipated. The prejudice that some of us worked against it very materially, because it was a foreign line, has all been removed, if it ever existed."

The value of the statement quoted as testimony in this connection, consists not alone in the time it was made, but in the circumstances that it was made during a discussion of the Canadian line's differential among ourselves; in the closet, before representatives of both sides, who were as familiar as the speaker was with all the facts and circumstances involved in the discussion and could not be deceived by mis-statement—men who were experts in transportation and had for a long time dealt with each other; men who not only understood the spoken word, but could also discern the unspoken thought behind it. Since that time the Canadian line has obtained control of the Minneapolis, St. Paul & Sault Ste. Marie Railway, has extended it from Minneapolis to a junction with the Canadian Pacific Railway at Portal, and built a branch down from Pasqua, to meet it, thus shortening its route from Minneapolis to San Francisco by about 150 miles. The effect of this has been to reverse the relative length of the lines between Minneapolis and San Francisco of the Canadian line, via Vancouver, and the Northern Pacific, via Seattle. Then the Canadian line was the longer by about 91 miles. The acquisition or control of the Sault Ste. Marie line bettered its relations to the traffic between San Francisco and all the Northwestern States, and the States south of the Great Lakes and west of the "Alleghenies."

This improvement is not to be measured by the reduced length
3565 of haul; that is the smallest part of it. The Minneapolis terminus, the getting upon an equality with the Northern Pacific in respect to a direct connection with the great railroad systems leading from the south, southwest and southeast, and terminating at Minneapolis, was of far greater importance than the mere reduction of length of line. It has since extended its line from Mission Junction, B. C., to Sumas, made a traffic agreement with the Seattle & International Ry., thus practically making physical connection with the rails of the Northern Pacific over which and its connections, it can reach all Washington, Oregon and California by rail. Then it could reach Puget Sound points, Portland and San Francisco by water only, from Vancouver. It has demonstrated that being a foreign line, having to submit to customs regulations is not an insur-

mountable obstacle to its use by American shippers. It relieves the shipper of all trouble arising therefrom. It has proven to be a good winter line, having never been obstructed by snow, while in 1889 the lines via Ogden—the short line—were closed for weeks by a snow blockade in the Sierra Nevadas. In 1897 the "Sunset" line was stopped for several weeks by yellow fever. In 1898, it is partially so and we do not know what day the quarantine will be closed down against us and we will be prevented from sending any goods over that line ("Sunset Gulf" or "Sunset all-rail"). The circumstance that it was a broken line did not enter into the consideration of the American lines as factors of influence. How could it have done so when among the American lines there were several lines presenting similar features in this respect? The question of time required to
3566 move the traffic did not receive consideration. How could it when the respective abilities of the several American lines in this regard varied widely? To have conceded the Canadian line differentials on these grounds would have been to ignore similar conditions among ourselves. It must be manifest, therefore, that the subordinate factors of influence, those which were confessed in justification of the act, were those conditions and circumstances which we have named and they have changed so materially as to lose whatever weight they ever had.

Shall I proceed? This is a good stopping point, but I will continue if the Board so desires?

Arbitrator WASHBURN. We will now adjourn, until half past 2 o'clock.

AFTERNOON SESSION.

OCTOBER 14, 1898—2.30 P. M.

The meeting convened pursuant to adjournment.

Arbitrator WASHBURN. Mr. Stubbs will proceed with his argument, if he is ready.

Mr. STUBBS. Now, if it please the board, we submit that so far we have met the Canadian line on its chosen grounds, its allegations of disability against its own line by contrast with the American lines, its plea that the American mixed lines have alternative all-rail lines, its reference to the customs of other lines in other territories as valid precedents, and its appeal to its arrangement with the Trans-
3567 Continental lines in 1888. We think that all of these contentions have been shown to be insufficient, not one of them has been established, not one of them furnishes a substantial foundation for the claim of the Canadian line to the right, an equitable right, to an artificial advantage over the American lines, in order to share San Francisco's trade. Then, whence is the alleged right derived?

The Canadian Pacific was not created for the purpose of doing San Francisco business. It is the creature of a foreign state. Its sovereign could confer upon it no title, right or privilege within the borders of the United States, or with respect to the domestic commerce of the United States. It is, as has been said by a prominent

writer on the subject, a political and military enterprise, conceived and executed to politically unite the several Provinces, comprising the Dominion of Canada, to cause these Provinces to trade among themselves instead of trading with the United States; to serve as a line of military communication between the different parts of the Dominion, to promote the scheme of British Imperial confederation. On account of its political and military objects, it was munificently aided by the Dominion Government of Canada. To the extent that it was and is a political and military enterprise, its construction was and its operation is not amicable toward the United States Government. In war it is as powerful an engine of offense or defense as in peace it is a potential agent in developing and promoting the commercial and industrial resources of the Nation. In war it is a menace to the American Nation; in peace its primary object is to develop the resources of Canada and to promote British trade and British
3568 commerce as against all other Nations, and against the United States in particular. The object of its construction was not that of developing or promoting the commerce of the United States. Its participation in that trade is merely incidental. It is not subject to the laws of the United States. It does not employ, to any considerable extent, American labor. No considerable part of its line is taxable in the United States. Did the Canadian line make, build, extend or support the trade of San Francisco and thus acquire a right to possess and enjoy it? It has had no part in creating San Francisco's trade. It in no sense contributes to it; does not promote nor sustain it. On the contrary, the purpose and effect of its operation and construction was and has been to divert from and diminish the trade of San Francisco. One of the primary objects of its building was to take from San Francisco its trade with British Columbia and give it to Montreal and other Canadian cities. In part, its object was to divert, and it has succeeded in diverting from San Francisco, a very considerable amount of Oriental trade that formerly passed outward and inward through the Golden Gate. It has given nothing in exchange for what it has taken from San Francisco. It has not had, and has not now, nor can it in the future have, anything to give. It has opened no new territory to the San Francisco merchants, nor to the California producer. This practically closed territory, formerly opened to the San Francisco merchant its entire territory throughout the length of its line, is closed to the San Francisco merchant as effectively as it would be were the Dominion Government and the United States at war. On the other hand, the American lines are creatures of the United States. The very object of their
3569 creation was to develop and promote the internal commerce of the United States, the industries and resources of the several States which they traverse, in order that the people of this American Union might be as free from industrial and commercial dependence upon foreign states, as they are, and always shall be, free from political subordination to other states. They were born of the necessities of

our people. They rank among the greatest industries of the Nation. They are the most potential factors in the industrial progress of the country. They are citizens of the United States. Again, the American lines have, for the most part, created a trade for San Francisco. They have developed, promoted and sustained it. The duty of sustaining it, of further promoting and increasing it, also falls upon and will forever remain with the American lines without aid or comfort from our Canadian friends.

In a broad sense, carriers, and especially railroads, may be classed among the most productive industries, because they are among the most efficient agents of productive and manufacturing industries. On the American continent they have superseded the pioneer, have pushed beyond the borders of civilization out into the wilderness and the desert; they have been followed, not preceded, by the husbandman. Farm houses, villages, towns and cities with their varied manufacturing industries, have sprung up in their tracks. This is peculiarly true of the territory, the supplying of which has made San Francisco the metropolis of the Pacific Coast. Her chief trade is in distributing supplies to, and in distributing the products of, the States of California, Nevada and Utah, and the Territories of Arizona and New Mexico. That is her chief trade. The mer-
3570 chandise which she gathers from all the States east of the Rocky Mountains is for the most part distributed over the States and Territories I have named. The product of the field, of the forest and of the mines, which she ships to the east in exchange for this merchandise, are for the most part the products of the States and Territories named. It is this merchandise and these products, the transportation of which is the subject of this controversy. The opening of this consuming and producing traffic to San Francisco, the agencies which made it possible, which have developed, promoted and sustained it, are the American railroads. Whose was the courage, the daring, the skill, the perseverance to overcome what was conceived to be insurmountable obstacles to railroad building presented by mountains and deserts? Who demonstrated the possibility of binding the Pacific and Atlantic Coasts of North America with bands of steel at the risk of fortune and of fame? It was the builders of the American lines. Who opened the productive valleys of California that furnish over 75 per cent of the trade of San Francisco? Who climbed the Sierra Nevadas and the Rocky Mountains, revealing to the world their treasures of wealth of field, forest and mine? It was the builders of the American railroads. The trade of San Francisco is of their creation. Without their agency in the development, promotion and sustainment of the productive industries of the United States, territory whose trade is tributary to it, it would have speedily relapsed after the gold excitement of 1849 and the early 50's, into an inconsequential seaport town whose chief trade with the eastern states consisted in distributing supplies to the cattle ranches and carrying their products—hides, wool and tallow, to

3571 New York, for which an occasional sailing vessel around Cape Horn would amply suffice.

Permit us to illustrate by referring to the growth of California which is the principal source of San Francisco trade:

In 1870, one year after the opening of the first Pacific railroad through line, the population of the State of California was 560,000. In 1890, it was 1,280,130.

STATE OF CALIFORNIA.

| | In 1870. | In 1890. |
|---|---|---|
| Population | 560,000 | 1,280,130 |
| Valuation of Property | $638,000,000 | $2,523,000,000 |
| Imports | $15,900,000 | $48,750,000 |
| Exports | $13,365,000 | $35,960,000 |
| Manufactures | $65,500,000 | $213,400,000 |
| Number of Farms | 23,724 | 52,894 |
| Value of Farm Products | $49,856,000 | $87,833,000 |
| Railroad Mileage (miles) | 925 | 4,328 |

What was the principal agent in this remarkable improvement? The answer is found in the fact that in 1870 the railroad mileage in California was 925 miles. In 1890 it was 4,328 and this increased railroad mileage was almost wholly constructed and has been operated by the American lines who are parties to this controversy. The Canadian line in no sense and in no degree contributed to it.

Is it apparent from this showing that the Canadian line has any equitable ground for claiming that its right to the smallest part

3572 of San Francisco's trade is paramount to the rights of the American lines to do, and enjoy, the whole of San Francisco's business with other points in the United States? Is its competition desirable and helpful: promotive of trade? Is its presence in the San Francisco markets welcome to the San Francisco merchant? We aver that it does not introduce any necessary element of helpful competition which promises a freer and fuller exchange of commodities between San Francisco and its eastern markets of supply and consumption. A single glance at the map will prove that San Francisco is served by a sufficient number of independent American lines, not only to handle all her freight, but to do so if it were increased many times over its present volume. I refer to these lines out via Portland, Seattle and Tacoma; out via San Diego, not touching the Central Pacific; besides the Central Pacific and Southern Pacific lines and added to these, the Pacific Mail Steamship Company, the original line, in connection with the Panama route, and the vessels of Cape Horn.

The history of the operation of these lines proves beyond question the impossibility of any combination without the competition of the Canadian line which would not be possible with it. The public interest is fully protected in this respect by the natural, uncontrollable, competition of the American lines, so that the Canadian line cannot find any substantial foundation for its claim of right to share in

this traffic in the assertion that its services are necessary or desired by San Francisco merchants either to move the traffic or maintain helpful competition. Moreover, the volume of the traffic is not so great as to tax the capacity of any of the American lines to move it safely and expeditiously, while there are six of the American
3573 lines, all rail and mixed water-and-rail, over which it can move to and from the State of California, under as favorable conditions, approximately, as it can move over the Canadian line, and we contend that it is not equally just and right to all concerned to require these American lines, or any one of them, under such circumstances, to surrender, through the device of a differential or any other expedient, any portion of this trade which may otherwise seek their line. We are talking about *right*, now. On the contrary, to require all or any of these American lines to surrender, under circumstances such as have been described, any portion of their traffic, to the Canadian line, is to declare that their right is subordinate; that the right of the Canadian line is paramount in respect to said traffic. Such a requirement is essentially inequitable, unequal, partial and unfair.

In support of our averments that the Canadian line does not contribute to the up-building of San Francisco trade, but, rather, that its purpose and effect has been to divert and diminish that trade, and that its competition is not promotive of San Francisco's trade interest, we beg leave to file with the Board certified copies of the following documents:

("Exhibit A") Report to Chamber of Commerce of San Francisco of Committee on Withdrawal of Bonding Privilege of Canadian Pacific Railway, March, 1898.

I am not going to take your time by reading all this, just a few paragraphs.

"The Canadian Pacific Railroad diverts from our city a very large part of the constantly growing trade with China, Japan and Australia, which but a few years ago came to our port."

3574 Then they give some examples.

"In fact, this road is engaged in building up Vancouver with trade which formerly came to us, and we are helping them."

That shows how the Americans look at this thing.

"We allow only American vessels to carry cargoes between Atlantic and Pacific ports, or, in fact, between any of our domestic ports, but a foreign railroad is allowed to compete for this business, and is more favored by us than our own lines, as we are obliged to comply with our laws, while we do not put this restraint on the foreigner."

Is that Jingoism? It is the Chamber of Commerce of San Francisco.

"Our sense of justice demands that a foreign road should not be treated with more favor or consideration than a domestic road."

And then they go on and pass resolutions, going to an extent that we do not desire, asking that the bonding privilege be canceled, and that they be forbidden or prevented by that enactment of law from

doing any of this business. We take no such position with them. We are not shaking the "bloody shirt" and saying "you shall not come into this country." We are simply contending that you must come in on an equality with us: that "you do not possess a better right nor a superior title to one pound of this freight than we possess. You are welcome: we are glad and willing to work with you, if you will come in on an equality of rates."

Anticipating that it may be said, as was intimated in refer-
3575 ence to another Exhibit, which I shall now put in, that this was procured by railroad efforts, I wish to say, in the first place, that no railroad man in San Francisco or from anywhere, that I know anything about, had anything to do with that. The inspiration of that, so far as my knowledge goes, was from Captain W. L. Merry, at the time Secretary of the Chamber of Commerce: the man who, for years, has been the agent of Nicaragua Canal, and has felt himself obliged to antagonize the railroads because he thought they were inimical to that interest. He is now our Minister to the Central American Republic of Nicaragua.

("Exhibit B") Letter of San Francisco Chamber of Commerce, by its President, addressed to the Boston Chamber of Commerce under date of August 29, 1898.

Now, if that document is susceptible to the criticism or the imputation made yesterday with reference to another document, let me call your attention to the fact that it, and other petitions to Congress that I shall present to you, originated in organized bodies of business men, which, in respect to all the commercial interests of their cities, are the mouth-piece of the people. To accentuate this I call your attention to "Exhibit B," which I have just described.

The Boston Chamber of Commerce desiring to have its views concerning the Inter-national treaty which is now the subject of negotiation between a Joint Commission composed of representatives of the Dominion of Canada and of the United States, sent a member out to San Francisco for the purpose of winning the Chamber of Commerce's influence in favor of that program. This is a letter dated August 29th: it is a copy, but certified.

3576 "BOSTON CHAMBER OF COMMERCE.

GENTLEMEN: A short time ago Mr. Osborne Howes of your Chamber gave a very interesting and instructive address to us on trade relations and reciprocity with Canada, and in the course of his remarks he spoke of the Fishing question, Klondike Mining laws, Boundary, Fishing and Navigation of the Great Lakes, Behring Sea Sealing matters, Alaskan boundaries, &c., &c., but the question of transportation in bond by the Canadian Railroads was not commented on. A resolution was adopted by the meeting expressing the hope that the most friendly relations might exist between the two countries and that the Commission would make a satisfactory solution of the difficulties. After the meeting was over, in conversation with one of our trustees the question of the bonding privilege of the Canadian Pacific Railroad was referred to and Mr. Howes expressed himself quite strongly

in favor of the Canadian Pacific Railroad looking at it from the way it affected New England in her trade with the Middle west. Mr. Howes was then informed that a Committee of this Chamber had spent some time investigating this question last spring and that our views so far as the bonding question was concerned were very plain. That you may not by any chance misunderstand us we write so that you may clearly know our position on this subject. We enclose herewith copies of the report of the Committee which investigated this matter. We call particular attention to the quotation from the 6th Inter-state Commission Report for 1892, wherein the Commission say that "No such advantage exists or can be
3577 given to the people of this country on the Pacific Coast as is afforded the people of our Western and Northwestern States." Why should this advantage be given when we do not get a compensating benefit? It is the policy of the Canadian Pacific Railroad to build up Vancouver and Canada and divert the trade which would otherwise come to and through America. It is also the policy of this railroad to demand a differential to San Francisco. This may seem to be an advantage to us, but in the long run it is not, for it creates considerable unrest and disturbance in freight rates which would otherwise be firmly maintained. This Canadian Road demands the right to quote rates 10 per cent below those of the American lines without regard to the fairness and so obliges the American lines to collect 11 per cent more than the Canadian Pacific. It does not base its rates on the cost of transportation, but says whatever rates the American lines make, we will cut them 10 per cent. There is not justice or reason in this. We trust this bonding privilege will not be perpetuated or placed out of the reach of legislation by treaty, for should such an attempt to be made it may cause opposition to a treaty that might otherwise be beneficial."

That is "Exhibit B."

("Exhibit C") "Petition of Manufacturers and Producers Association of California—Terms of Re-entry of Goods into the United States."

I will not read them, preferring not to take your time. These are all addressed to Congress, or to our representatives in Congress.
3578 Arbitrator WASHBURN. You understand we are here to listen to anything you desire to say.

Mr. STUBBS. I did not want to take your time, but thought that you preferred to go over these in your chambers.

Arbitrator DAY. If you do not wish to read them you may just briefly state what they are.

Mr. STUBBS. Well, this exhibit which I have just referred to, the Petition of Manufacturers and Producers of California, after the "Whereas," says:

"Now, therefore, we, your petitioners do humbly pray you to, without delay, pass a law which shall take away from and deprive the Canadian Pacific Railway, and all other railways or transportation lines of any sort or nature, of any and all right to transport goods, or

passengers from any one part of the United States to any other, or further terms of re-entering into the United States than those which exist and are applicable to passengers and goods coming into the United States from a foreign country."

Arbitrator WASHBURN. That is from whom?

Mr. STUBBS. The Manufacturers and Producers Association of California, with the seal of the Association, signed by James W. Kerr, President. You see this goes further than we do. We do not wish to exclude them from this country.

I file next, as "Exhibit D," two resolutions of the Chamber of Commerce, Sacramento, "Protection of American Commerce," under date of March 18, 1898.

You will observe these are all addressed to the Congress of the United States. "Exhibit D" is as follows:

3579 "*Resolved*, by the Sacramento Chamber of Commerce that our Representatives in Congress be urgently requested to favor such legislation as will protect American Commerce and give to American labor and capital, ample protection against this unfair foreign competition." (Signed by its President and by "Coleman, Secretary.")

I file a resolution of Chamber of Commerce of Los Angeles, "Protection of American Commerce," as "Exhibit E."

"The Los Angeles Chamber of Commerce, March 2nd, 1890."—(before we ever thought of this arbitration.)—

"Whereas, it has been represented to this Chamber that the Canadian Pacific Railway by reason of the aid received from the Government of Canada, and by its exemption from the provisions of the Inter-state Commerce law of the United States, has great advantage over the American Railroads, and

Whereas, it is understood that the Canadian Pacific Railway is using the advantages so enjoyed by it, in aid of the Commerce and interests of Canada, and against those of the United States, and especially of the Pacific Coast States, therefore be it,

*Resolved*, that our Senators and Representatives in Congress be and they are hereby respectfully requested to enact such legislation as will deprive the Canadian Pacific Railway, and all other foreign railways of any privileges that give them an undue advantage over the railroads of the United States.

*Resolved*, that a copy of these resolutions be transmitted to our Senators and Representatives in Congress."

3580 (Signed by "Wiggins, Secretary," with the seal of the Chamber under date of August 26th.)

Mr. McCloskey, the Assistant Secretary of the Pacific Coast Hardware and Metal Association, forwarded to our Traffic Manager a copy of the resolutions adopted at a meeting of the various jobbing lines of San Francisco, an original copy of which was sent to Sir Wm. C. Van Horne, President of the Canadian Pacific Road, and a duplicate forwarded to Mr. Robt. Kerr, Traffic Manager of the

same System. I do not know whether that is the same that Mr. Kerr referred to or not. I will file it with the Board as "Exhibit F."

I file these documents not representing the desire of the American lines that the Canadian line shall be completely shut out from our trade. We do not believe in that, because the Board must have seen from the presentation that we have so far made, that all we are contending for is equality:—that we have met the Canadian Pacific upon its own ground and disputed its alleged claims of disability:—that we are not allowed, for considerations of law, or the general policy affecting this whole territory, which is more binding on us than law, I must say, because it affects directly our own interest—to partition this traffic among ourselves. We cannot say to the Northern Pacific, "You shall have so much of this business," nor to the Texas & Pacific, "You are entitled to this much," nor to the Oregon Short Line, "You shall have this percentage." We cannot do that. There is nothing left for us but equality of rates. That is the traditional policy, and it is an outgrowth of a careful study of the situation by the
3581 experts that are employed to manage these roads from the Presidents down to the Traffic Managers and General Freight Agents, and therefore it must be taken as conclusive that business considerations, the financial considerations, entering into the general policy of this traffic, are very weighty. It leaves the Northern Pacific and the Great Northern to say we will do all we can at equal rates with you and take that, not and be satisfied, but with the consciousness that we have done the best we can.

I might as well here touch on something that has occurred to me several times. It must be manifest to this Board that if the Canadian line is entitled to a differential on San Francisco, these lines (indicating on map) are entitled to a differential on Vancouver. We have not asked it. Mr. Kerr says:

"The question of Canadian roads being permitted to participate in American traffic has been a subject brought under frequent discussion and in some quarters strong efforts have been made, through the press and by various other means, to prejudice the rights and privileges—"rights and privileges"—of Canadian roads in that respect, the motive being to work up public opinion to a point that will enable our opponents to procure legislative action against us, in order that the Canadian roads be removed from the field as competitors in American traffic."

What if it is true? Is it not the inalienable right of every American citizen or of every Englishman to agitate a question that concerns his personal or property rights: to seek for protection whether to his person or to his property: to reform laws that operate
3582 adversely to his interest? If we had done what is claimed, have we done anything different than every Englishman that felt himself suffering from abuses since the time the charter was wrested from King John has done? Is it not, as I have stated, our inalienable right? This question has already become a public question. That is evidenced by the exhibits I have submitted and parti-

ally read. I may say that it has become a national question because it is treated of in the Annual Reports of the Inter-state Commerce Commission and in the Passenger Differential case was made the subject of an inquiry by the Inter-State Commerce Commission, in the City of Chicago. It will continue to be a public question and a national question just as long as the cross of St. George flies above the Canadian line, guaranteeing to it the support and protection of the greatest and most aggressive commercial power on earth; just as long as Old Glory waves in beauty over the American lines, symbolizing liberty and equality to every one beneath its folds; just so long as this alien comes into this country and demands that in respect to domestic commerce it shall have an advantage, not equal rights, but that it shall have an advantage over domestic carriers. In that demand it assails the very genius of our institutions. It is an insult to our flag which not only symbolizes but guarantees liberty and equality to all. Is that jingoism? Talk of business interest or commercial instinct—commercial instinct is British instinct. The American public is just waking up to the significance of the attitude of our adversaries. Exacting as it may be to the American railroads, unreasonable as it may seem to us at times to be in dealing with us,

there is no doubt that the body politic means to be just,
3583 and when it becomes a matter of public knowledge that American lines in respect to domestic business are at the mercy of foreign lines, you may as well attempt to smother free speech or to muzzle the press as to prevent its becoming a political issue that will spread all over the country and overwhelm even New England with a tide of patriotism that will coerce Congress to legislate to protect the American lines; to secure to them, at least, equality of privilege with the Canadian lines, and that, if it pleases this Honorable Board, is all we demand and all we ask.

Now, having treated of the alleged disabilities that the Canadian line works under, as contrasted with the American lines, and, as we believe, disposed of them,—found them to be insufficient, is it not manifest that behind or beneath all the reasons advanced by the Canadian line in support of its contention, and which we have reviewed, there lies, unconfessed, a reason which predominates, a reason which, though not publicly avowed, underlies the original demand of the Canadian line, and has since provided its only support? We aver that there is such a reason, that it subsists in our adversary's unavowed but conscious power to injure us without fear of retaliation; in its ability, without any material damaging consequence to itself, to make the subject business valueless to the American lines, and with it the business of all Pacific Coast Terminals, and the business of other intermediate dependent points, and we solemnly aver that this power to work harm to the American lines, constitutes the sole ground upon which rests the Canadian line's claim of right to share in San Francisco's carrying trade; the only ground upon which its claim for
3584 differentials is founded. If proof of this averment is required, further than that which is found in the universal belief of all

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practical railroad men, not only with respect to the claim of the Canadian line, but of all similar claims by other carriers, alien or citizen, let this test be applied: Build at Vancouver, the Pacific Coast terminus of the Canadian line, a city of the population, wealth and enterprise of San Francisco, supported by a territory as large and productive as the State of California. Give the American lines as large a target to fire at as San Francisco now presents to the Canadian line. Would not the latter's demand for a differential be instantly withdrawn? And, if so, why? Because its power to inflict injury without suffering a like injury at the hands of the American lines would not exist. Enlarge this test. Reverse the industrial conditions in Canadian territory west of Lake Superior served by the Canadian line, and the industrial conditions in United States territory served by the American Trans-Continental lines west of this river—the Missouri River line. Put San Francisco as it is, in the place of Vancouver as it is.—California in the place of British Columbia and Vancouver as it is reverse them. Place the cities, towns, farms and other industries now located in the United States territory west of the Missouri River, in Canadian territory west of Winnipeg. Relegate the United States territory referred to to the conditions prevailing thirty-five years ago in all respects save existing railroads. Would either party be before this Board? Would not the governing council have adopted such regulations as to effectually prevent American lines from interfering with the Canadian line's traffic,

3585 by the use of an advantage, whether it be differential rates or other device? If not, is it doubtful whether the Canadian line would not then be found in the same attitude of resistance to the demand of the American lines for a differential, which we now occupy with respect to its demand? Would it not cry out in protest against our demands that they were not only unjust but barbarous because they rested upon no other foundation than that of our power to destroy their business and the purpose to destroy it unless the demands were yielded to? Is it possible, in this civilized age to build up and establish a right, an equitable right, upon the doctrine that the power to destroy gives the right to take over and hold?

There may be no statute in the code of man's making which will prevent the Canadian line from presenting to the American lines the alternative to yield the advantage it asks, or suffer the loss which its purpose to take it will impose upon them: but we believe it to be against the spirit of the laws of society, which take no account of a person's power to work mischief in measuring that person's rights, but are designed to protect the weak against the strong. That power may be taken account of and may continue to dominate the considerations when the question of expediency is submitted for determination, but it can have no place here or in the consideration of this Board of the question submitted. Will the High Court of Arbitration appointed to determine the respective rights of the British Government and the Venezuelan Government in respect to certain terri-

tory, the ownership of which is in dispute, be influenced in reaching a determination of the questions submitted by the fact that Great Britain could take the land she claims or destroy the Vene-
3586 zuelan Government, or inflict greater loss upon the Venezuelan Government than the disputed land is worth?

It may be true, and we believe it to be true, as the Interstate Commerce Commission says in the Canadian Pacific Passenger Differential case, that:

"If the Canadian Pacific used its power to inflict injury as a means of obtaining the allowance of a differential, that is precisely what in a greater or less degree every road which obtains a differential or an advantage in the shape of a differential does."

It is likewise true that powerful nations at times go to war with weaker nations, or threaten to do so, in order to gain advantage, and the issue of that war is not doubtful; but when they refer the question as one of right to the arbitration of a disinterested tribunal, as in the Anglo-Venezulean case, the relative power of the contestants, the manifest result of war, are put out of sight; and if the claim of one party is found to have no other foundation than its power to destroy or injure the other party, the conclusions of the arbitrators are inevitably in favor of the party subject to said injury.

Take away from this case what we all know and what the American lines fear, the power of the Canadian line to destroy this commerce without anything like a similar injury or equal injury being inflicted upon it, I appeal to every member of this Board if we would be here, if you would ever hear of this differential case or would have ever heard of it? So in this case we submit that if the Board finds that, but for its power to injure the subject business of the
3587 American lines, the Canadian line would not have preferred its original demand for a differential, much less have persisted in it; that, as no equitable right can subsist alone in such power, we are entitled to the decision in this case.

If it please the Honorable Board, this question when reduced to its last analysis, stripped of its cloak of technical phraseology and exposed to the understanding of the non-professional mind, the naked question submitted to your determination is: Has the Canadian line such right to an arbitrary allotment of San Francisco traffic, that the American lines shall be required to adjust rates so as to force American citizens to use the facilities of that foreign line for domestic transportation? That is the naked question. The question is not whether the American lines shall make more money or have a more comfortable time by yielding the demand of this stranger to our soil and our laws. The submission to your Honorable Board is one of title and right. It is not one of expediency. The right asserted, either subsists, or it does not subsist. There is no middle ground. The Canadian line affirms this right. As I have stated once before to-day, "he who affirms must prove." We contend, that it must not only establish its title and right to an undefined share of the San Francisco traffic, but, necessarily, that its title or right is an exclu-

sive title, a sole right, because it is asserted against all the American lines. It must establish its right to be dealt with preferentially, to have us deal with it as we may not deal with each other. It must provide this Board with a reason upon the record of which your Honors may stand before the world in justification of your
3588 decision, that we, who are to the manor born, citizens of this Nation, shall give way to an alien, a stranger within our gates. What reason, founded in equality of privilege which everywhere is co-existent with equality of right, has been advanced by our adversary? Whence comes the asserted title and right? What will be the answer of this Honorable Board to that question?

If it please the Board, I have in passing referred to and submitted several exhibits: "A", "B", "C", "D", "E" and "F". I wish now to offer "Exhibit G."

"Exhibit G:" Comparison of distances via Vancouver, Seattle, Portland, New Orleans and Galveston, respectively.

Those are compiled from the "Travelers Official Guide," my authority for the distances I have used.

"Exhibit H," I have already filed. "Exhibit I," the same; "Exhibit J," the same.

"Exhibit K," "K–2" and "K–3", are the lists of Differentials.

"Exhibit K:" Freight Differentials in the United States prepared by Secretary of the Inter-State Commerce Commission, September, 1898.

"Exhibit K–2:" Circular Central Freight Assn., Chicago, showing rates to and from west bank of Lake Michigan ports, November, 1897.

"Exhibit K–3:" Freight Differentials between Joint Traffic and Trunk Line territories and San Francisco.

"Exhibit L:" Report and Opinion of Inter-State Commerce Commission in re Passenger Differentials by Canadian Pacific Railway, August, 1898.

"Exhibit M:" Report of Discussion Canadian Pacific Dif-
3589 ferentials at meeting Trans-Continental Lines, Denver, August, 1898.

"Exhibit N:" Comparison of Distances of the all-rail lines of Canadian Pacific, Great Northern and Northern Pacific.

"Exhibit O;" Comparison of Distances of the all-rail lines of the Texas & Pacific and "Sunset Route" of the Southern Pacific Co.

"Exhibit P;" Senate Report No. 847, 51st Congress, First Session.

"Exhibit Q:" Statistics of Railways in the United States in 1896, published by the Inter-state Commerce Commission.

"Exhibit R:" Report of the Inter-state Commerce Commission, in the matter of the application of the Atchison, Topeka & Santa Fe Ry. Co., and others, for a suspension of the fourth section, decided February 24th, 1898.

"Exhibit S:" Article in the New York Sun of July 16, 1898, entitled "War in Passenger Rates."

"Exhibit T:" Report 1530, 51st Congress, 1st Session, on relations with Canada. Testimony taken by the Select Committee on Relations with Canada, United States Senate.

"Exhibit U:" Showing payments that were made to the Canadian Pacific Railway Company during the year 1891, that I read from yesterday.

I believe, if it please your Honors, that is all I have to present. I realize that I have, in a large measure taxed your patience., I ought to apologize. All I can say is, if you have suffered more than I have, you deserve a greater amount of sympathy and I extend to you my most hearty thanks. Do you care for this map as an exhibit?

3590 Arbitrator WASHBURN. Yes.

Mr. STUBBS. As many of these exhibits that I have are original documents, and belong in my records, after you are through with them, I suppose they can be returned to me; they are my own exhibits.

Arbitrator WASHBURN. Yes.

Arbitrator MIDGLEY. Mr. Stubbs, might I ask you a question, please?

Mr. STUBBS. Yes.

Arbitrator MIDGLEY. I think there has not probably been any statistics kept by the Trans-Continental Bureau for several years?

Mr. STUBBS. No, sir.

Arbitrator MIDGLEY. Would you be willing to furnish a statement of the business since the time you suspended; all of the business by years, separating the eastbound and the westbound?

Mr. STUBBS. I would not, for the reason that it has nothing to do with the case.

Arbitrator MIDGLEY. My object in making the inquiry, was, you have complained of the past injury done you by reason of this competition with the Canadian Pacific, and so, taking their traffic, which we will call for at the same time, we would ascertain the percentage of the total they have carried.

Mr. STUBBS. I beg the Honorable Board's pardon. I do not think it will be found anywhere in our statement that we have complained of injury done by the Canadian Pacific. We have claimed what was manifest, or what must be manifest to the Honorable Mem-

3591 ber, himself, that we have given this differential in the past to the Canadian Pacific, through fear, or constraint—fear that there would be incalculable injury done to us. I have made no statement that the Canadian Pacific has damaged us in the past few years.

Arbitrator MIDGLEY. In looking over the proceedings, after I was appointed, and called for the record—in fact took them home and read them, I recalled a speech of Mr. Mellen's at one of the meetings, in which he said, for example, that five per cent—that is as I remember—would not be an unfair amount for the Canadian Pacific to have carried.

Mr. STUBBS. That probably would come under the second question submitted to the Board, possibly. If it please the Board, you will notice I have not touched the second question, for the reason that the submission to this Board is the question of title and right. I do not believe, and cannot be made to believe, that this Board or any Board will decide that the Canadian Pacific, or any other line, has a title or right to a differential rate, or a title or a right to any portion of the traffic that makes a differential rate necessary in order to obtain it. When we get to the second question, then I shall be very glad to do everything that I can in the way of giving information.

Arbitrator MIDGLEY. At the close of Mr. Kerr's remarks for the Canadian Pacific, one of the Arbitrators asked him for certain information in the way of statistics, which he said he did not have now, but would procure them. I simply wanted to comment on the difference in position.

Mr. STUBBS. I have noticed what Arbitrator Day did at that
3592 time. Arbitrator Day, I suppose, knows what he is about.

Arbitrator DAY. Mr. Kerr was talking about the volume of traffic, and he said, among other things, that if this Board of Arbitrators did not—this is the way I understood him—that if this differential was not granted the Canadian Pacific that it would practically result in their exclusion from the United States. I asked Mr. Kerr for the total volume of Inter-state traffic which they carried. That is easily obtainable from the Treasury records of the United States Government, because they preserve them. I then asked him to separate them and divide his traffic, and let us know what portion of the whole was California traffic, either to California or from California. It was with that view, and to meet that point which Mr. Kerr himself made, that I asked for that information. Mr. Kerr did not have it and could not give me even an approximation in respect to any of it. I do not ask them to go to work and procure statistics. If he wishes to do so within a reasonable time, while the Board is together, I shall be glad to see them; but I asked for them only in reference to that particular point which he himself raised.

Arbitrator MIDGLEY. This Board has not anything to do in the submission of this Trans-Continental question, with shipments between Chicago and Boston. It is simply confined to Trans-Continental traffic, and the differentials are not claimed nor applied on any other.

Arbitrator DAY. That is what I thought. Mr. Kerr has made the
statement that if this Board did not grant or concede their con-
3593 tention, and grant them a differential, that it would practically
exclude them from the United States.

Arbitrator MIDGLEY. It would not exclude them from business between points in the States where it did not have——

Arbitrator DAY. You made your statement so broad that I thought I would ascertain the traffic and how it was applied.

Arbitrator WASHBURN. Mr. Stubbs, I understand you have finished?

Mr. STUBBS. Yes, sir, I have closed.

Arbitrator WASHBURN. Will there be any other speakers in behalf of the American lines?

Mr. STUBBS. I do not know of any.

Arbitrator WASHBURN. Then the Board is ready to hear the Canadian Pacific in its closing argument.

Mr. STUBBS. Here is an exhibit I intended to put in. You may not want it, and at the same time you may be very likely to need it. It is the Proceedings of the Trans-Continental Association. I have had them taken out from the body of the books and everything that relates to those proceedings and the Trans-Continental Association, that relates to freight differentials is presented here in form that is more ready for your examination, than if you were to go and search through those books. If you had rather have them I will file it with you.

Arbitrator WASHBURN. I would like to have them.

Mr. STUBBS. I file this as "Exhibit V."

Arbitrator WASHBURN. Mr. Kerr, you may proceed.

Mr. KERR. Mr. Chairman, and gentlemen: As it is now after 4 o'clock, and the representative of the American lines has develo-
3594 ped several points, covered with a very eloquent display of pyrotechnics and oratory, I would ask that the Board adjourn until to-morrow morning. I would like the opportunity of going through and picking the meat out of all this long discussion, in order to try and answer any points that have been raised that have not been already covered in my statement. A great deal has been said, and it will take from now until bedtime really to get at it, and I would like that opportunity of doing it quietly and leisurely, in order that I may be able to come before you in the morning with a proper statement of our case in refutation of their points.

Arbitrator WASHBURN. We will adjourn until 10 o'clock to-morrow morning.

At 4:15 p. m., an adjournment was taken until October 15th, at 10 o'clock a. m.

3595 MORNING SESSION.

OCTOBER 15, 1898—10 A. M.

The meeting convened pursuant to adjournment.

Arbitrator WASHBURN. Since we adjourned yesterday afternoon, a telegram has been received from Mr. Shaughnessy by Mr. Kerr, expressing a desire to be present before the hearing is closed, and I infer, to possibly make some remarks upon this subject, and I would like to ask the representative of the American lines, if he has any objection to that. He cannot be here, he states, until Monday morning.

Mr. STUBBS. Mr. Chairman, I do not know that we have any objections. I think we are prepared to stand on our case as it is made, at the same time I think it pertinent that this statement be made:

This matter was agreed to on August 23rd. At that time, as I once before stated to the Board, we hoped to be able to get it out of the

way; to make the submission, expecting the question to be decided before October 10th. On that account the meeting at Denver, which was attended by representatives of all the Trans-Continental lines, inclusive of the Canadian line, adjourned to meet at New York on October 10th, for a consideration of the general situation, with the end in view of improving it, if that were possible. Some Committees were appointed for the purpose of leading up to the work that might come before that meeting in New York. These facts will be revealed to you if you will refer to the proceedings of the Denver meeting, which I understand have been filed. We all went
3596 about preparing our case immediately upon the adjournment of that meeting—I am speaking now for the American Lines, and in that respect speaking for myself more perhaps than for any other member of the Committee—laying aside much of our current work in order to prepare for this hearing. The Canadian line had the same opportunity, and I presume that the same spirit inspired them that inspired us in the matter. Later on, in correspondence with Mr. Morton, who was the mouth-piece of the Chicago resident members of the Committee, it developed that some understanding was desirable as to how the submission should be made. Just how that came up, I do not know, but I was advised that the Canadian line asked our people here whether this submission was to be made by traffic men or by counsel. We expressed a willingness to leave the presentation to the traffic men, and I have been informed by Mr. Morton that he had the understanding with Mr. Shaughnessy, that this presentation was to be made by the traffic men. That is, so far, supported by telegraphic correspondence passing between Mr. Kerr and myself. I received a message from Mr. Kerr asking me if our case was to be presented by counsel or by traffic men, and, if so, by whom. I replied that the Committee had not yet met, but that I understood that the case was to be presented on our side by traffic men; as to who would present it, I did not know; we had not reached any conclusion as to that. I received an answer from Mr. Kerr to this effect, that that was all right, except that if we afterwards decided upon presentation by counsel, he wished to notify me that the Canadian line would ask for a postponement of the hearing, in order to coach their counsel.
3597 I responded to that by saying that I should see that he was properly notified, and immediately after it was concluded that I should make the presentation for the American lines, I wired Mr. Morton to consult with Mr. Truesdale and give notice to Mr. Kerr to the effect that it had been finally decided, so far as our part of the case was concerned, that we should submit it by traffic men. Upon my arrival here, I asked Mr. Morton if the notification had been sent, upon which he informed me, as I have said, that it had, upon receipt of my despatch, and that there was an agreement that the arguments were to be made by traffic men on both sides, and I believe he stated that he notified the Canadian people that I was to represent the American lines.

Now, it has been intimated to me that the Canadian people are under the impression that we have had the advice and aid of counsel. That is not true; not in any sense, nor in any degree. The presentation of the case that has been made by the American lines, is my work, wholly unassisted by any lawyer or any counsel by way of advice, reference or suggestion. The only assistance I have received has been on the part of the traffic men who are members of the Committee. I have supposed, and I think that the agreement so far reached necessarily implies, taking all the circumstances into consideration, that this submission was to be made by the traffic men; that it was to be made at this hearing without any unnecessary delay, to the end that we might go about our business, which the Board knows is very pressing; and I have purposely avoided anything that would in any way delay the case. Now, the Canadian Pacific have had the same opportunities that we have had. They have been represented here by their traffic men; the men who have been
3598 familiar with this case from the very beginning. There is only one man that I know of, who has ever represented the Canadian Pacific in any of our general meetings, or of our exclusively freight meetings on this subject, that is not present here, and that is Mr. George Olds, and he has been out of it for a long time.

I think at every meeting, except perhaps the first one, Mr. Kerr has represented the Canadian line. He is the man who takes the burden of this business, with Mr. Bosworth, of handling this question with the American lines. He has taken charge of it from the very beginning. The Canadian line has no other man that is so well posted, or that, in my judgment, is as able to represent them before this Board, as Mr. Robt. Kerr. Coming in now, after their opening, and our submission of our case, and asking for time to bring in the Vice-President—the active manager of their road—the man who controls the entire policy of the road, subject only to the President, it seems to me is a departure from the agreement. I should say that it was only reasonable that, if you accord this privilege—and I am not going to object to it—that I should have the right to bring our Vice-President here to answer Mr. Shaughnessy—General Hubbard; but in order to do that I should have to ask for further delay, for I do not know that he even knows that we are arbitrating this case. I reported to our President the result of the August meeting at Denver, and wrote him, and just this morning received his reply in acknowledgment of the receipt of my letter advising him that I had been selected to present the case of the American lines. I had hoped
3599 that we would present this speedily and that I should be able to get home; that is to leave for San Francisco tonight. That, I now see is not possible.

Now, with that statement of the case, I propose to leave the matter entirely in the hands of the Board, and shall be satisfied. I do not intend to make any reservations, but leave our case in that respect entirely in the hands of the Board.

Arbitrator DAY. Mr. Stubbs, I understand you say that you do not object.

Mr. STUBBS. Yes, sir; I say I am not going to object.

Arbitrator WASHBURN. Mr. Kerr, do you wish to make any further statement of the matter?

Mr. KERR. I do not think the subject calls for any statement from me. Mr. Shaughnessy is our chief traffic officer; in the same way, of course, he is also our chief operating officer. He takes a very deep interest in all matters of traffic. All matters of importance that come up in connection with the traffic department must be passed in review before our Vice-President, so that in asking that he should appear here before you, the Canadian Pacific Company are simply presenting to you their chief traffic officer. Heretofore you have been listening to one of the subordinate officers. Therefore, I take it as not wrong or amiss that the Canadian Company should be heard through their Vice-President.

Mr. STUBBS. Why has he not been here from the beginning? It has developed by this statement you were not going to call him in; you had no intention of bringing him in, in the first place.

Arbitrator WASHBURN. When I was first called into this
3600 case, we took up the matter of the manner in which the railroad companies should present their case to the Board, and I think a telegram was sent—certainly it was understood that one would be sent—by Mr. Countiss to both parties that they would be allowed to present their case in any way in which they chose, either by traffic officers, by other of their own officers, or by counsel, the desire of the Board being to get at the facts in the case. I was told the hearing would probably require two days. This is the fourth day and to remain here is to me a matter of considerable inconvenience. I have important matters for the road with which I am connected that require my attention, but it is the desire of the members of the Board to get all the light upon this subject they can in order to decide the case intelligently, and as the representative of the American lines has offered no objection, we will consent to the appearance of Mr. Shaughnessy as desired, and when the hearing is adjourned to-day, it will be until Monday morning at 11 o'clock, at which time Mr. Shaughnessy says he can be present. Now, Mr. Kerr, are you ready to proceed?

Mr. STUBBS. Now, Mr. Chairman, yesterday I filed as an exhibit with the Board a copy of a Decision of the Interstate Commerce Commission in the Passenger Differential case. I had it in my mind at the time, but it escaped, to file the record of the hearing in that case. I wish now to file it as a part of the submission yesterday. (Filed as "Exhibit Y.")

I also omitted to file a document which I had with me, but somehow
it got out of the list of exhibits, in support of the averment, on
3601 our part, that the opening of, and operation of the Canadian line was inimical to the commercial interest of the City of San Francisco. In support of that statement I beg leave to file as an

exhibit a "Compilation of the Imports and Exports, Port of San Francisco." (Filed as "Exhibit W.") It is signed by Edward A. Stevenson, who is our Custom House Attorney in San Francisco, but it is taken from "Commerce and Navigation of the United States," an official document issued by the United States Treasury Department. I have not that document with me, but it is a public document, and if it is desirable the figures can easily be proven. Just for a moment, calling the attention of the Board to this showing "Commerce between San Francisco and British Columbia for the years 1880, 1886, 1888, 1890 and 1897—the years being the fiscal year ending June 30—in 1880 the exports to British Columbia by San Francisco were $866,000; in 1897, they were $550,000." Well, it will be found by examination of the paper that the total exports of San Francisco as between 1870 and 1897 increased three times.

Arbitrator WASHBURN. Those are practically the figures you gave us yesterday as I remember.

Mr. STUBBS. No; I did not give these figures at all.

Arbitrator WASHBURN. I do not know that you gave these figures, but I got that result from my own calculations of the figures you did give.

Mr. STUBBS. I also wish to file, just to bring the matter before the Board so that in its consideration of the subject it may have had its attention called to this point and give it whatever weight the
3602 Board thinks it is entitled to, a copy of the Evening Post of October 13, 1898. (Filed as "Exhibit X.")

Arbitrator WASHBURN. The Chicago Post?

Mr. STUBBS. Yes, sir; yesterday's Post, calling attention to the special cable to the Evening Post under the general caption of "Republican Money Markets," in which is stated that at the meeting of the directors of the Grand Trunk Railway of Canada today the Chairman stated that negotiation with the Canadian Pacific for the restoration of local rates had proved abortive, the reason being that the Canadian Pacific wished to dis-associate the Grand Trunk from connection with American lines in the matter of through business. Those were conditions to which the Grand Trunk could not consent. That is submitted in reply to the assertion upon the part of the other side that the participation in purely domestic Canadian business by the American lines was welcome to the Canadian line. It is a matter of public knowledge that this brief statement found in the despatch which I have referred to, refers to the fact that because the Grand Trunk line would not withdraw from its connection with American lines for purely Canadian business and work wholly and solely with the Canadian Pacific line, that the Canadian Pacific cut the local rates, instituted a war of local rates in Canada against the Grand Trunk to compel it to do that thing.

Arbitrator WASHBURN. Mr. Kerr, are you ready to proceed now?

Mr. KERR. Mr. Chairman and Gentlemen of the Board: Before proceeding to the main case, I ask permission to make a short reference to the two exhibits that Mr. Stubbs has just filed with you.

3603 In the first place, in his remarks in connection with the filing of that trade report showing the exports from San Francisco to British Columbia Coast points, and showing that in a given number of years a falling off has taken place, that those exports have decreased, their values have decreased. In order that you should arrive at a fair conclusion as to just what that means, if the matter to your mind has any bearing on the subject in hand, you should first obtain the returns from American North Pacific Coast points, the exports from those points, from Portland, Tacoma, Seattle and points on Puget Sound, to British Columbia points, and see if the markets of Canada have been shut out from the reach of the American seller. The chief exports from California to British Columbia in the past have been fruit, dairy products and cereals. British Columbia has opened out of late years by reason of the construction of the Canadian Pacific road. Its valleys are rapidly filling with an agricultural population, and they are very fertile and rich valleys that can produce almost anything required for the use of man, for his necessities. Now, the producing power of those valleys is increasing every year, they are producing more and more, and they have more to sell. What more natural than that they should supply their products to the towns and cities of the coast in British Columbia? And what more natural than that the exports, the sales of products from San Francisco, should decrease? Surely, there is nothing in that very natural course to influence you, or to bear on this subject in hand, nor to create in your minds any prejudice whatever.

3604 Concerning the filing of this newspaper as a matter of record—official record before you—there is no one who has any greater regard and respect for the newspapers than I have. They are a mighty power for good, and they are a mighty power for evil; but we all know that they are not always accurate in their statements of facts. The very nature of things, the rush and turmoil of this busy life, this busy period, this end of the 19th century, precludes the possibility of men, who are devoted to the gathering of news, the hurry and scurry, to do more than gather the points here and there. They get the skeleton, and they build on the body; and, in that building, they are very, very frequently, out of line, and do not get their proportions right. Now, even in my wildest moments, I do not think I would ever dream of filing a newspaper as evidence before a Board of intelligent, experienced men, such as I am standing before, to take it—such a report, as being correct; and if it is correct, what does it mean? It has nothing to do with this subject that is before you. The whole question under discussion is the passenger matter. It is a question of restoration of passenger rates, with the hope of increasing passenger revenues. There have been various points of dispute, as you all know, as between the Canadian Pacific and the Grand Trunk. Does anybody mean to say that there are not also many points of dispute as between the American lines, one with the other? Has the Southern Pacific Company no disputes with their neighbors of any kind? Now, why should a

newspaper report bearing on passenger difficulties, that may or may not exist, as between the Grand Trunk and the Canadian Pacific, the Grand Trunk, and any other Company, Canadian or American,
3605 the Canadian Pacific and any other company, Canadian or American, on purely passenger matters, have anything whatever to do with this case? I do not see what light or information such a newspaper article as that can give to you gentlemen to aid you in deciding on a purely freight traffic question.

The representative of the American lines has presented to you a most voluminous statement of his case. It is clothed in many words. No fox ever eluded his pursuers, ever doubled on his tracks with greater skill than the representative of the American lines in iterating, reiterating, presenting and re-presenting, in every form and phase, pretty near, that the English language is capable of being turned into; the same thing over and over again, with the idea of thumping and pounding and pounding the points so that they will be thoroughly clinched and stay. In doing this, he has shown a great deal of cleverness. We know that he is clever, but, in doing it, he also has obscured and beclouded it to such an extent that it becomes at least to me, almost an impossibility to follow him through in anything like a connected manner. Therefore, I hope I will not exhaust your patience in endeavoring to follow him. I may have to iterate and reiterate, on the same points, double and come back.

The representative of the American lines in the opening of his case on Thursday afternoon, makes use of this statement: "This contention is in respect to freight rates, and freight rates only," meaning that the subject before this Board is one pertaining exclusively to freight rates; but we find, during the course of his argu-
ment, he has again and again quoted and made reference to a
3606 decision—not a decision—they do not claim it to be a decision—of the Inter-state Commerce Commission, it is an opinion that they gave in connection with the Passenger Differential case. He has not only done this, but he has filed with your Board, the opinion of the Commission in connection with the case. Now, it is not at all clear to me what bearing a passenger question which stands alone, by itself, can have on this freight question, that stands alone by itself. We all know that precedents, customs, rules and regulations, pertaining to the handling of passenger business are very different from customs, rules and regulations pertaining to the handling of freight business. Sometimes general principles can be applied to both, but what may be done or said in a passenger matter, cannot possibly have any connection with what you do and how you act in a purely freight matter, therefore, I have not the least fear that all these passenger records, that our opponent has filed with you, will have any influence on your minds whatever in dealing with this subject.

Mr. Stubbs makes argument that the so-called Pier rates in effect by the "Sunset," "Mallory" and "Atchison" lines, and "Cromwell" and Texas & Pacific lines, cannot be regarded as differential

rates for the reason that the all-rail lines may make the same rates if they wish. The published rates as shown in Trans-Continental Freight Bureau Tariffs are made up by conference and agreement in fact but not in theory. That may seem paradoxical. It is so. They are supposed to be—that is these tariffs—these agreed published Freight Bureau tariffs are supposed to be the individual rates of each of the lines, as according to their present interpretation of the
3607 law, the roads cannot legally combine for the purpose of making an agreement; therefore, each road is at liberty to change its rates at any time without regard to the others; doing it in a lawful way, of course, or else taking their chances on the law. Now, if the all-rail lines decided to adopt and put into effect, from New York, the Chicago rates, being lower than published rates from New York, and the lower rates as I have already explained from Chicago are the rates that are put in effect from the New York piers in connection with these Southern Ocean lines—ocean-and-rail lines—they are at liberty to do so providing they conform to the requirements of the law. Now, here we have a statement of differential rates, working and operating on the lines managed by the great champion of equality in rates, for Mr. Stubbs is the great champion on that subject. He is the warrior that is always put into the arena when a battle is to be fought, on that or any other subject, and as all of you know he is a very vigorous warrior. Now, is it consistent to come before this Board, having the enjoyment of lower rates than the all-rail lines out of New York and the surrounding immediate coast territory? I think he has explained to you that the all-rail lines, owing to their greater interests up in the middle and middle West States, cannot always afford to reduce their rates, openly, to meet these differential rates that the "Sunset" and the other ocean-and-rail lines wrested—took from—the all-rail lines against their will. I say that deliberately and knowingly, for I have been the witness of discussions and disputes on that subject as between the representatives of the ocean-and-rail lines and the all-rail lines in meetings.
3608 These differentials were not given voluntarily to the "Sunset" line, and "Atchison," and to the Texas & Pacific line; they were taken by force, and now are growing to be a custom to them, according to Mr. Stubbs' interpretation of the word. He is great on telling us what words mean. It is not quite conforming to the rule as being beyond the time whence the memory of man runneth not. We remember when it began and we know it exists. And now they sit here with these differential rates, and they say it is right they should have them. I think Mr. Stubbs also gave us a lesson on what the word "right" means. On the records of the Trans-Continental Freight Bureau, it would appear as if the other lines now had consented to these differences of rates as made from the New York pier on the one hand, and by the all-rail lines from New York proper on the other, and by the aid of these differential rates, these ocean-and-rail lines are enabled to reach up into territory they should not invade. Still, the Canadian Pacific Company, in one place of Mr. Stubbs' statement

is compared to Barons of old, who held up anybody that came their way, if he had anything on worth holding him up for.

It is stated by the representative of the American lines that the Canadian Pacific was not projected or built for the purpose of developing, fostering or sharing in the carrying trade between San Francisco and the eastern parts of the United States. Doubtless that is true as an initial idea. Will the representative of the American lines tell us or you that whenever a road is projected and built, that the full field it may ultimately be able to cover, draw traffic and revenue from, is always known and taken into account? Is there
3609 not in that, as in many other business propositions, an unknown quantity? Do not railways, small links at first, grow and develop and by process of evolution finally become great and long systems of roads that cover huge territories of country, by building, by absorption, by purchase, and the various other methods we recognize of building up great systems? A little road may be started down here—and has been started—in Illinois or any other State in the Union, that may not be more than fifty or one hundred miles long when first projected, but after the lapse of years what do we find? A link in a great system of railroads which may reach clean across this Continent. Now, what point is there in it, in stating that it was not contemplated by the builders and projectors of the Canadian Pacific road at the start, at the beginning, that we should reach out for San Francisco traffic?

I feel as if it is wrong for me to take up your time in explaining a point that is as well known, and better known to you than it is to me, that railroad companies seek for traffic and revenue from and between all points that they deem may be to their advantage to do so. I am not seized of the facts, but I very much doubt that when this "Sunset" line was built, as between San Francisco and New Orleans, that the original projectors had any idea that it would reach away up to New York and through the whole northern tier of States in the Union—Northern and Eastern. These things all come by a process of evolution. The world was not made in a day; we are told it took six.

3610 In this connection, he very mistakenly calls up the "Soo Line" as one of the examples. Now, the "Soo Line," so far as its western extension to the junction of the Canadian Pacific line at Portal, No. Dak., was built expressly for the purpose of seeking for the trade and traffic of the Pacific Coast, Middle-West, Middle and Eastern States. The Pacific Coast Steamship Company was not built and operated expressly for the purpose of carrying Trans-Continental freight in connection with the Canadian Pacific road. They are an old company, antedating the Canadian Pacific by many years, as I believe. When that line was put in operation they had not the faintest idea that they were going to participate in Trans-Continental San Francisco traffic; but on the completion of the Canadian Pacific line to the Pacific Coast very naturally they sought an alliance whereby they could increase the field from which they would draw

revenue and traffic. It was of mutual interest that such an alliance should be made. It was made and today the line is in operation, and has been for a good number of years. It is not necessary for projectors to have in mind all the possibilities that may come from the inception of construction of a line at the beginning.

In connection with the question as to the special arrangements we had with the Association lines in 1891, turning on the point of my statement that we carried so little business—practically nothing—the question was asked if we still maintained our agencies, to which I replied, "Yes, we still maintained our agencies in their entirety."

Mr. Stubbs makes the statement that the San Francisco office
3611 of the Canadian line was simply a ticket office. I do not believe Mr. Stubbs made that statement deliberately in order to deceive the Board. He was simply mistaken. We do now, and have always, maintained a freight and passenger office in San Francisco, and the title of our representative there is that of "District Freight and Passenger Agent." The agency was inaugurated, I think late in '86 or early in '87. The same representative is there today as was appointed then; he is there for the purpose of taking care of both our freight and passenger interests. No agencies were closed during the year of 1891.

In that connection the representative of the American lines cites as an example an imaginary case in connection with the Union Pacific and Central Pacific, and says that if they had pursued the same policy, or did pursue the same policy in connection with the canvassing and working for freight to and from competitive points, that their business would leave them, 50 per cent or more, inside of a year. That is my understanding of his statement and what he meant. Now, no one can dispute that statement as it stands alone and by itself, but it was made with the purpose of carrying you away from the point. The Union Pacific and Central Pacific under like circumstances, conditioned as we were, under the same agreement with the other lines as we were, would, I take it, have done exactly what we did, and carry out their agreement with the other fellow honestly and truly, and their business would have left them—their tonnage; and, as in the case of the Canadian Pacific, it would have taken them a long time after that agreement was through with, to recover and get
3612 back to the status of tonnage that they enjoyed before they entered upon that agreement.

The representative of the American lines has laid particular stress on the fact that the different lines, members of the Association, should contribute to the Canadian Pacific subsidy, paid out certain sums, which, from the figures, you will notice, shows that they amounted only to about 2½ per cent of their gross earnings, many of the lines being only 300 or 400 miles long, away off in the center of the country there, little bits of links in a long chain that traverses this great country from the Atlantic to the Pacific. This, our opponent considers a very heavy tax and unprofitable investment. He does not tell you that the Canadian Pacific Company, while a member of the

Association, in paying its share of the Pacific Mail space rental (so-called) subsidy,—in fact, a differential under another name,—does not say that we were suffering any hardship in paying for something for which we gained very little direct benefit. Strange, how sometimes a fellow on the other side always forgets the good points against him, and in pleading for your sympathy in connection with the great sufferings of these small lines, away out in the middle of this great country, the middle links, in contributing to the subsidy of the Canadian Pacific road, he does not say anything about how they are suffering under present conditions. Their sufferings, under those conditions back in 1891, were not a drop in the bucket, as compared to the suffering they are now undergoing by reason of disturbance in rates and reductions in revenues to and from points with which the Canadian Pacific Company has nothing on
3613 earth to do. It cannot reach, cannot get near, and still they will tell you, and do tell you, that the Canadian Pacific differential is the great—our greatest disturbing element in the rate situation of the whole Trans-Continental business. They say this to you, gentlemen, who know as much about the situation as they do, and it sounds to me—I was going to say, ridiculous, but I will only say, funny, why they should do it.

Arbitrator DAY. You spoke of the Panama subsidy. What was the amount of that?

Mr. KERR. My recollection of the Panama subsidy is that it was $65,000 a month, and before it terminated it was $75,000 a month, amounting in the year, I guess to something over $800,000, perhaps $900,000; the records of the Association of course will tell you if you care to investigate them.

Arbitrator DAY. Did that continue more than one year, or is it the year you particularly mention?

Mr. KERR. Oh yes, the Panama space rental arrangement subsidy expired in 1892; when the Association dissolved, I think they went too.

Arbitrator DAY. You were speaking about your contribution to that. What was the amount of it?

Mr. KERR. Our contribution to that in 1891 was nearly $12,000—$11,700 odd—2½ per cent on the amount of earnings that year. The other fellows, these little links out here, paid us 2½ per cent. We also paid 2½ per cent.

Arbitrator WASHBURN. What roads contributed to that Mr. Kerr?

Mr. KERR. All the roads in the Association.

Arbitrator WASHBURN. All the roads of the Trans-Continental Association?

3614 Mr. KERR. Yes, sir.

Arbitrator WASHBURN. None of the roads east of the Missouri River line contributed, only the roads west of that?

Mr. KERR. Only the Trans-Continental roads; yes, sir.

Arbitrator MIDGLEY. Those east of the river never contributed.

Mr. KERR. At our first entrance into the Association in 1887, for a certain period, we, along with some others, did not contribute, but evenutually we came in and took our share with the rest and carried it on until the arrangement expired; whatever the agreement was we all carried it out.

It may not be amiss, while on the subject of the subsidy to the Canadian Pacific road for the year 1891 to reiterate the fact, first, that we were not the originators of that plan. The Canadian Pacific Company did not go to the other lines and say, "Pay us something to stay out." It was the other lines who came to the Canadian Pacific to negotiate and finally agreed that they would pay this sum and before the expiration of the year many of these lines were willing and anxious to renew it—to renew the arrangement for another year, perhaps with some modification as to sum and so on, but others of the lines—I think some of those that had the least interest too, in the arrangement,—objected, and it fell through. It was not renewed after the expiration of 1891.

The question as to whether there had ever been an agreement as between the Canadian Pacific and the American lines as to the Canadian Company's differentials, has been discussed at considerable
3615 length and in the main denied by the representative of the American lines, even in the face of the records—the clear records—filed with your Board, of the New York and Milwaukee meetings held in '96—March and April, 1896, where they simply fell on a technicality, that because the act of one company for reasons good and sufficient unto themselves, prevented the completion of the proposed association and confirmation of the agreements all around. I think you will agree with me, gentlemen, that that is a mere technical evasion. The records speak for themselves. There was an agreement. There was an agreement at the beginning—the agreement being the outcome of proper, honest business negotiations. Negotiations of that kind you are all familiar with. It would be presumptuous in me to enlarge upon the point. There was no idea in the mind of the Canadian Pacific as to shot-gun policy, or ruthless destruction of revenue. At the inception, the question was one of ordinary business negotiations; at the close in 1896, when we may say our straight connections with the Trans-Continental lines ceased, by reason of the falling to pieces of this proposed association not being formed, there is a complete record of agreement, as between the American lines and the Canadian Pacific. Since that time, although not associated with them directly in the various organizations that they have perfected we have worked with them closely and in perfect touch all the time. When the old Association dissolved at the end of 1892, as already explained, we adopted the flexible plan of differentials on a percentage basis. There was not any serious objections offered to that, at
the time. We have been in meeting, off and on, with those lines
3616 ever since, and to my knowledge, I do not think there is any record of protest with this Company against the adoption of the 10 per cent differential plan, until about one year ago, when, at

a meeting in Chicago, something was said of rather an indefinite character on the question of our differentials. Again, in March and April of this year, the question was raised at a meeting. Again, in May the question was raised, evidently a concerted plan to make a record. They had got to act and they built up there a structure on which they could remove our differentials and destroy us so far as the California traffic was concerned.

I think it will be remembered that the representative of the American lines insinuated that the failure of the Union Pacific to finally agree to the proposed formation of the Trans-Continental Association, in 1896, was due to the question of differentials with the Canadian Pacific Company; differentials of 9 per cent, the compromise differential of 9 per cent. Mr. Stubbs is too clever to make that statement out straight, because he knows that it is not so. He knows, I know, and I think probably nearly every gentleman in this room knows, with all reasonable degree of certainty, without really being behind the scenes and having the records in our hands, the reason why the Union Pacific Receivers failed to confirm the action of their traffic representative in agreeing to the formation of that association. The reasons were, stated briefly and in general, that they were advised that they were taking some risk under their personal bonds in assuming to join in the payment of the Panama route proposed subsidy, and as they were not prepared to take that risk, consequently they failed to confirm the action of their chief traffic
3617 officer in the New York and Milwaukee meetings.

As has already been stated and explained at some length, a meeting was called in Denver, Colo., to be convened August 22nd, last, for the purpose, as was explained in the call, of considering the question of Canadian Pacific differentials in connection with them, as being an element going towards the disturbance of the rate market. Now, it says, "Westbound rate conditions have become so demoralized——

Arbitrator DAY. What says that, the call for the meeting?

Mr. KERR. No sir; Mr. Stubbs' presentation of his case.

Arbitrator DAY. I thought you said that that was in the call for the meeting?

Mr. KERR. Sir?

Arbitrator DAY. I thought you said it was in the call for the Denver meeting?

Mr. KERR. Yes, I take it as really a rehearsal of the call. This is a copy of the call sent to the Canadian Pacific Road.

Arbitrator MIDGLEY. Who sent that?

Mr. KERR. Mr. Stubbs.

"Westbound rate conditions have become so demoralized by attemps to meet Canadian Pacific differentials that I think the domestic Trans-Continental lines should immediately decide upon a settled policy to be pursued uniformly by all, either to abandon sporadic efforts to equalize Canadian Pacific rates and strictly maintain published tariffs, submitting to large diversions to Canadian line, or to

formally notify Canadian Pacific that United States lines will no longer submit to its demand that they shall make higher rates, and then proceed jointly by published rates to meet whatever action Canadian Pacific takes. The importance of this question
3618 merits the attention of the highest officers of lines engaged in California traffic with the east. Will you attend a meeting at Denver on Monday 22nd inst., for the purpose of discussing and disposing of this question?"

I wish to amend the record when I stated that this is a copy of the call sent to the Canadian Pacific Company. I did so because it is so stated here in Mr. Stubbs' evidence. But my recollection is that this call was not sent to the Canadian Pacific Company. The one that was sent to us was of very different wording, but it did say that the reasons for calling the meeting were to consider the situation in connection with the Canadian Pacific differentials. The call is before you and I am not pretending to give the exact reading of it.

Now, when we get into meeting at Denver, having been told what terrible fellows we were and the dreadful things we were doing, what do we find? After the discussion had fairly gotten under way, pro and con, as to the situation, the representative and chief traffic officer of the Union Pacific pointed out that it is no secret at all that the roads east of the Missouri River and the Mississippi River, on Trans-Continental business, are in a very demoralized condition, and that the through rate from New York to San Francisco can be cut through causes entirely foreign to the Canadian Pacific differential. This was a fact patent to us all. We all knew it, and the following resolution was adopted:

"*Resolved*, that a Committee of five of the Trans-Continental lines be appointed to confer with a Committee or such organization
3619 as they have, of the Central Freight Association and the Trunk Lines for the purpose of arranging, if possible, to stop present demoralization in Trans-Continental California and North Pacific Coast freight rates. If said Committee reports satisfactory arrangements, it then to be understood that all lines here represented are pledged to restore rates from all territories on such day as Secretary Countiss may fix."

Now, here is a situation developed that shows that the Canadian Pacific differentials are in no way responsible for the demoralization of these rates. It is well and publicly known that the connecting lines east of the Missouri River do shrink their proportion of their earnings. It is well known that the Trans-Continental lines do accept those shrunken proportions or earnings and add them on to the proportions of a through rate west of the Missouri River, with which to cut the agreed published through rates of the Trans-Continental Association, and in doing that naturally they wipe out and destroy the Canadian Pacific differential. Will anybody say that the disturbance on all these lines in the central Freight, in the Western and in the Trunk Lines' territory, is caused by the Canadian Pacific Trans-

Continental differential on California business? Surely, no man would say so who knows anything about the situation. Furthermore, the demoralization caused by this condition of affairs in this territory east of the Missouri River, is not confined to California; it extends to the North Pacific Coast. It carries all along Portland and north;

3620 points with which we have never had our rail line differentials, and never asked for them. Does the Canadian Pacific differential to San Francisco cause all of these lines down here to shrink their rates? Surely, you will never believe it.

The representative of the American lines claims that the American lines are united; that they are welded together as one line on this subject; that the Canadian Pacific stands alone as the only one seeking for differential privileges. In making that statement he may be in a measure right, but he does not take you gentlemen into his confidence and tell you why it is so, if it is so. In the first place the American lines are not a unit on this subject, any more than they are a unit on many other subjects. The Great Northern Company and the Union Pacific Company are not a unit on this arbitration. The representative of the American lines does not represent those companies, as I understand it. They have withdrawn. In the first place, the Great Northern Company refused their invitation to come in and join in this question of arbitration; for reasons, I suppose, that are good and sufficient unto themselves. The Union Pacific by their accredited representative, the chief traffic officer voted "aye" on this arbitration resolution at the Denver meeting, but for reasons good and sufficient unto themselves, their President over-ruled his action. That put them out of Court so far as this arbitration case is concerned. What their opinions are can cut no figure whatever in this case. The Great Northern never entered Court. What their opinions are can cut no figure in this case. The American lines are not a unit on this subject, as they are not a unit on many other subjects.

3621 Now, why do we stand alone in asking differentials on California business? We stand alone for the reason that the differential is the only means whereby we can obtain any share of this traffic. The others, the Great Northern and Northern Pacific, cited so extensively by our friend on the other side of this case, receive their quid pro quo for keeping out of California business by the ocean route. The representative of the American lines, with a display of a good deal of feeling, denied that there was any such agreement; denied my statement that there had been a trade and falls on the technicality that what was agreed to at the New York and Milwaukee meetings not having been confirmed could not be regarded—a mere technicality. As a matter of fact we know, or rather we think we know—and pretty often you are right when you think you know—that that agreement of Milwaukee and New York in 1896 is being operated under today.

Arbitrator WASHBURN. In its entirety or in part, Mr. Kerr?

Mr. KERR. To the extent, with possibly some exceptions, that the California lines do not work up into Puget Sound, north of Portland; they do not work actively; they do not care for the business, so long as the Northern lines will not work actively for California business. Precisely on the same basis, you might say, for the same principle will apply, when the Canadian Pacific Company had the subsidy they put their rates on a parity with the other lines with the result that it completely dammed up and stemmed the flow of traffic to and from California by the Canadian Pacific road. Consequently, the two
3622 northern lines maintain, in the same way, the full, published all-rail tariff by their ocean-and-rail routes, and they get no business. On the other hand, the California lines do not get very much business in Puget Sound; do not seek for it very actively, do not look for it. I beg permission to quote from the proceedings of the Trans-Continental Association, "General Meetings New York and Milwaukee, 1896." These are the meetings when it was proposed to form this Association and failed. On page 17—you have a copy of this filed with you—the resolution reads:

"*Resolved*, that the California lines, i. e. those lines which must work through or via California, to reach Portland and other North Pacific Coast points, hereby agree not to publish tariffs or to solicit business between Portland and North Pacific Coast points, on the one hand, and points in the eastern Trans-Continental territory on the other hand, but, on the contrary, to withdraw from participation in said business.

In consideration whereof, the North Pacific Coast lines, i. e. those lines which must work through or via North Pacific Coast points, from Portland to Vancouver—Vancouver excepted—to reach California (it being expressly understood that the Canadian Pacific Railway Company is excepted from this provision), hereby agree not to publish tariffs or to solicit business between California points and points in the eastern Trans-Continental territory, but, on the contrary, to withdraw from participation in such business.

It being understood that either party may call upon the
3623 other to publish tariffs on a sufficiently higher scale than those carried by the direct lines, to give full force and effect to the agreement embraced in this resolution."

Mr. STUBBS. Was that resolution adopted?

Mr. KERR. That resolution was adopted at that meeting. It says: "After full discussion, the following was offered and adopted."

Mr. STUBBS. I just wanted to get it fully before the Board. That was at the Milwaukee meeting, as I understand?

Mr. KERR. That was the Milwaukee meeting. Now, my understanding is that the Northern lines are acting on that; the California lines are acting on that today, with possibly some modifications. I think there has been an arrangement made whereby the Northern Pacific works certain lines of traffic, all-rail, out and into San Francisco, via the "Shasta Line" of the Southern Pacific Company, from

Portland to San Francisco. Possibly there may be, also, an arrangement whereby the Great Northern line may work certain lines of traffic, through Spokane, over their connections, the Oregon Railroad & Navigation Co. to Portland, thence to San Francisco. There is a large fruit traffic that will not take the ocean route. There are various kinds of traffic that must have an all-rail outlet; that cannot be handled otherwise. Now, the Canadian Pacific can get no advantages of this kind. They are up on the extreme north.

The suggestion was made by Mr. Stubbs that we should seek an all-rail inlet and outlet on the San Francisco traffic.

3624 Mr. Stubbs was not in earnest when he said that, I am mind-reader enough to know that. He knows the impossibility, the practical impossibility of the Canadian Pacific Company making an arrangement to work their traffic all-rail over three companies and pay each one of those individual companies a proportion out of what is a very low and practically non-paying through rate on many of the lines of traffic that we now have to carry. To use that through line, would mean a loss to the Canadian Pacific Company, and if those three connecting lines from Huntington, B .C., or Sumas, Wash.,—those are the two points of junction where the Seattle & International road, and the Canadian Pacific road join,—from that point down, if they were willing to accept their proportion of the pro rata per mile, or pro-rata per rate, it would not pay them, they would not make any money; they would be better without the traffic and so would we. Now, Mr. Stubbs ignores all practical workings in dealing with this question, and endeavors to create the impression on the Board that that all-rail line from Sumas to San Francisco, is a very easy proposition for us to come in and accept. If we pay those three companies a reasonable proportion, sufficient on which to give them a margin of profit, we would suffer a dead loss; and he asks the question why, if we can reach 1000 miles in the south and east for business, and pay the rates up to our connection at St. Paul and Minneapolis, why cannot we also pay for carrying our business another 1000 miles on connecting roads at the western end.

The published rate on rails from Pittsburgh to San Francisco is 75 cents. That is the published rate.

3625 Arbitrator DAY. How do you carry that traffic, Mr. Kerr?

Mr. KERR. If we had to take even that 75 cents and pay for 1000 miles haul on the one end and 1000 miles haul on the other, would not we be better without the business?

Arbitrator DAY. What is your route from Pittsburgh?

Mr. KERR. Oh, various lines. We get up in the usual way, just as the others do.

Arbitrator DAY. Up to St. Paul?

Mr. KERR. Yes, to Chicago and St. Paul.

Arbitrator DAY. I was wondering whether you carried that business by way of Detroit?

Mr. KERR. Oh, no.

Therefore, we must look at this question from a practical standpoint and stop theorizing. We could not possibly afford to carry the business by the all-rail line, under even very favorable offers of proportions and division. Furthermore, we have other obstacles in the way. I think the representative of the American lines stated—if he did not do so he can correct me—that we had an all-rail line into Portland, Ore., and that the Northern Pacific line was open to us; that we had it at the start and we have it now.

Mr. STUBBS. No, I did not say you had it at the start. I said quite to the contrary.

Mr. KERR. Well, when the rails were connected through from Sumas.

Mr. STUBBS. Yes.

3626 Mr. KERR. We could not have it; of course, if the rails were not there we could not have it. I meant when the rails were connected. Now, the information that he has gathered on that head is wrong. We have not had an all-rail line into Portland; not for freight business. We have no passengers. The Northern Pacific would not take our business into Portland. The very best that the Northern Pacific would ever do with us was to let us, for a period, into Tacoma, 42 miles from Seattle and two or three years ago they cut that off, and they will not let our cars roll one foot south of Seattle on their tracks even by paying their local rates.

Now, assuming that Mr. Stubbs, in charge of the Southern Pacific Company, should say to the Canadian Pacific Company: "Come and form a rail-line over our 'Shasta Route' and we will give you such proportions as you can work under." We have no means of bridging that 185 or 187 miles between Seattle and Portland; we could not accept his kind offer, and today we cannot move business south of Seattle on the Northern Pacific road, and we never have been able to move business south of Tacoma on the Northern Pacific. I am speaking purely of freight, of course. Now, I think that fairly disposes of the question: "Why do you not come and form an all-rail line?"

Arbitrator DAY. What objection can the Northern Pacific interpose to your getting in there?

Mr. KERR. They will not have another competitor in territory that they can hold to themselves.

Arbitrator DAY. Did you offer to do it? You heard Mr. Stubbs' statement yesterday.

3627 Mr. KERR. We have never discussed the propriety of working San Francisco business, but the Northern Pacific would never allow us to work into Portland; it never would allow us to use their line. They will not today. They would not take a car of San Francisco freight from us today any more than they would take a car of Tacoma or Portland freight from us today. They will not do it, because they do not want another competitor in the territory that they have local to themselves.

Mr. STUBBS. Well, now, is not that new matter, Mr. Kerr?

Mr. KERR. No, sir.

Mr. STUBBS. I have not said anything about that business.

Mr. KERR. It is in connection with this whole question.

Mr. STUBBS. I make the distinct assertion that you never have approached the Northern Pacific Company to form an all-rail through line to San Francisco, equitably, with an offer to abandon your differentials. I have not discussed Portland business or your relations with the Northern Pacific into Portland, except on the basis that you work there; on the basis according to rates.

Mr. KERR. I do not know that it is an important point, but the statement was made that the Seattle & International Ry. was an independent road. In order to make the record accurate, I would say that the Seattle & International Ry. is owned and controlled by the Northern Pacific Railway Company. They acquired the control of that road some months ago—I have forgotten how many, but it was some months ago—in the beginning of the year, I think. Previous to that the Seattle & International Ry. was an independent road for a period and during that period the Canadian Pacific Company made a traffic contract with it for the handling of traffic between Seattle and other points on its line. Our connection is at Sumas, and the contract or agreement, which has still some
3628 years to run, covers both through and local traffic, passengers and freight. Were it not for that, I am not so sure but what we would not be able to put our cars into Seattle today over that road.

In connection with the statement that the Northern Pacific and Great Northern by their ocean-and-rail lines, do not demand a differential, but that they actually operate these lines on a parity of rates—equality of rates—with the all-rail rates—Trans-Continental roads. I explained the reason why the Great Northern and the Northern Pacific published equal rates by their ocean routes and to show you how very effectually that plan is in stemming back traffic if you demand the same money for carrying an amount of goods by that broken ocean-and-rail route, as against the other fellow who has a direct rail line to offer, I quote from a statement of "Expenses of Inspection of Westbound Trans-Continental shipments reaching San Francisco via Pacific Coast Steamship Company and Oregon Railroad & Navigation Company Steamers;"—that is, handed to this steamer line by the Canadian Pacific, the Great Northern and the Northern Pacific and the Oregon Railroad & Navigation Company—theirs is a railway up to their Ocean Division. I might add that it was agreed that we would submit to the general system of inspection that obtains in California in order to check classification and weights and to charge up and all that sort of thing that you are familiar with. We and these other lines named agreed to go in under this inspection and share on a certain basis in the expenses in connection

with the inspection—the salaries and so on. I quote the following percentages of business carried:

3629

| 1898. | Can. Pac. Ry. | Gt. Nor. Ry. | Nor. Pac. Ry. | O. R. & N. Co. |
|---|---|---|---|---|
| January | .9274 | | .0307 | .0419 |
| February | .9924 | .0007 | .0065 | .0004 |
| March | .9814 | | .0185 | .0001 |
| April | .9906 | | .0009 | .0085 |
| May | .9498 | | | .0502 |
| June | .9848 | .0007 | | .0145 |
| July | .9846 | | .0002 | .0152 |

Now, it will be seen from that statement that those lines are practically all out of Trans-Continental San Francisco business. They are not "in it." Why? Because they do not want to be in it; it is not to their interest to be in it. The Union Pacific will not work San Francisco business through their Portland water gateway; if they did, would they not at once get into serious trouble with our esteemed friend here? If the Denver & Rio Grande system began working San Francisco business through the Portland gateway, would they not get into the same trouble? The fact of the matter is, that these various lines are either influenced by a club or they are bought off. In the case of the Northern Pacific and Great Northern, they are bought off. In the case of the Union Pacific and the Rio Grande system—(Speaker here made motions as if swinging a club)—that accounts for why the Canadian Pacific stands alone on this question of differentials.

Arbitrator WASHBURN. Have you finished on that point?

Mr. KERR. Yes, sir.

Arbitrator WASHBURN. As it is nearly one o'clock, we had better adjourn until half past two o'clock this afternoon.

An adjournment was here taken to 2.30 p. m. of the same day.

3630

AFTERNOON SESSION.

OCTOBER 15, 1898—2.30 P. M.

The meeting convened pursuant to adjournment.

Arbitrator WASHBURN. Mr. Kerr will resume his argument.

Mr. KERR. Mr. Chairman and Gentlemen: When we adjourned I had disposed of the case and given you the reasons why the Canadian Pacific stood alone on the question of differentials into San Francisco, and now with your permission I will touch upon a point raised. Mr. Stubbs in his argument stated that we were suffering under a disability on the east end of our line. Mr. Stubbs says that the Atlantic Seaboard traffic is moved by the Canadian Pacific via Montreal and what he calls its Sudbury line, meaning its main line via the north shore of Lake Superior through Fort William and Winnipeg to the west. If I understand him correctly, he is trying to pull us from the west end where our disabilities really exist down into the

east where they do not exist and he states that although ostensibly we are asking differentials in connection with our ocean line, that really they are to overcome disabilities in connection with our all-rail line around the north shore of Lake Superior. That is my understanding of his meaning in the manner in which he puts the case and I want to say right here that I think he knows better than that. We do not claim to have any disabilities on the east end of our line, where we are operating rail and wheel; we do not claim disabilities and consequently we do not claim differentials. Our disability rests on the west end with our ocean connections. The broken route, the extra handling, the prejudice in the minds of shippers as against using such a route, the necessarily longer time that it takes to get goods forward on such a route and the various other reasons that I have already specified. I will not take up your time to recount them.

3631 The next point I desire to touch upon is that of equality in rates. As baldly stated without explanation and without regard to circumstances surrounding particular cases, it looks fair and it is fair when not applied practically as between broken rail-and-water lines and direct all-rail lines and of equality in rates by every line crossing this continent; by all lines throughout this whole country east and west of the Missouri River section that are traversed by both lake-and-rail and by all-rail lines; sections that are filled full with differential lines; differential lines because they suffer under these disabilities that I have described over and over again. Now, carried to a logical conclusion, what is the effect of equality in rates between all of these broken rail-and-water lines and all-rail lines? Will it not have the effect of throwing the tonnage and the revenue over onto the strong all-rail lines? Will it not have the effect of largely destroying the weaker rail-and-water lines? Will it not have the effect of taking from the weak and giving to the strong; to the lines that are already strong and increasing the weakness of those that are already weak and what becomes of the people who have their money tied up in those weak lines? What becomes of the people who are served by these lines through which they enjoy a competition in traffic? Gentlemen, I hold that the whole argument as advanced by the representative of the American lines in this case is fallacious and wrong. I do not agree with him on the point and I do not think that he can make any level headed traffic man believe that the perfect equality of rates does not mean just what I have said, if carried to its logical conclusion.

3632 Now, taking that to be correct, what becomes of the Canadian Pacific line in connection with San Francisco traffic? If we are forced to adopt equal rates with the strong direct lines? It goes without saying, that we must abandon the business, or, rather, that the business will abandon us. That will fit the case of our friend here. He would like to see a competitor removed. He does not care whether that competitor is a Canadian road or an American road. He would remove that competitor, if he had the power to do so, with

the utmost cheerfulness, but that does not suit the rest of us; it does not suit the public; it does not suit the people of the United States to have any line removed from the field as a competitor for business—for traffic.

Now, the argument has been freely advanced and dwelt upon, that the differentials of the Canadian Pacific road are a disturbing element and that they cause a general demoralization of rates. Applying the general principle of that, and weighing the lake-and-rail routes as against the all-rail routes, down in this section—I mean the lake section, from the Atlantic Seaboard to Chicago, if you like—if the differential of the Canadian Pacific line on the San Francisco business is a general disturber of rates, then the lake-and-rail differentials of the lake lines here must also be a general disturber of rates, but do we not often find that during the season of closed navigation on these lakes, when no steamers are operating, do we not find that there is often a greater demoralization in rates during the winter season when the lake-and-rail differential lines are not in operation? It is not because of the differential rates. As Mr. Stubbs has said, differential rates mean agreed rates, and when rates are
3633 agreed to they should be maintained. The statement has been made that agreed rates, differential and all-rail, full tariff, being on the market at the same time, the inducement to the man who represents the all-rail line in canvassing for business is so great in his greed and grasp for business for his line that he is never strong enough to resist the temptation to use the differential rate of his weaker brother and apply it on his own strong line. And this principle is advanced as an argument, has been on many occasions, why the differential rates of the Canadian Pacific should be done away with, because they were a temptation—too great a temptation—to the representatives of the other lines to maintain their tariffs. Those gentlemen can withstand anything except temptation, and I do not think it is a good argument, not if these strong lines intend that those rates shall be maintained, and the executive and chief traffic officers of those lines make their orders imperative to their subordinates that they must and shall be maintained, so that those subordinates thoroughly understand that their weak brother here on the right, with his lake-and-rail line, has been accorded a differential, and that that shall be respected. Will that man disobey orders? Not if he values his job. The trouble is, they do not receive those orders, and the representative of the strong line falls under the temptation. He uses the differential rate and that is the destruction of the whole revenue on the traffic. That is not the fault of the differential line. It is the fault of the other fellow, yet they would seek to hold us responsible for the conditions.

3634 This morning Mr. Stubbs took exception to my mentioning Portland rates, on the ground that it was not in the case and should not be referred to. I find, on his own record that he makes a very plain reference to Portland. Mr. Stubbs says:

"It may be that the Canadian line will give as a reason for not using the all-rail line, that the Northern Pacific between Seattle and Portland is not open to its use for San Francisco business upon reasonable terms, or upon terms which it can afford to pay. It pays the terms from all these points in this country [indicating on map] up to Minneapolis—local rates—but we ask in reply, why this reason does not apply to Portland business as well as to San Francisco business? I do not know that they make much use of that line, but it is open to their use and they maintain equality of rates."

I have already explained to you that the Portland line is not open to us and we do not take business into Portland. Further, Mr. Stubbs says:

"The Canadian Pacific line does use the Northern Pacific connection for Portland business, and does work upon an equality of rate with all the North Pacific Coast lines for Portland business. Whether it does or not, is of little moment. It is upon an exact equality with these lines south of Portland. Then why should it not work with them upon an exact equality as to rate for San Francisco business?"

3635 I just mention this in order to set the record right, that the question of Portland business is in the record and consequently it was quite proper for me to speak on the subject.

I desire to revert to the case of the Hong Kong agreement. That is a point pretty well covered, but the point is this: The agreement was made in Hong Kong as Mr. Stubbs correctly states, by the representatives of the steamship lines, but in making that agreement, being 7,000 or 8,000 miles away, those representatives were empowered to act in joint traffic matters for the railway companies that operated in connection with the steamship lines. So that, in making the agreement covering overland business through from China and Japan ports to points in the United States or Canada, they were acting for the Southern Pacific Company, the Northern Pacific Company, the Great Northern and the Canadian Pacific Company, just the same as if the chief traffic officers of those companies were over there and made the agreement. So there is no question on that head of those men making an agreement simply for the steamship company; they also made it for the railroad company.

A great deal of stress has been laid on the alleged fact that the differential arrangements as originally made and continued with the Canadian Pacific were the outcome of fear on the part of the strong American lines; fear that we would adopt a "shot-gun policy" unless they delivered up their goods. Now, gentlemen, I hold that the very fact of your being there at the head of that table and Mr. Stubbs and myself presenting our respective cases to you, refutes that argument. We never adopted a policy of force. We did adopt as everybody adopts the proper and reasonable policy of nego-

3636 tiations, business negotiations. In agreeing to this arbitration, what is our position? We have everything to lose and

the other man has everything to gain if we do not substantiate the facts on our side and obtain your favorable verdict. If we were pursuing a "shot-gun" policy would we have come to an arbitration? Would we have ever consented to an arbitration? Would we not have said: "No, we will not arbitrate; we will fight. We insist on taking our differentials and you can do what you like about it." We did not say that. But we were so strong, we felt so strong in the righteousness of our cause, in the merits of our case, that when the suggestion of arbitration was made we said: "Yes, we have a good case and we are very confident we will win." We were taking all the risk. They were not taking any. We are in the position today that we have been in for ten years with differentials. We could probably keep on in that position indefinitely if we were to pursue this policy of force, this robber baron policy like Mr. Stubbs has referred to. We did not do it. We are here with all the risk on our side and none on theirs to present what we believe to be a righteous and just cause. There is no "shot-gun policy" in that. Then again, after we had agreed to this arbitration the door was open for us to withdraw. The Union Pacific, one of the chief and leading Trans-Continental California lines, by their chief traffic officer in meeting assembled at Denver, voted "aye" to this resolution to arbitrate, that we would all arbitrate. That vote was reversed by his President and the Union Pacific retired. The door was made
3637 wide open for us to withdraw then. We had agreed to arbitrate with all those gentlemen. That is the unit Mr. Stubbs tells us about which immediately became a dis-unit—disunited very quick. We did not do it and yet we are accused of pursuing a policy of force.

Mr. Stubbs presents for your consideration the remarks made by various gentlemen at various times in various meetings of the Trans-Continental Association, touching on the question of the Canadian Pacific differentials, wherein they all give expression to their dissatisfaction. That is only a nagging, harrying policy. They kept that up for ten years, in and out; wanted to make a record. We all knew about the records. We have all been railroading for a good many years and we all know about records and how they are made. No importance can be attached to that. We know that loose statements are often made at these meetings. That does not carry any weight.

The representative of the American lines has read and filed with the Board a number of communications from various Boards of Trade in California. Usually reports of such important bodies as Boards of Trade are the outcome of their wisdom in general meeting assembled. Sometimes they are reliable, sometimes they are not. We all know how Boards of Trade can be assembled at times and under certain conditions and we know how resolutions can be put through those bodies. Now in regard to this particular report drawn up by Captain Merry, I do not know whether this is the same gentleman or not, and if it is, I do not know whether he went into that

matter honestly or not, but I have a very distinct recollection that
years ago, at the inception of this line there were some very
3638 long communications—voluminous correspondence as between
a gentleman named Merry, living in San Francisco, and our President, seeking a connection with the road, wanting to be a representative in some character. He did not get what he wanted and I presume he has not been very friendly to this railroad since. He may not be the same gentleman, but I have an impression he is. If I am right in my surmise, it is not difficult for a man to work up resolutions of that kind through a Board of Trade or any other body if he sets about it.

And now, gentlemen, we come to that point where yesterday we were given such a delightful display of fire-works—oratorical fireworks, with all the fixings thrown in. Mr. Stubbs made a grand speech, but it was not business. He is good enough to say that I have made out a case, but that I have not made out this case.

Now it seems to me that all these national prejudices should never abide in the mind of a business man. It seems to me that no proper thinking man will bring up such questions, or touch any man upon his nationality in a gross manner. The flag of England, according to Mr. Stubbs, is the emblem of trade, and that only. The flag of England is the emblem of open trade. The flag of England is the emblem of liberty, just as much as the flag that floats over our heads today, and they two, together, with their silken folds entwined, represent the liberty of the world, and as they pass with the drum beat, going around the world, the oppressor must cease to oppress and the haughty nations must bow their heads. I give place to no man in
admiration of that flag—I mean the American flag. Why
3639 should I? I followed it through many bloody fields: I carried it on many, and why should I give place, although I am said to be a stranger within your gates, an alien, a foreign intruder. That is the point I gathered from the remarks of Mr. Stubbs, for I am part and parcel of the Canadian Pacific Company, a company that owns a very, very large mileage in the United States, a company that spends millions in trade with the United States; a company that employs many Americans, not only in the United States but in Canada, in all grades of the service. There sits (indicating Mr. Bosworth) as true an American citizen as any man in this room, who occupies a very important position, one of the most important in the service of the Canadian Pacific. Is he an alien? I have spent more than half my life among you; yet, I am a stranger within your gates.

The alleged prejudice in the minds of railroad officers, agents, and others, against the claim of the Canadian Pacific for a differential, if it exists, is the result of clamor in the public press and of misrepresentation by selfish rivals. Nothing is or was more popular, or a surer way to unthinking public favor than to raise an outcry against a foreign road; but such practices are narrow and unwise and in no way creditable to the otherwise liberal ideas of the American people, a large section of whom do not consider broad trade questions within

the narrow limits of International boundary lines, but consider that the door should be kept wide open for all, in order that American trade may expand and grow, in like manner to the open-door policy pursued by your Canadian friends, who invite competition,
3640 freely admit and encourage American lines to participate in their domestic traffic, throwing no restrictions around American roads in their efforts to compete for business between points in the Dominion. Agencies of leading American lines are established in the larger Canadian cities which strive hard with the Canadian Pacific Railway for the transportation of traffic between strictly Canadian points. For example, between Quebec and Ontario on the one hand, and the Northwest on the other. Those interchanges can not be carried on without cooperation of American lines, such as those west of Chicago and St. Paul. In reply it is asserted that no differential is claimed by American lines doing a Canadian business, therefore the Canadian Pacific Railway should be glad to share in American traffic on even terms. But the assumption first described is not correct; when the lakes are used in connection with American lines on Canadian traffic, differentials are invariably used; in other words, whenever a broken route, that is part water and part rail, is used on traffic carried either between Canadian points or between American points, all roads engaging in the business claim and apply differentials, and the universality of the rule not only disposes of the point in this direction sought to be established by American lines, but clearly establishes the contention of the Canadian Pacific Railway in the case under consideration.

Mr. Chairman and gentlemen, I feel that I have trespassed upon your patience very largely, and I know that you will be glad to hear that I have now finished, and in finishing I thank you most heartily for the very patient and kind consideration and hearing you have given me in this case. I thank you.

3641 Arbitrator DAY. Mr. Kerr, I ought to have asked you a question earlier in the hearing when you were discussing it, but it seemed that it embarrassed you for me to ask questions, but this is one of the facts that I would like to know; I would like to know how you carry your Trans-Continental traffic, that is to say, the traffic that reaches the Missouri River common points from New York to the Pacific; how you get that to your rails from New York City, chiefly?

Mr. KERR. We bring it to Prescott by the rail line. New York Central and Rome & Watertown roads.

Arbitrator DAY. To Ogdensburg?

Mr. KERR. Yes.

Arbitrator DAY. Is there a ferry there?

Mr. KERR. Yes.

Arbitrator DAY. And you ferry the cars right over to your road?

Mr. KERR. Yes.

Mr. STUBBS. Now, Mr. Chairman, I wish to say that in the reply of the Canadian Pacific, there have been some issues as to facts be-

tween their side and ours. I do not know how you are going to determine those questions, unless you take testimony. For example, notwithstanding the answer of the American lines, to the effect that there is no trade with respect to North Pacific Coast business, between the American North Pacific lines, and the California lines, the Canadian Pacific advocate reiterates his statement. Now, I must insist, under the submission of the case, that his iteration and reiteration, of that statement cannot stand. In order to have any
3642 influence with this Board against our denial, he must prove it. If you are going to consider that matter, we demand that you shall take testimony on that point.

Arbitrator WASHBURN. I do not quite catch the point that you refer to.

Mr. STUBBS. The Canadian Pacific averred the reason why the Great Northern and the Northern Pacific, and the Oregon Railroad & Navigation Company did not participate in San Francisco traffic; did not insist upon the use of their rail-and-ocean line on a differential basis was that there was a trade.

Arbitrator WASHBURN. I understand now, what you mean. I understand what you refer to.

Mr. STUBBS. I answered that by saying there was no trade. Notwithstanding that fact, the Canadian Pacific or Canadian line, today reiterates the statement that there is a trade. He has no foundation whatsoever for it, except the fact that they carry but little business. He introduces evidence in the shape of——

Arbitrator WASHBURN. He said he thought he knew.

Mr. STUBBS. He said that he knew. That is an opinion. That is not evidence. The point I wish to make is this, that he must prove his statement; that it cannot stand; is entitled to no consideration by this Board, in the face of our denial. For, when we deny, we speak the truth in regard to the matter. We demand that he shall be put to the test on that point, or that the statement shall be thrown out. The Board should request or demand that witnesses who ought to know all about this thing, shall come before it and testify,
3643 under oath, if you please, to the fact as to whether there is any such trade or not.

I wish further to make the point that you may search the statement of the American lines through; you may analyze every phrase, dissect every sentence, and define every word, and you will not find one personal expression in it. So far as the personal representatives of the Canadian Pacific here, and wherever they have represented that company, are concerned, they have always been received and treated with the utmost courtesy and they have personally received such treatment as to make it surely beyond question that, as men, they were esteemed and respected, placed upon an equality with the oldest and most experienced and the best men among us. When the American lines speak in their argument of an "alien," when they speak of themselves as "citizens," they are referring to the artificial

person of the Canadian Pacific road, the Canadian Pacific Railway Company, and the artificial person in law, just as when they refer to themselves as "citizens," they refer to the corporations which they represent as officers, as artificial persons—"citizens of the United States."

There is no occasion for any dramatic effort on the part of the representative of the Canadian line to win sympathy or to point his argument, by saying that the Traffic Manager of that road is an American citizen, that he himself has fought under the "stars and stripes." There is no one who will honor him more as an ex-soldier of the United States, whichever side he fought on in the Civil War, than the representatives, the individual officers of the American
3644 lines. All honor to the soldiers of our country, whether they be in the employ of an alien or whether they be in the employ of a citizen.

It is not fair to bring personalities into this controversy and we wish to disavow the idea that we, in our individual personalites, in our personal characters, in our services in the past to the public, or to the Nation or Dominion under whose flag we live today, have anything whatever to do with this case. We are here, not as Mr. Robert Kerr and Mr. Bosworth and Mr. Stubbs. We are here as the Canadian line, our identity merged with that corporation. We are here as—the American lines the corporations that were named to the Board in the opening made by their representative. Our identity is merged with theirs.

Arbitrator WASHBURN. Mr. Stubbs, of course I suppose you understand without its being stated, that on Monday after Mr. Shaughnessy has said what he has to say, you will have an opportunity to reply to him as in the first instance.

Mr. STUBBS. I do not understand, I wanted to understand it, that is why I spoke this morning.

Arbitrator RIDGLEY. Oh, certainly; if they bring in any one else you should certainly have an opportunity to be heard again.

Mr. STUBBS. It is all right; I guess we can stand it if the Board can.

Arbitrator WASHBURN. Have the parties to the hearing anything further to say this afternoon?

Mr. KERR. Mr. Chairman, just one word more. If the Board desires any fuller information than they have with regard to the New York and Milwaukee meetings held in March and April, 1896,
3645 Mr. Secretary Countiss has one copy of the proceedings, the record, the extended notes of the discussions had, and it might possibly be of advantage to you to ask him for it.

Arbitrator WASHBURN. If we find we want that we will call upon him for it; of course with the understanding that we will return it.

Mr. STUBBS. May I ask whether there can be any light thrown upon the question as to the likelihood of our being able to get away Monday night?

Mr. KERR. Oh, I imagine so.

Mr. STUBBS. I did not know but you knew something about what Mr. Shaugnessy might have to say and whether it was going to throw the thing wide open again for discussion.

Mr. BOSWORTH. Oh, no; I think he will not occupy more than an hour.

Mr. STUBBS. You know bringing in reserves is a little dangerous; I may want to come in with some reinforcements.

Arbitrator WASHBURN. The American lines will be given any reasonable time that they may require.

Mr. STUBBS. Any one of the American lines that we choose to bring forward to represent us, barring counsel—any one of the American lines to represent us?

Arbitrator WASHBURN. Yes sir. Then we will stand adjourned until Monday morning at 11 o'clock.

3646 MORNING SESSION.

OCTOBER 17, 1898—11 A. M.

The meeting convened pursuant to adjournment.

Arbitrator WASHBURN. Gentlemen, on Saturday we adjourned until this hour, to give Vice-President Shaughnessy, of the Canadian Pacific, an opportunity to appear before the Board, and make an argument, and if he is now prepared to speak, we will listen to him.

Mr. SHAUGHNESSY. Mr. Chairman and Gentlemen of the Board of Arbitration: I thought it was quite distinctly understood, in the beginning, when this arbitration was decided upon, that the questions to be discussed before the Board of Arbitration were strictly of a business nature, involving arguments and exhibits necessarily technical in their character, and we thought it best that our Company, at any rate—and we quite understood that the other companies intended to adopt the same course—should be represented by our traffic officers; our chief traffic officers, who deal with these subjects day by day, and who have all the necessary information at their finger ends. I was surprised to learn by telegraph Friday evening, that the American lines, represented by Mr. Stubbs, had made a new departure, had introduced national issues, and had endeavored to make this subject one of national importance, and, indeed, had rather appealed to the national and patriotic sentiments of the Arbitrators than to their sense of right and justice; and, inasmuch as I was unable to learn just what Mr. Stubbs had said, I decided I would come here today,

3647 having learned first that I would be given opportunity to speak, for which I thank you. I decided that I would come here today to make such answer as the circumstances of the case might demand. I had no intention then, nor have I any intention now, of introducing any new issues here, or saying anything that may tend to prolong your session. I merely desire in as few words as possible to answer the particular remarks of Mr. Stubbs, with reference to the Canadian Pacific, its history, its destiny, its conduct,

and so forth. I had no opportunity, until I saw the stenographers' notes yesterday, to ascertain just what Mr. Stubbs had said, and, indeed, in the limited time I had after I received the notes, I could give his remarks but little more than a cursory examination. I must, before I proceed, express my regret and my surprise, that Mr. Stubbs, with all his tact and his policy, and his experience, should have thought proper, when a business question of this kind was before the Board of Arbitration for discussion, to display what I must be pardoned for calling exceedingly bad taste for making the attack—an unwarranted, unreasonable attack upon the other party to the discussion. I can only account for it upon one ground and that is that these gentlemen, having canvassed the situation, having brought to bear every possible argument that they could from a business standpoint, felt so uncertain as to the outcome—or rather felt so certain as to the outcome—knowing that they had no case, that they decided to appeal to your sympathies. But, I have not the slightest doubt that long before this the Arbitrators have decided that it would be quite improper in dealing with this question to give any attention whatever to such appeals. I may say, further with reference
3648 to these appeals that they are not unusual; that the same gentlemen whose sentiments Mr. Stubbs voiced here the other day have for years past, by every possible trick and stratagem; by the employment of counsel; by the subsidizing of the press, and in every other manner endeavored to impress those views upon the people of the United States, but entirely without avail. The sections of the country of the United States served by Canadian avenues, by Canadian railways, are too large and too important to permit of any interference with existing conditions, and day by day as the discussion goes on the feeling in the United States, I am satisfied, against anything like interference, becomes more pronounced.

The Canadian Pacific Railway Company, organized under the laws of Canada has about 7,000 miles of railway in Canada. Its paramount duty and its prime purpose, as Mr. Stubbs stated in his remarks, are the development of the resources of Canada, the expansion of Canada's trade, and the Canadian Pacific has endeavored and is endeavoring to perform that duty faithfully, and in pursuing that policy, in establishing new connections, in creating new routes, the Canadian Pacific, like a progressive institution as it is, anxious to increase its earnings year by year, has made investments in the United States representing upwards of $60,000,000.00, by means of which it has secured close working arrangements with nearly 2,000 miles of railway in the United States, so that even in this country, Mr. Chairman, no gentleman is warranted in calling the Canadian Pacific an alien institution. It is true that the Canadian Pacific received subsidies from the Canadian Government for the construction of
3649 its line. Subsidies in the way of cash, lands and some miles of completed railway, because, without this aid, it would have been quite impossible for the Canadian Pacific to have built its line from ocean to ocean, and the vast areas of land belonging to the

Dominion Government, which are now producing food for the people of the world, would have remained unproductive. But the policy of the Canadian Government in this respect, does not differ materially in dealing with the pioneer portions of the west. In this respect the United States was quite as liberal, and I think I may safely assert that the figures will show that the lines represented here to-day received far more liberal aid from this Government than the Canadian Pacific received from the Dominion Government.

Mr. Stubbs has mentioned another matter. Mr. Chairman, I am going into these matters only in answer to Mr. Stubbs. I do not consider them essential arguments in dealing with this subject—I am only going into these questions because the issue was forced upon us. There is another little matter about which Mr. Stubbs made no reference. The Railways of Canada representing a length of about 18,000 miles, and serving a population of about 5,000,000 or 5,500,000 of people—I speak of the length of miles of road in 1897—received in that year for the carriage of mails the sum of about $1,350,000.00. The Railways of the State of Ohio, during the same year, received for the same services, $4,350,000.00; the State of Ohio having 11,000 as against 18,000 miles of railroad, and the population of the State being somewhat less than 4,000,000; so that the Railways of
3650 Ohio received for the carriage of the mails nearly three and one-third times as much money in the year 1897, as did all of the Canadian railways; and we find that in the little State of Nebraska, the railways received during that same year, for the carriage of the mails, more than all the railways of Canada received, for serving that vast country, and that population of 5,000,000. Another section of country, where the Government in paying these mail subsidies was also very liberal—I refer now more directly to some of the territory traversed by the lines represented here—the railroads in Texas, Arizona, New Mexico and California with a population nearly equal to that of Canada, received about $4,200,000.00, for that service, about three and a half times as much as the Canadian Pacific and all other railways in Canada combined received for the same service in that time.

I say, Mr. Chairman, I am not mentioning this matter for the purpose of impressing on the people of the United States that their railways are being overpaid; on the contrary, I do not believe that they are being overpaid, but that we are seriously underpaid. At the same time I desire to impress on you the fact that there are subsidies and subsidies and of necessity subsidies are not always paid in the nature of a lump sum.

Then when they refer to this alien corporation that is preying upon the traffic of the American lines, these gentlemen forget some other exceedingly important factors. I venture to say that none of them have mentioned here that the Northern Pacific Railway Company owns 250 miles of railway in the Province of Manitoba; that they not only received from the Provincial Government and the
3651 British Columbian Government the necessary franchises to

enable them to construct this railway, but that they received in cash every dollar of the amount necessary to construct these miles of railway. Then they have not mentioned that the Great Northern have received in addition to that, large grants of land from the Government of British Columbia. For what purpose have those lines been utilized? For the purpose of competing with the Canadian lines. These American lines are preying on the Canadian traffic, and surely if the Canadian lines are competing for the American traffic the honors are quite easy. Neither party has any ground for complaint upon that score.

There is another difficulty about which the United States lines complain. They say the Canadian Pacific is in the jurisdiction of the Canadian Government; it is not amenable to our Inter-state Commerce Act; it is not required as the United States lines are, to obey the requirements of that Inter-state Commerce Act. On this point we desire to take direct issue with them. The American lines in the United States will naturally, and as a matter of fact do, take liberties with their lines at home that the Canadian Pacific would not think of doing abroad in a foreign country. I feel confident that if upon this point the opinion of the Inter-state Commerce Commission were asked, and that those Commissioners told you the candid fact, they would say that every line in this country, every United States line has from time to time been guilty of infraction of that Act. Indeed, I might tell you, and I think I could tell you without danger of contradiction that to-day every line represented here,
3652 except the Canadian Pacific line has violated the Inter-state Commerce Act; and that the Inter-state Commerce Commission would state to you that the Canadian Pacific has obeyed its requirements more closely than any other line on the continent.

However, gentlemen, as I said in the beginning, you have no doubt already decided that all of this discussion upon International issues is rather beside the question, and I do not intend at this time to enlarge upon it. I prefer in a very few words to outline the position of the Canadian Pacific from the practical standpoint, and for that purpose and in view of what I said as to the evenness of the competition between the lines on the one side or the other I should not discuss the practical question before you obliterate the international boundary line. Imagine that there was no boundary line there and consider that all these railway companies are railway companies of a common nationality, all within the same country. Upon no other ground can the question be properly discussed. There are the Atchison, Topeka & Sante Fe, the Southern Pacific and Union Pacific and other lines running along through the United States, direct all-rail lines, with their connection to San Francisco and other points of California. There is the Canadian Pacific line running to the north, with its Trans-Continental line and its connections, giving it access to all of the New England States and indeed most of the States of the east, to the western States and northwestern States. The Canadian Pacific has no rail line south of Vancouver. It has no line reaching

the cities of the Pacific Coast in the United States, and as a consequence, for the purpose of conducting its business between Vancouver and San Francisco it uses an American Steamship line.

3653 This does not belong to the Canadian Pacific; it is not, as stated in the Inter Ocean of this morning, subsidized by the Canadian Pacific line or any other line. It is purely a steamship line engaged in commercial trade between San Francisco and points in Canada and on the coast.

The Inter-state Commerce Commission in their opinion or report or ruling upon the passenger rate war recently, made the point that the Canadian Pacific, because of its long, circuitous route, should not be a participant, should not be a competitor for passenger business between New York and other points on the Atlantic Coast and San Francisco; and, while I do not consider their opinion entirely sound upon that point, it has some merit, because there can be no doubt that a passenger, required to travel a long additional distance, several hundred miles to use a broken route, part rail and part water, will hesitate about going that way, unless he is offered some extraordinary inducements. But no similar theory can obtain in connection with the transportation of freight. It does not matter, in the slightest degree, to a carload of iron, or a bale of merchandise, whether it be carried a thousand miles, more or less. It is quite impervious to sea-sickness and indigestion and is not inconvenienced by trans-shipment from rail to boat and from boat to rail. The same theory cannot obtain to the transportation of merchandise, but the shipper, or the owner has a very important interest in the question of route. If he can send his carload of nails, or his carload of merchandise, by a direct, all-rail route, from a point in the east to San Francisco,

3654 and from San Francisco to a point in the east, with the same saving of time, without trans-shipment, at exactly the same rate he is required to pay if he sends it by the circuitous route with the delay and all the dangers of trans-shipment incident thereto—dangers of damage, and so forth,—it is natural, indeed, it is a foregone conclusion, that his goods will go by the all-rail route and the less direct route or broken rail-and-water route will, of necessity, be forced out of the business. In order to compensate for the disadvantages of the broken route, it has been the practice for the broken route to offer to the shipper a lower rate than the all-rail continuous route; and the giving of these lower rates, unless there are some regulations, or some understanding, is sure to lead to demoralization. For the purpose of equalizing, as far as possible, the conditions, and to prevent the inferior road from quoting a rate that may be unduly low, and to keep the regulation of rates within some reasonable limit and prevent demoralization, it has been the practice for years and years, on this continent, to grant to the inferior route the privilege of making a lower rate than the stronger route, or all-rail route, and that privilege is known in railway parlance as a "differential." They have been accorded the right of quoting a differential rate. At the present time the Canadian Pacific business is by an all-rail

line to Vancouver, thence a steamship line from Vancouver to San Francisco, and it is quoting a differential rate. It has been for some years past, by agreement with its competitors, the all-rail lines, and we maintain that agreement is in force today. We maintain that the dissolution of the Trans-Continental Association has had no effect whatever upon the regulations that were established
3655 by the Trans-Continental Association, and that have been observed in the past, and up to the present time.

Now, the gentlemen representing the all-rail lines recently conceived the idea that with this differential, the Canadian Pacific had possession of an undue advantage over the all-rail lines. A meeting was called in Denver for the purpose of discussing that subject, and the parties, unable to agree, decided to refer the question to arbitration. I am sure that our traffic officials—Mr. Bosworth and Mr. Kerr—have given you all the necessary evidence to show that at even rates the Canadian Pacific would be forced out of the business, and that the freight business between San Francisco and all eastern points would be practically in the control of one single railway company. They have given you illustrations to show that, under like circumstances, it is the common practice, indeed the universal practice, in the United States to permit the rail-and-water carrier to quote differential rates, the Southern Pacific itself being no exception to this rule because by some of its routes they enjoy such a differential. They have explained that the Canadian Pacific with no access to the American cities on Puget Sound, except over the lines of active competitors, have no territory to set off on a trade with the San Francisco lines, and that therefore the Canadian Pacific is, with reference to San Francisco, in a position radically different from either the Northern Pacific or the Great Northern. It is not my intention to recapitulate or enlarge upon what they have said; but I shall only ask you to consider this matter purely from the standpoint
3656 of recognized railway practice and precedent, under similar conditions, giving no heed to extraneous statements or sentimental buncombe. We are prepared to compete with the American lines for inter-state or inter-provincial traffic in exactly the same manner as they compete with each other, the establishment and regulations of rates to be determined by exactly the same measures, the same practices that they use when dealing with each other in the several sections of the country. We do not ask that our foreign position, our Canadian position, give us any advantage; but we beg you that it shall not prejudice us in dealing with this subject. We see no earthly reason why it should under the circumstances. By the laws of the country, and by common consent, we are exercising in the United States, transit privileges that American railways enjoy in Canada, and while that continues to be the case we shall deal with these very railways, and shall expect them to deal with us, without reference to the question of nationality.

Now, gentlemen, I have nothing more to say. With this I am prepared to submit to you the case of the Canadian Pacific. If, in your

deliberations, and in view of the testimony that has been offered here, you find that the present differential enjoyed by the Canadian Pacific is insufficient, I have no doubt that you will increase it. It is the duty of the Arbitrators to increase it if the circumstances show that it be insufficient. If it be excessive, it will be the duty of the Arbitrators to decrease it. I can see no possible grounds, and I hope that you will see no grounds, upon which that differential shall be abrogated.

Its abrogation means a serious thing to the Canadian Pacific.

3657 It means, if you decide that it shall be abrogated, that the Canadian Pacific shall practically withdraw from San Francisco and California business, and that it shall entirely avoid that territory, because it can secure no business on even terms with these Trans-Continental lines, and it will be making that sacrifice; you will be compelling it to make that sacrifice without giving it one single thing in the way of return, either in the matter of territory or anything else. So that, to us, to the Canadian Pacific, the abrogation of that differential would be a most serious matter indeed. I thank you, gentlemen, for having listened to me.

Arbitrator DAY. Mr. Shaughnessy, what is the capitalization of the Canadian Pacific road?

Mr. SHAUGHNESSY. $65,000,000.00.

Arbitrator DAY. That is represented in shares?

Mr. SHAUGHNESSY. In shares.

Arbitrator DAY. At the par value of $100?

Mr. SHAUGHNESSY. Yes, sir.

Arbitrator DAY. What dividends were paid last year on the Canadian Pacific capitalization; on the capital stock?

Mr. SHAUGHNESSY. 4 per cent.

Arbitrator DAY. Mr. Kerr, I would like to ask you another question: On your traffic for points on and west of the Missouri River from Boston—I mean Inter-state traffic now solely—how does the traffic from Boston reach your rails?

Mr. KERR. It goes up and connects with us at Newport, Vt., all-rail, over the Boston & Maine.

Arbitrator DAY. Do you have any water connection with your rails on the Atlantic Seaboard?

3658 Mr. KERR. There are from New York, in connection with the Canadian Pacific Dispatch. That does not operate Trans-Continental, but operates up into this section of the country, Chicago and St. Paul.

Arbitrator DAY. I thank you.

Arbitrator WASHBURN. The Board is ready to listen to any reply that the representative of the American lines desires to make to the remarks of Mr. Shaughnessy.

Mr. STUBBS. Mr. Chairman, and Gentlemen of the Board: I do not know that I have much to add; indeed, I am somewhat embarrassed by the turn the discussion has taken. I really do not know how

far my right extends to reply to Mr. Shaughnessy. If I err you will have to call me to order.

First, the Vice-President of the Canadian Pacific says, that in the matter of the subsidy granted to the Canadian Pacific line, or referring to that matter, that some of the American lines represented in this controversy were quite as well dealt with by the United States Government. It is a matter of public knowledge that the Canadian Pacific did receive $35,000,000.00 in cash——

Mr. SHAUGHNESSY. $25,000,000.00.

Mr. STUBBS. $35,000,000.00. The Canadian Pacific received $25,000,000.00 and 25,000,000 acres of land. The Canadian Government then took back 7,000,000 acres of land at One Dollar and fifty
3659 cents an acre; which, while it reduced the land subsidy of 25,000,000 acres to 18,000,000 acres, it increased the money subsidy $10,000,000.00. You will find that all explained fully in the published documents which I filed with you. They received $35,000,000.00 in cash from the Canadian Government, 18,000,000 acres of land and 714 miles of railroad. That is acknowledged. None of the American lines received a dollar of cash subsidy from the United States Government. The Government loaned them money, and issued bonds and paid the interest, but those lines have got to repay. The Union Pacific has already, in its settlement with the Government, paid the debt in full. Every one who is familiar with the agitation in Congress now, over the settlement with the Central Pacific, which is far more serious than the Union Pacific, knows that the Government is pressing and will press for refundment or repayment of the full amount advanced, principal and interest. Their land subsidy—I am not able to tell you how much it was, in gross; it was every odd section within twenty miles of the road. What that aggregated, I do not know; much of it has been forfeited.

Now, the representative of the Canadian line this morning says, that the Northern Pacific and the Great Northern, referring to both of them, have extended up into the Province of Manitoba, built into that portion of the Canadian territory, for the purpose of sharing in Canadian commerce; that commerce which is purely domestic to Canada. No one denies that, but can he demonstrate to this Board that they entered that territory asking an advantage over the Cana-
dian line? I endeavored to impress it upon the minds of the
3660 Board, that the American lines did not say to the Canadian line: "Keep out of this territory." In fact, when there were filed with you the petitions from the Chambers of Commerce of the principal cities on the Pacific Coast (and I did not file all that were filed with Congress, for Portland, I know, sent in a like petition, and I think Seattle and Tacoma did the same thing), I explained to the Board that while these Chambers of Commerce petitioned the United States Congress to suspend and abrogate the bonding privilege, which would effectually cut the Canadian line off from competing on any terms with the American lines, we did not go so far; I ex-

plained that we welcomed the Canadian line in this territory, if it came here upon equal terms with us.

Further on, the Honorable Vice-President of the Canadian line says: "We are prepared to compete exactly as they compete with each other," meaning the American lines. That is all we want him to do. Now, competition does not consist alone in competition of rates. There is such a thing as competition in service; competition in facility, which every railroad man and every shipper understands. The Canadian line has not competed, never has, and is not now competing in service. This I illustrated to the Board, by contrast with the "Sunset" line, that it was evident that it had sat down on its differentials, and depended wholly upon its differentials, in order to get business with San Francisco, instead of doing what the "Sunset" line had done. Now, the Vice-President of the Canadian Pacific says, that they have no line from Vancouver running into San Francisco or into the United States territory, but that there is an American Steamship line there with which they are compelled
3661 to work. Now, we know that that is not so. Why does not the Canadian Pacific line go into this territory on the west Coast? What is to hinder the Canadian line from building into San Francisco? Then its question of disabilities would disappear. If American lines put in their money to build a railroad, put up that investment, thereby creating an advantage over the Canadian line who has the same field open to it, who will say that they must necessarily compensate it by giving an advantage in rate? Why should not the Canadian line be less like the Chinaman who comes into this country, bringing nothing with him, and sending every dollar that he gets out of the country; even comes under a contract that his bones must be taken back to the Celestial Kingdom? That is what the Canadian line does with respect to San Francisco business. It can build railroads into the United States territory exactly as the Great Northern, or acquire railroads exactly as the Great Northern and the Northern Pacific acquired roads in Manitoba; do it, exactly as the American lines have done it. By using the same means, the same methods, the same skill, the same energy, they can duplicate the lines of the American roads. There is no question about it. I think it is preposterous for any line having this field and this opportunity open to it to come into the United States and say, "Because we elect to use an inferior route because of the money that it brings into our pockets, the profit we make by so doing, and do use a steamer line from Vancouver to San Francisco, that the American lines shall pay us something in addition by giving us (as its own representative said) a money advantage. What
3662 we are contending against is the claim of the Canadian Pacific line, an alien—for it is an alien—for an advantage over domestic lines with respect to domestic business. They are not entitled to the advantage.

The Vice-President of the Canadian Pacific road refers to a fact that I fully expected the General Traffic Manager and his assistant would have referred to here, viz: that they are in this country by the sufferance of the laws of this country; that the laws of this country admit them upon an equality with the American lines. He did not use the word "equality" but said that they have the same privileges in this country under the laws that the American lines have. What he refers to is that section of the United States statutes which gives to the foreign line, or gives to the shippers, the right to send their domestic business from one point in the United States to another point in the United States, through a foreign country without the payment of duties upon re-entry into the United States. That law was passed by Congress for what purpose? Was it passed in order to give the Canadian line an advantage over the American lines? No, sirs. It was to put them upon an equality, and that is all that we ask. Suppose it had been said to Congress at the time, that they are foreign lines; that they are circuitous lines, and that this mere suspension of the collection of duties, as is proposed will not enable them to do any business. Do you suppose Congress would have added a subsidy or any additional privilege which would have overcome the natural disadvantage they labored under? Now, moreover, that privilege that was given, I think it is in Section 3006 of the
3663 Statutes of the United States, was given not for the purpose of benefiting a foreign corporation. It was given for the purpose of benefiting the domestic shipper. It was reciprocal. It gave to the Canadian people by the operation of their laws the right to ship Canadian commerce through the United States back into Canada and it gave the American shipper the right to ship American freight through Canada back into the United States. It was because it gave a short line. It goes away back to 1864. The Act was passed for the purpose of legalizing the ruling of the Treasury Department. When the Suspension Bridge was built a shorter route could be made to the Peninsula of Michigan and the Great Northwest through Canada than could be made by any of these lines (indicating on map) and the privilege was given for the benefit of our own people. Now then, when the Interstate Commerce law was passed—dealing still with this question of equality—when the Interstate Commerce law was passed—Section 6, I think it is, provides that tariffs shall be published—certain tariffs shall be published, and posted and that all through tariffs shall be filed with the Interstate Commerce Commission. It was found that the Canadian corporations were not subject to that law. They therefore could evade that law if they chose to do so, so that in order that they might not have an advantage over the domestic carriers—(Congress exercised itself to prevent there being any advantage over the domestic carriers)—a section, or paragraph, rather, was introduced into that section that made it obligatory upon the Secretary of the Treasury, upon demand of the Interstate Commerce Commission, to suspend the bonding privilege in any case
3664 where a Canadian corporation or a foreign corporation failed

to comply with the provision of our own laws. That shows that it was not in the mind of Congress that the Canadian line should have any advantage over our own. It is the spirit of our laws, equality, and we want that spirit applied to this business.

Now, it is intimated that it seemed necessary to bring the chief operating officer of the Canadian Pacific road here for the purpose of answering an allusion that we made or an appeal that we made to the patriotism of the Board of Arbitrators. That section of our argument was introduced by the fact that the Canadian line had opened the question. If I remember rightly the advocate of the Canadian line said something to this effect—I cannot take time to refer to the record, I will only attempt to give the substance of it—that the American lines had harried the Canadian lines—that they had agitated and sought by legislation through Congress and by every way that was within their power to prejudice the Canadian line and shut them out of this territory. It was to answer that suggestion plainly made for the purpose of prejudicing this Board against the case of the American lines—it could have no other purpose than to impress you gentlemen with the idea that we were not playing fair in this matter; that we had been the strong man abusing the poor man. I then appealed to this Board if it were not true, if it was not the right of every Englishman as well as for every American to agitate any question that affected his personal or his property rights. It is fundamental in the principles of both governments.

Every American citizen has that right, and every Englishman
3665 will assail Parliament if Parliament passes a law which is inimical to, or fails to enforce a law which is protective of that person's rights—which affects his property. If we have done what we were charged with, we only exercised the inalienable right of American citizens. I stated, further, that this thing had become a public question; not that we had made it so; that it had become a national question. I said this was evidenced by the fact that the Interstate Commerce Commission had treated of this question in its several annual Reports to which I have referred the Honorable Board. I said that the Interstate Commerce Commission had investigated this question with respect to passenger business, and had made a report and rendered an opinion upon it in which notwithstanding what the Honorable Vice-President of the Canadian Pacific road says it plainly states—and its dictums are full of it—that the Canadian line is not subject to the laws of the United States. I have not raised the question here as to whether the Canadian line obeyed those laws. That is apart from this question so far as this differential case is concerned. I do not care whether they are quoting a reduction of 10 per cent or 25 per cent or 50 per cent below our rates. It has nothing to do with this case, but it is a public question. It is a national question and I stated to this Board that it would continue to be so, so long as the British flag floated over Canada and the Canadian line, and the American flag was unfurled above the American lines; so long as the Canadian line is an alien corporation coming

into this country and demanding what? To work upon an equality with us? No, to work with an advantage over us. Now, it is
3666 all right to narrow this question down to business principles. We want it to be considered from a business standpoint, but when you take considerations of business, of the conducting and extension of trade away from any province or dependency of the British Government, you take away its very life and spirit. Brother Kerr referred to the open door policy of England; calls this evidence, intends to be understood that we should extend an advantage to the Canadian Pacific in order that we may be in harmony with the open door policy of Great Britain. There was a little speck of war in the horizon a little while ago. What was it about? It was because Russia had gained a railway franchise in China instead of Great Britain. What did Great Britain care especially about that railway franchise, per se? Nothing, but it was because if that railway franchise was given to Russia and not given to an Englishman, the territory or provinces served by that railroad would be closed to British trade, and so jealous is Great Britain of her British trade that she threatened to go to war with Russia rather than that thing should come to pass.

Take away business principles. Rob this question of its national aspect by saying that it is not business. Take the extension of British trade away from the policy of the British Government, and her fleet, which is built for no other purpose than to maintain that trade, and which is now equal to the combined navies of the world, will disappear inside of ten years. Take business principles, as shaping and governing governmental policy, away from Great Britain and the British Empire perishes from the face of the earth. Take business principles away from the governmental policy of the United
3667 States, and where will this agitation end, or how far will this agitation go with respect to whether we shall retain the Philippines or Cuba or Port Rico? Is not the business sentiment of this country crying out to the Government and forcing the Government to a policy of retention of the Islands in the Pacific Ocean as well as those in the Caribbean Sea? How can you rob it—this question—of its public aspect? Business principles? Great Britain was against slavery, fundamentally; was active in its destruction all over the world, until the Civil War in America broke out, and then Great Britain symphasized with and aided the South? Why? Because the American people controlled the commerce of the oceans at that time. She saw her chance and, against her settled principles, she equipped the Shenandoah and the Alabama, and allowed them to sail forth, fully equipped and armed, to prey upon American commerce, and she destroyed our commerce and took it to herself and today controls it, and she has got these combined navies—this enormous navy—for no other purpose than to maintain it. Now, this is a public question; it is a national question; and while we who are called the Trans-Continental lines—meaning the lines west of this Missouri

River line—take upon ourselves the burden of contesting this question with the Canadian line, all these lines are interested in it. (Pointing to the map.)

As illustrated, if, by the use of a differential freight is taken from New York out over the Canadian line, that traffic is diverted from the New York Central, or from the Pennsylvania or the Baltimore & Ohio—from all these direct lines. Nearly all the important
3668 railroads in the United States are interested in this question.

We claim that under the circumstances the Canadian line has no right to share in the traffic if it cannot share in that traffic upon equal terms with us. The question, simmered down, is, "Shall the American lines adopt a policy which will force a part of this traffic on the Canadian line?" Prima facie, that is in restraint of trade. Prima facie, that is an inducement to the Canadian line not to improve its service; not to build lines into the United States and take its place where we are, having to pay taxes as we do, and be subject to our laws as we are. Right on its face, it shows that that is an inducement for the Canadian line to occupy the same relative position to this traffic, so far as the physical operation of its road is concerned, as it has occupied from the beginning; and that must necessarily be in restraint of trade, for the public, as I have said, is deeply interested in having, not only adequate but efficient service, and I do not believe that it is possible to convince a business man, an intelligent man, who thinks upon this subject, that there is any justification, whatever, in giving the Canadian Pacific a money advantage over the American lines because it elects to use this steamship line, (pointing to map) when it can get franchises and can build down into San Francisco, as readily as any of the American lines, and if the American lines have built these roads at great expense to themselves, they ought not to be asked to pay the Canadian Pacific, by forcing a portion of the traffic on that line for using an inferior route.

It seems to me to be an "A, B, C" proposition.

3669 The vice-president of the Canadian Pacific referred to and dwelt upon the fact that he, or his representative, had shown that the Canadian line was only asking for what was recognized as a settled principle over the United States, both with respect to domestic traffic and with respect to international traffic. Now, I think I have shown this Board clearly, First: that the customs to which he refers, and which were elaborately set forth by his representative in the first instance, do not meet this case. Take the differentials by lake-and-rail to North Pacific Coast points that were dwelt upon with emphasis. Those differentials apply by every line that reaches the North Pacific Coast. Take the differentials, lake-and-rail, with the Atlantic Seaboard; or, Atlantic Seaboard, ocean-and-rail, to Texas; or, Atlantic Seaboard, ocean-and-rail, to Colorado. Take them all, every example that he gave you; and in no case has the differential been limited to one line, but all the lines which were similarly circumstanced in each territory use the same differential.

Now, the Canadian line adheres to its allegation of physical disability by reason of being a broken line, as its chief and almost its only dependence in its case here. The "Sunset" line has been shown to you—and I take it as the extreme case; I take it because the "Sunset" line is the great bug-bear in the eyes of the Canadian line—has been shown to you to be physically, in respect to the disabilities described by the Canadian line, a weaker line than the Canadian line.

In the first place, the ocean haul from Vancouver to San Francisco, is eight hundred and some odd miles—I have forgotten—
3670 eight hundred and fifty or sixty miles. It is 1800 miles from New York to New Orleans—more than double. Compare the line, New York to San Francisco via the "Sunset." New York to San Francisco via the Canadian line and Pacific Coast Steamship Company, and it is 200 miles longer this way (pointing on map to "Sunset line). There is a comparison. Narrow their contention down to that physical disability and there you have a graphic comparison; a picture of the two lines. Now, where does the Canadian line stand under that? What is its answer? "Oh, well, the 'Sunset' line has been operating so successfully that it has demonstrated its ability to take the business, and it has got all it should have."

That is a fine argument, isn't it? If the "Sunset" line can build steamships, improve transfer service, run trains 2400 or 2500 miles from New Orleans to San Francisco, and take a fair share of the business; so much of the business that the Canadian line and no other line would be willing to give it any more, and it has double the ocean haul; and in total length of haul it is 200 miles longer than the Canadian line, tell me why the Canadian line cannot do it? Mr. Chairman, I know that you could do it, and while I am not an operating man, if I were on the Canadian line, I could do it. All I should ask would be that my backers should put up the money, as they did in the case of the "Sunset" line. But, instead of putting up its money to make its line effective as a competitor with the "Sunset" line, the Canadian line comes in and says: "Give us a money advantage;" that would be a tax on the "Sunset" line after it has improved its service in that way. Or it says, "Oh, the owners of the
3671 'Sunset' line have hedged California in with railroads and by reason of its local influences there is able to control the business." Very well. Let the Canadian line come down into California and build about 3500 miles of road; develop virgin territory; open it up to the outside world; invest money for which it has to look thirty-five to fifty years beyond in expectation of a return. Do not let it come and say: "Because you have done this, because you have made this business, at this great expense to yourself, and it is there, you have got to give me a share of it."

Now, one word more and I will close. I insist, in the name of the American lines, that back of this whole demand of the Canadian line, behind it and underneath it, there is nothing that gives it any force in the mind of the Vice-President of the Canadian line, any

more than it does in my mind, or any more than it does in the mind of this Board, than the unconfessed but existing consciousness that if you do not give them this money advantage, they can come in and will come in and destroy this traffic. If it were not for that condition of things, the Canadian line never would have asked for a differential. Why does it work upon an equality up here in Oregon with the American lines? It is the more amazing to me since I got some information from Mr. Kerr's statement of his relations with the Northern Pacific road. He says he cannot work in over the Northern Pacific to Portland. I know he does business to Portland, for I was present at the hearing of the Interstate Commerce Commission held in Portland not more than a year ago, and heard it testified
3672 to from the stand there, that shippers did use the Canadian line into Portland. Did he run it around by steamer? I took it as a matter of fact that he went in over the Northern Pacific line. I did not know how else he could get there. He works upon an equality there. Perhaps he does not do much Portland business. He says he does not do much Tacoma, but gets into Seattle by traffic arrangement with the Seattle & International Ry. Now, there must be some subsisting arrangement. I do not know, but it may be that this line has a traffic arrangement with respect to Vancouver; an understanding that if the Great Northern and Northern Pacific will keep out of Victoria and Vancouver it will keep out of Tacoma and Seattle. I do not know that that is the case, but that is the only reason that I can think of. As I have said before, if you will just reverse conditions, and that is the test, I do not care what is said; what argument is made beyond that. Picture in your minds San Francisco with the State of California back of it up here (indicating on map) at Vancouver; Vancouver down here at San Francisco with British Columbia at the back of it, all these rail lines existing just as they do to-day, would the Canadian Pacific be here asking for a differential in order to get into Vancouver, any more than we are asking a differential to get into Vancouver to-day? Why are they here? Because here (pointing on map to San Francisco) is a great volume of business that they did not create, nor contribute toward its creation. They do not support it nor sustain it, never will assist to support and sustain it until they do as they ought, build a road down into that territory (pointing to map) then they will not be like the Chinaman, they will build up American territory
3673 and American industry; they will contribute to the trade of San Francisco; they will open up new territory; they will have a right to some share in it, but they do not do that. This trade is made by others, sustained by others, and they come in and say, "We want a share in that, we have a right"—that is what they say—"we are entitled to it." We say, "You have not that right." What is their right founded on? The mere position that they occupy, of being able by reason of the comparative barrenness of population of their country west of Winnipeg, by reason of the small business inter-

ests up there, to reduce rates at San Francisco and destroy the value of that business to the American lines, and by so doing destroy the value of intermediate and dependent business. If they did not have that power they would not be here; if they were not conscious of that power they would not be here. Now, we hold that to be the underlying reason in this case and that this is not a question of expediency—not a question of whether we will make more money by trading with them than we will by not trading with them—also that that is the form that all these differentials in this territory (pointing on map to Central Freight and Trunk lines) take;—that they are mere questions of expediency. The Trunk Lines accede to differential demands so as to stop the demoralization of rates. Analyze the statement of the other side and get down to the under side of it, and you will find that their own testimony verifies what I say. We do not acknowledge the question of expediency. We are here to determine the question whether they are entitled to a share of this business if they can get it only by a money advantage, and
3674 they are here under the submission to prove that right. We are not obliged to prove that they do not have it, it is their business to prove that they have it, and necessarily in that aspect of the question, the whole range of the argument that the American lines submitted seems to us to be germane.

I am obliged to the Board for this attention.

Arbitrator WASHBURN. Mr. Shaughnessy, if you desire to make any further remarks on this subject, confining yourself to Mr. Stubbs' argument, you may do so.

Mr. SHAUGHNESSY. I shall say but a very few words, because there was nothing in Mr. Stubbs' remarks to-day, I think, that are not practically a portion of his previous address to the Board.

There are only two points that I consider of sufficient importance to deserve an answer, and the first of those points is the very last that he made, that the Canadian Pacific comes here practically with a threat that unless the American lines accord to them what they demand, they are in a position and they will utilize that position to destroy the rates to San Francisco, and Mr. Stubbs asks if it was not for this fact, would they be here to-day. Why, Mr. Chairman, if that is the fact, would we be here to-day? Would we at the Denver meeting have acceded to this arbitration? Would we not have said to the gentlemen, we have that differential and we will keep it? If that was the policy of the Canadian Pacific, and no one knows better than Mr. Stubbs that that is not its policy—no one
3675 knows better than Mr. Stubbs that in relation to a forced policy of that kind, whenever one is attempted, it originates not with the Canadian Pacific, but frequently with some of the gentlemen connected with the Southern lines—I will not except the Southern Pacific from it. The fact that the Canadian Pacific is here to-day and is submitting its case to you—

stating to you that it only asks, in dealing with this question, that you should act toward the Canadian Pacific route, not the Canadian Pacific Railway, but to the route, with the same consideration that you would to a road existing anywhere in the United States; deal with it in exactly the same way as if the Candian Pacific was an American line and not a Canadian line. I say the fact that we come to you and submit our case to you is the very best evidence that Mr. Stubbs' allegation that we are attempting to force something has no foundation in fact whatever.

Now, one further point. Mr. Stubbs refers to the Northern Pacific and says that they have built lines up into the Winnipeg country competing for strictly Canadian domestic traffic, and he says that the Northern Pacific, by competing with the Canadian Pacific, does so on exactly the same footing.

Mr. STUBBS. No; I did not say that was the case. I asked you the question.

Mr. SHAUGHNESSY. I beg your pardon, I will answer the question; they do. The Northern Pacific Company makes exactly the same rate from Toronto or Montreal as the Canadian Pacific makes, both having all-rail lines to Winnipeg, but on business, rail to
3676 Owen Sound, and by water to Port Arthur, thence via rail to Winnipeg, if the Canadian Pacific uses its rail-and-lake route, it makes a lower rate and the Northern Pacific consents to it, and the Canadian Pacific reciprocates by giving to the Northern Pacific the right, if it takes business by its lake-and-rail route from any point in Canada to Duluth—it reciprocates by permitting them to make a lower rate. Now, if the conditions were the same; if we had this all-rail line, to which Mr. Stubbs referred, to San Francisco, and if we were in as good a position to enable us to do an all-rail business as the Southern Pacific. I readily grant it would be absurd for us to come here and ask you to concede us a differential—it would be absurd, but we must take the road as it is to-day—a combined rail route and a water route, and from that standpoint we consider it just as the other roads of a similar character are considered throughout the United States.

I know of nothing else that I care to say—there is one matter, but I think it was probably an error on the part of Mr. Stubbs—I did not say, or at least I did not intend to say, with reference to the rights of the Canadian Pacific in this country, as stated by Mr. Stubbs. What I intended to say was, that the Canadian line had the same right and privileges with reference to traffic in bond that United States roads have in Canada with reference to bonding.

That is our case.

Arbitrator WASHBURN. The hearing is closed, and the Board, after giving the matter proper and conscientious consideration, will render its decision. We stand adjourned.

At 12.45 p. m. the Board adjourned.

3677 DECISION OF BOARD OF ARBITRATION.

The following is a copy of the decision rendered by the Board:

CHICAGO, *October 19, 1898.*

J. C. STUBBS, Esq.,
*Representing the United States Lines.*

T. G. SHAUGHNESSY, Esq.,
*Vice-President, Canadian Pacific Railway Co.*

GENTLEMEN: The undersigned who were appointed Arbitrators under the following resolution adopted at a meeting of interested lines which convened at Brown Palace Hotel, Denver, Colorado, August 22nd, 1898, viz:

"*Resolved*, That provided the Canadian Pacific Railway will join with the United States lines in a co-operative agreement designed to secure the maintenance of reasonable rates on the freight traffic interchanged with San Francisco, Cal., by other points in the United States and Canada, that the lines here represented will submit to arbitration the question of whether the Canadian Pacific Railway is, or should be entitled to a differential under the rates made by the United States lines for the carriage of the freight in ques-

3678 tion, and if any differentials, what those differentials shall be.

The Board of arbitration to consist of three members; one to be selected by the Canadian Pacific Railway, one to be selected by the American lines interested, they two to select a third and that the decision of two members of said Board of Arbitration shall be final, conclusive and binding upon all."

after hearing the evidence and arguments of the interested parties and having duly considered the same, respectfully submit their decision as follows:

The Canadian Pacific Railway is not nor should it be entitled to a differential under the rates made by the United States lines for the carriage of the freight in question.

Signed: EDW. S. WASHBURN
" W. A. DAY

I do not concur in the above conclusion;

Signed: J. W. MIDGLEY.

The hearing was then adjourned until the morning of Monday, March 22, 1909, at room 404 Federal Building, in the City of St. Louis, Missouri.

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3679 ROOM 404, FEDERAL BUILDING,
ST. LOUIS, MO.,
*Monday, March 22, 1909—10.30 a. m.*

The hearing was resumed before the Special Examiner, Hon. Sylvester G. Williams, at the above time and place, pursuant to adjournment.

Present: On behalf of the Complainant, Mr. C. A. Severance and Mr. G. E. Husted; on behalf of the Defendants, Mr. R. S. Lovett and Mr. N. H. Loomis.

## M. C. MARKHAM

being duly sworn as a witness on behalf of the Complainant, testified as follows:

Direct-examination by Mr. SEVERANCE:

Q. Mr. Markham, where do you live?

A. St. Louis.

Q. What is your business?

A. Assistant to the vice-president of the Missouri Pacific Railroad.

Q. How long have you occupied that position?

A. Over three years.

Q. Previous to that what was your business?

A. Railroading for 35 years, I think, in various capacities.

Q. Will you state your railroad experience, commencing at the beginning, and give it down to the time you went with the Missouri Pacific, and the capacities in which you served?

A. I started as telegraph operator in 1869, and since then have been train dispatcher, superintendent of telegraph, clerk in the general freight and passenger office, secretary to the traffic manager of
3680 the Illinois Central for about six years, assistant to the General Manager of the Illinois Central two years, assistant to the traffic manager of the Illinois Central for fifteen years. I was the joint representative of the Rock Island-Atchison, the Gould lines, the M. K. & T., in New York, for six months; assistant to the president of the Western Pacific; and assistant to the vice-president of the Missouri Pacific for the last three years.

Q. Your experience, then, has been chiefly in the traffic department in railroading?

A. Chiefly in the traffic.

Q. During the time that you were with the Illinois Central, you were entirely in the traffic department, weren't you?

A. No.

Q. Were you part of the time in the operating department?

A. Yes; I was entirely in the traffic, but as assistant to the General Manager I had other duties besides the traffic.

Q. What year did you leave the service of the Illinois Central?

A. 1903.

Q. And you had been for 21 years either assistant to the general manager or assistant to the freight traffic manager?

A. I was secretary to the traffic manager, assistant to the general manager, and assistant traffic manager. I was assistant traffic manager for fifteen years, and secretary to the traffic manager about five or six years.

Q. During the time that you were connected with the Illinois Central, did that line participate in transcontinental business with its connections?

A. Yes, sir.

Q. Did it participate in such business during all that time?

A. I don't think so; but probably at the beginning, from the
3681 advent of the Southern Pacific at New Orleans, and of its own line to Omaha it did.

Q. Previous to the time that your line was built into Omaha—by your line I mean the Illinois Central—were you engaged in transcontinental business?

A. Not to any appreciable extent. We were to some extent; not to any appreciable extent.

Q. What year did you build into Omaha?

A. Sometime in the nineties. I can't say. I should say 1897 or 1898, along there.

Q. Previous to that time which way did your transcontinental business, whatever you did have, move?

A. Via New Orleans and Sioux City. To the west via Sioux City, such as went that way.

Q. How did you get to the Union Pacific from Sioux City?

A. We would go down over the Omaha line, or, I think there was a connection from Sioux City that struck the Union Pacific at some point west, a short distance.

Q. From what points did you pick up business, either brought to you over other lines or originating along your line, for California by way of New Orleans?

A. From all points on the Illinois Central line and from such points on connecting lines as our solicitors could get it; from Chicago and east thereof; all the way east, on the Chicago parallel of latitude probably.

Q. Do you remember the occasion of the amalgamation of control of the Union Pacific and the Southern Pacific?

A. Yes, sir.

Q. Previous to that time what was the attitude of the Union Pacific and the Southern Pacific toward each other, as to being competitors or otherwise for transcontinental business?

A. I should say they were competitors, as all other independent lines were.

3682 Q. For traffic originating in what territory were they competitors?

A. I should say on all traffic east of the Missouri River and probably north of the Ohio. That is, I say in that territory it would be marked; not so marked, probably, in the territory south of the Ohio River and east of the Mississippi.

Q. For what transcontinental traffic were these lines competitors? How far north and how far south was the destination of this traffic on the Pacific coast?

A. All the way from Portland to San Diego, I should think.

Q. In this competition by what route did the Southern Pacific endeavor to route its traffic destined to San Francisco, or south of that point?

A. I suppose it would route it both ways. That would be in accordance with the manner in which it secured the traffic. It might secure it in connection with some other lines.

Q. I am speaking of the traffic that would be secured independently, say from the Atlantic seaboard territory.

A. They sent a great deal of the traffic by the Southern route, and I suppose also by the other. We found the traffic going both ways.

Q. From your experience, which way did you find was the preferred route of the Southern Pacific from eastern territory, Atlantic seaboard territory, and, say, Pittsburg, Cincinnati and points there?

A. We found we could work it by the Southern Pacific better by New Orleans, that it was to the interest of the Illinois Central to take that business by the way of New Orleans, and they found the Southern Pacific very willing to aid them in all their traffic.

3683 Q. Did you work with the Southern Pacific on that traffic?

A. We worked with the Southern Pacific on that traffic.

Q. Do you recall that previous to the purchase of the Southern Pacific stock by the Union Pacific, there was a boat line from Portland to San Francisco owned by the O. R. & N.?

A. I do not recall it. I never knew personally anything of that kind, only the general impression.

Q. That is, you never went over it?

A. No.

Q. But you knew of the existence of that boat line?

Mr. LOVETT. Don't lead him.

Q. Did you know of the existence of the boat line in connection with the Oregon Railroad & Navigation Company, running from Portland to San Francisco?

A. It was a general report at one time.

Q. I mean from your knowledge of the traffic conditions of the country?

Mr. LOVETT. I object to any testimony as to general report, if the witness does not know of his own knowledge.

A. Yes.

Q. Have you ever been over the Boston & Maine Railroad?

A. No, sir.

Q. Do you know whether there is such a railroad?

A. Yes, sir.

Q. That is the case with a large number of the railroads in the country, isn't it? No traffic man has been over them, but they are familiar with their existence from the knowledge of the business; isn't that true?

A. That is true.

Q. What influence, in your judgment, upon transcontinental rates was possessed by the Union Pacific Railroad by its owner-

3684 ship of the line of railroad from Omaha and Kansas City on

the east to Portland on the west, and a boat line from there to San Francisco?

Mr. LOVETT. The defendants object because there is no basis shown for any opinion upon the subject.

Mr. SEVERANCE. I will withdraw the question and ask one or two others.

Q. What line of rails reached from Omaha to Portland?

A. From what particular point?

Q. Well, I want the Union Pacific line. What was their line?

A. There are four or five lines from Chicago to Omaha.

Q. I am speaking of from the Missouri River to Portland; from Omaha to Portland.

A. The Union Pacific to Ogden, or Granger, with the Oregon Short Line and Oregon Railroad & Navigation Company; the Great Northern and Northern Pacific to Seattle and Tacoma; and the Northern Pacific line from Seattle to Portland. I don't know of any others by rail.

Q. Now, I will repeat my question that I asked before, as to what influence was possessed by the Union Pacific railroad in transcontinental rates by the possession of this line from Omaha to Portland, over its own rails and those of its subsidiary companies, the Oregon Short Line and Oregon Railroad & Navigation Company, and the boat line from Portland to San Francisco?

Mr. LOVETT. Same objection.

A. It would have an influence on the rates.

Q. It would have an influence, I understand you?

A. Yes.

Q. Is your answer it would have an influence?

A. It would have an influence on the rates.

3685 Q. Why? How could that influence be used?

A. Because it could make what rate it desired from Omaha to San Francisco.

Q. Suppose the Union Pacific, in connection with these rail lines and the boat line, made a rate into San Francisco; what effect would that have upon the rates by the all-rail lines?

A. They might meet that rate and they might not. If they found that the rate made by the Union Pacific by Portland was of the character that enabled it to take traffic important in amount, I suppose the Southern Pacific would take some action of a retaliatory character, or cut its rates down.

Q. Do you remember the Canadian Pacific differential that was in force for a number of years and finally arbitrated?

A. I remember it only so far as I heard Mr. Stubbs argue on the matter.

Q. Did you ever come in contact with the Canadian Pacific differential in the way of securing traffic?

A. I never came in contact with any matter in connection with it.

Q. From your experience, what is your opinion as to the desirability of railroad lines which are competitive with each other maintaining soliciting agencies to get traffic?

A. I think it is all-essential.

Q. Assuming that two roads are competitive, and one of them maintains a soliciting agency and the other does not, what, in your opinion, would be the effect on the movement of traffic?

A. The line that did not would be at a disadvantage.

Q. Do you know whether prior to the acquisition of the Southern Pacific stock by the Union Pacific, the two lines maintained traffic soliciting agencies in the Illinois Central territory?

3686 A. They maintained two separate agencies. Chicago and Cincinnati were the only ones I knew personally.

Cross-examination by Mr. LOVETT:

Q. Do you know the distance from Ogden to San Francisco by the Southern Pacific line?

A. In round figures I take it about 800 miles.

Q. And from Granger or Ogden to Portland by the O. R. & N. and Oregon Short Line about what is the distance?

A. About 770 or 800 miles, something like that. Isn't that right, Mr. Stubbs?

Q. Isn't it farther than that from Ogden to Portland?

A. I don't know. I only give the impression that I have in my mind of those distances, sufficient to enable me to form a judgment in any matter that I might have. That is all I charge my mind with in those things.

Q. You are not sure it is accurate?

A. No, sir.

Q. And your impression is it is about how far?

A. I thought it was about 750 or probably a little over that.

Q. From Ogden to Portland?

A. From Ogden to Portland. I have been over the road, but I have forgotten.

Q. From Portland down the Willamette and Columbia Rivers to the Pacific and down to San Francisco, about what is the distance, do you know?

A. I should think about 800, or very nearly that, probably. It is probably 770 or 780.

Q. You are familiar with the line of the Union Pacific proper, aren't you?

A. I am not familiar; I have got it in my mind, the geography, from the maps, and I have been over it.

Q. You know the main line of the Union Pacific extends from Council Bluffs to Ogden, don't you?

A. Yes, sir.

3687 Q. Isn't it true that the natural line for any traffic to California, handled by the Union Pacific from points east of the

Missouri River, would be by its main line to Ogden, and then over the Southern Pacific?

A. Assuredly.

Q. Why?

A. Well, it is a long-established route. It is the shortest route. In all probability it is recognized to-day that it has got better facilities than probably any other line. I don't know about the Atchison in that regard. But I think it is so regarded.

Q. And also in the matter of distance?

A. And in the matter of distance I take it it is shorter. I stated that.

Q. When the Union Pacific gets the freight, if it should attempt to move it around by Portland, it would be as far from San Francisco, practically, when it got the goods to Portland as at Ogden, wouldn't it?

A. Yes, sir, fully.

Q. And even without reference to distance, it would be a much more efficient line by the all-rail direct line than by the transfer from boats to Portland?

A. Yes, indeed.

Q. You don't know anything about the character or capacity of the boats formerly operated by the Union Pacific system between Ogden and San Francisco, do you?

A. Between Portland and San Francisco, you mean?

Q. Portland and San Francisco.

A. No, sir, I do not.

Q. You don't happen to know that they were very small boats, with small tonnage, and little freight capacity?

A. No, sir.

Q. You don't know as to that?

A. No, sir.

Q. You never knew of any freight to be worked by the Union Pacific by way of Portland, did you?

A. I did not.

3688 Q. Never knew of any shipments at all going from east of the Missouri River to San Francisco by way of Portland?

A. No, sir.

Q. The Union Pacific never solicited any that way, as far as you know, did it?

A. Not that I know of

Q. And the Illinois Central never routed any that way, as far as you know?

A. No, sir.

Q. Isn't it true that you didn't have in any divisions that way?

A. I think that is true.

Q. The Southern Pacific has other connections at Ogden, hasn't it?

A. Yes, sir.

Q. Now, if the Union Pacific should have any disagreement with the Southern Pacific, asuming that their relations were divorced and each was independent of the other, and the Union Pacific should at-

tempt to cut the rate or otherwise antagonize the Southern Pacific by working the Portland route, what could the Southern Pacific do?

A. It could turn all its east-bound business over to the other road at Ogden.

Q. Over the Denver & Rio Grande?

A. Over the Denver & Rio Grande.

Q. Isn't the Southern Pacific able to control a very large amount of both east and west-bound business?

A. Yes, sir.

Q. It has always been able to do that, hasn't it?

A. Always, yes. They have very active agents in the field in the east; and of course it controls it in the west, entirely so.

Q. It reaches all points originating freight in California, practically, doesn't it?

A. Yes, sir.

Q. And if it should set its agencies to work as against the Union Pacific and in favor of the Denver & Rio Grande it could
3689 probably divert a great deal of traffic from the Union Pacific, couldn't it?

A. No doubt of it.

Q. So the Denver & Rio Grande thinks that a good deal of traffic has gone to the Union Pacific which it might have gotten but for the friendship of the Southern Pacific for the Union Pacific, doesn't it?

A. I have so heard it stated. I am not conversant with the fact.

Q. You are not directly connected with the Denver & Rio Grande?

A. No, sir.

Q. Don't you think, as a railroad proposition, it would be rather a foolish thing for the Union Pacific to ever attempt to work that Portland route for San Francisco business, as against the Southern Pacific?

A. I do.

Q. With the power that the Southern Pacific has to retaliate by diversion of its traffic?

A. Not alone that, but in the interests of the Union Pacific alone.

Q. Why?

A. Because it couldn't hope to do better by any other route than by the Southern Pacific.

Q. That is, by the Ogden connections?

A. In its Ogden connections. I have reference to the net revenue, which, of course, is what we are all after.

Q. With reference to the competition that you say at one time existed between the Union Pacific and the Southern Pacific through their agencies; the Southern Pacific was trying to work the business from the east by way of the Sunset Route to California, I believe you say?

A. I think it worked it both routes.

Q. By way of Ogden and by way of the Sunset Route, too?
3690 Is that your understanding?

A. That was my understanding, yes.

Q. In other words, it worked it preferentially the way it could get the long haul ordinarily, didn't it?

A. That is what we all do; yes, sir.

Q. What they all do?

A. That is, provided there is more revenue in the long haul—which follows generally.

Q. That is what it means when you say the long haul?

A. Yes, sir.

Q. That usually means the long end of the revenue?

A. Yes, sir.

Q. Now, from the Chicago territory they work pretty actively for the Ogden route as well as the Sunset Route, don't they—the Southern Pacific agents? Wasn't that your understanding?

A. I think more for the Ogden route from the Chicago territory.

Q. More than the Sunset Route?

A. Yes, sir.

Q. When California business was secured by the Union Pacific agents, in their solicitation during the time they had separate agencies, how did it go to California? It went by way of Ogden over the Southern Pacific, didn't it?

A. Yes, sir.

Q. That was its only outlet up to the opening of the San Pedro line in 1905, wasn't it?

A. I think that was the only one.

Q. The only one over which you ever knew any freight to move?

A. Possibly the northern routes may have taken some little.

Q. I am speaking of the Union Pacific.

A. The Union Pacific, that is right.

Q. The Union Pacific never sent any by the northern routes, as far as you know?

A. Not that I know.

3691 Q. So whatever the Union Pacific secured of this California business by its solicitation ultimately went over the Southern Pacific?

A. That was my understanding.

Q. There were only two lines reaching California, two all-rail lines—the Southern Pacific and the Atchison and their connections?

A. That is all. I should say three lines.

Q. How is that?

A. The Sunset and the Central Pacific and the Atchison.

Q. Well, I count the Southern Pacific as owning two lines.

A. Counting the two as one?

Q. There were only two corporations in California operating railroads eastwardly?

A. Two corporations; yes, sir.

Q. They were the Atchison and the Southern Pacific?

A. Yes, sir.

Q. The Southern Pacific had one line down through Southern California by way of El Paso, and thence the line to New Orleans and

Galveston, the Morgan Steamer line between New Orleans and New York; it had another line from San Francisco and various points eastwardly to Ogden, where it connected with the Union Pacific; and the Atchison had its line from Chicago westwardly to various points in California, including Los Angeles and San Francisco. Those lines with their connections were the only railroad lines for California business prior to the opening of the San Pedro line, were they not?

A. At destination.

Q. I say they and their connections.

A. They and their connection.

Q. They were the only lines on the Pacific coast south of Portland?

A. Yes, sir.

3692 Q. The connections of the Southern Pacific and Atchison have always actively solicited California business, haven't they?

A. Yes, sir.

Q. The Union Pacific and its connections, and the Denver & Rio Grande and its connections, the Burlington, the Rock Island, the Northwestern, the St. Paul, the Missouri Pacific, the Chicago Great Western, the Chicago & Alton—all those lines have been actively soliciting California business, haven't they?

A. Yes, sir.

Q. And the Illinois Central also?

A. Yes, sir.

Q. Then, to the southeast, the Rock Island, the Missouri, Kansas & Texas, the Missouri Pacific, with its Iron Mountain line, and the Texas & Pacific were always very active for that business by way of El Paso, weren't they?

A. I don't know that they were *very*. They were active.

Q. Well, they got all they could get, didn't they?

A. They got all they could get, yes.

Q. They didn't let any get away from them if they had a chance to get it, so far as you know?

A. No. They had more important——

Q. Have not the Missouri Pacific (I mean its Iron Mountain line) and the Texas & Pacific (which is closely affiliated with the Missouri Pacific) always been very actively trying to get business for California by way of El Paso, so far as is within your knowledge?

A. When I said "Not very active" I had this in mind: That there was more important business that they might have been active in and given more attention than they gave this particular business. I think that is true. But they always have been active.

3693 Q. They probably did have more important business than the transcontinental business; but they have been very actively soliciting it, haven't they?

A. Yes; they have been very active.

Q. The Missouri Pacific has always kept agencies on the Pacific coast, so far as you know, hasn't it?

A. I think it has a joint agency there with the Denver & Rio Grande.

Q. Hasn't the Texas & Pacific and the Missouri Pacific had a general Pacific coast agent out there for at least twenty years?

A. Yes, sir.

Q. With a corps of assistants actively working for California business?

A. They have had some representation; not very large.

Q. How about the Texas & Pacific? Do you know as to that?

A. I think they have one man at Los Angeles.

Q. Haven't they a man farther north too? Haven't they one at San Francisco?

A. I don't think so.

Q. How is that?

A. I don't think they have. Of course the Missouri Pacific representatives there solicit for the Texas & Pacific.

Q. They worked together?

A. They worked together.

Q. The Missouri Pacific moves it either way that it can get it, doesn't it?

A. Yes, sir.

Q. Either by way of El Paso or by way of Ogden?

A. Yes, sir.

Q. It has in effect the two outlets—one southwest to Texarkana and over the Texas & Pacific; and the other westwardly to Pueblo?

A. Yes, sir.

Q. And it solicits the business in the way it can get it, and naturally prefers the way where it would get the most revenue; doesn't it?

A. Yes, sir.

3694 Q. The Texas & Pacific line was opened to Pueblo before the Missouri Pacific, wasn't it?

A. I don't know. I think it was. My impression is it was.

Q. The route by way of Texarkana, the Iron Mountain and Texas Pacific to El Paso——

A. My impression is that the Texas & Pacific was in operation before the Missouri Pacific to Pueblo.

Q. The most active solicitation was by way of El Paso, for the Missouri Pacific line, for California business, wasn't it?

A. At what particular time?

Q. After 1882?

A. Well, I couldn't say. It naturally would be, with such conditions as you have stated.

Q. Even after they were open to Pueblo, didn't the Missouri Pacific still work more actively its business by way of El Paso than by way of Pueblo?

A. I couldn't say as to that.

Q. Let me ask you this: After the close relations that now exist between the Missouri Pacific management and the Denver & Rio Grande, didn't the Denver & Rio Grande route (that is, the Ogden

route) become the preferred route for the Missouri Pacific solicitation on the Pacific coast? In other words, didn't they try to work business by way of Ogden rather than by way of El Paso?

A. I think they did. I think it would be natural for the Missouri Pacific, apart from the D. & R. G., to work that route, because it gets very near double the haul to Pueblo as against the haul to Texarkana.

Q. The system, as a whole, gets more revenue out of the haul by way of Ogden than it does by way of El Paso, doesn't it? Isn't that a reason too why they work that way?

A. I could not say as to that. That may be generally understood on the outside. But I do not think you can get individual
3695 men of the various roads who will say they want to give up anything that will be a detriment to the particular line they are serving.

Q. The Texas & Pacific man, for instance, regardless of the relations of the Missouri Pacific, would not want to give up anything to the Missouri as against his own line; is that what you mean?

A. Not of the revenue; not unless he would make more revenue for his own line in some other way.

Q. But take a Missouri Pacific man on the coast, acting upon the same consideration.

A. His interest would be the Ogden route.

Q. You don't know whether there has been any change in the actual solicitation as between the Ogden route and the El Paso route or not, since the Missouri Pacific and the Denver & Rio Grande have gone into close relations?

A. No, I do not. I know it is very active for the Ogden route.

Q. You were asked about traffic for the Pacific coast that originated or had destination on the line of the Illinois Central. I understood you to testify that it was routed both ways, by way of New Orleans and by way of Omaha, after your Omaha line opened, and also by way of Sioux City before the Omaha line was opened. You moved it the way you could get the most revenue out of it, didn't you?

A. That was the intention.

Q. So far as the Illinois Central controlled the routing, it sent it the way it could get the most revenue?

A. Yes, sir.

Q. Sometimes it would send it by way of Ogden and sometimes by way of New Orleans?

A. Where it had absolute control of the business.

Q. Your solicitors for that business westbound sometimes
3696 worked with the Southern Pacific, I believe you testified, on business by way of New Orleans?

A. Yes, sir.

Q. Didn't they also sometimes work the Union Pacific business by way of the Northern route?

A. Yes, sir.

Q. Business originating or having destination on your line your men worked that independently; that is, they tried to get it which-

ever way they could get the most revenue out of it; and the work of the Southern Pacific agent or the Union Pacific agent with them was co-operative, wasn't it? Doesn't the line that originates the traffic largely control it?

A. You mean on the Illinois Central?

Q. Yes.

A. Yes, sir.

Q. The Illinois Central had agencies in California, hadn't it?

A. Yes, sir.

Q. Well, in their solicitation of eastbound business, I suppose the conditions were somewhat reversed, weren't they? There the business originated largely on the Southern Pacific, and your agent would co-operate with the agent of the Southern Pacific to get it over his line if he could; isn't that true?

A. Yes, sir.

Q. Wherever he could, he would naturally get it the way he would get the most revenue, whether by way of Omaha or by way of New Orleans?

A. That is what he tried to do.

Q. That is what a freight solicitor is always expected to do, isn't it?

A. Yes, sir.

Re-direct examination by Mr. SEVERANCE:

Q. Judge Lovett was asking you about distances from Ogden to Portland and thence to San Francisco. Is it a fact that
3697 the amount of traffic, in the case of ordinary slow freight, is determined by distance, where there are two lines competing?

A. It is at times, according to the character of the traffic.

Q. It depends on the class of freight, doesn't it?

A. The class of freight.

Q. Now, comparing some of these lines, the testimony shows in this case that the Sunset route, consisting of the Morgan steamship line and the Sunset Southern Pacific route from New Orleans west, has at times taken as high as 85 per cent of the business out of New York to the coast. Isn't that line much longer than the all-rail line?

A. Yes, sir, it is.

Q. And the transcontinental lines had to meet the competition of the Panama route?

A. I so understand it.

Q. That is a great deal longer?

A. That is a great deal longer, yes.

Q. Than even the Sunset route?

A. Yes, sir.

Q. Are you familiar now with the movement of traffic by way of what is known as the Tehuantepec route—the American-Hawaiian Steamship Company?

A. Only in a small way.

Q. Do they or do they not get some traffic that the Missouri Pacific is seeking to participate in—transcontinental traffic?

A. I never heard of any.
Q. You don't know of any?
A. No.
Q. You know of the route?
A. I know of the route; have talked with the manager.
Q. It is vastly longer than any of the direct lines across the continent?
A. Yes, sir; shorter than the Panama Canal, though.
Q. Shorter than the Panama, but longer than the Sunset?
A. Yes.
3698 Q. Much longer than the all-rail line?
A. Yes, sir.
Q. Judge Lovett brought out from you the fact that in case of difficulty between the Union Pacific and the Southern Pacific, the Southern Pacific could send its unrouted traffic east from Ogden over the Denver & Rio Grande. Assuming that the Union Pacific was an independent line and able to take care of itself and do business as an independent line, what do you think would be the effect on the Southern Pacific Ogden route, their Ogden line, if they attempted to divert all their traffic eastbound to the Denver & Rio Grande at Ogden, assuming the Union Pacific was free and independent and owned the lines that it did own?
A. I think that it would result in a disastrous war of rates.
Q. In a disastrous warfare?
A. In a war of rates.
Q. And in that war of rates would the Sunset route necessarily be drawn in, if it desired to continue to participate in the business?
A. Yes, sir.
Q. Judge Lovett asked you this question: Whether it would not be foolish for the Union Pacific to attempt to work the boat line as against the Southern Pacific Ogden route by reason of the ability of the Southern Pacific to manipulate that eastbound business. Wouldn't it in the same way be very foolish for the Southern Pacific to attempt to exact unfair divisions from the Union Pacific, or to divert business from them? Wouldn't that be very foolish on the part of the Southern Pacific?
A. I would so consider it.
Q. A great opportunity for both of them to be foolish, then?
A. Yes, sir. They have better sense, though.
Q. You were also asked whether the Ogden route was not the
3699 best line for the Union Pacific to make. You said it was. You said you thought that there was more net revenue to them—I believe that was your answer.
A. Yes, sir.
Q. You know that those divisions are and always have been 54 and 46 per cent between the Union Pacific and the Southern Pacific?
A. I don't know what they are. I suppose it would be on a mileage prorate.

Q. And your answer that more net revenue would be made was based upon your assumption that the divisions are on a mileage basis?

A. Yes, sir.

Q. You were asked whether or not the Denver & Rio Grande people had not complained (I think that was the word Judge Lovett used) of the fact that the Southern Pacific had endeavored to send everything it could eastbound over the Union Pacific since the amalgamation of their control. You said that you so understood from people in the Rio Grande road.

A. Yes, sir. Not everything.

Q. How is that?

A. Not everything.

Q. What is your understanding of what they have done?

A. My understanding is that the Denver & Rio Grande is not getting as much business now as it did formerly, in proportion to the business which it gives the Southern Pacific westbound.

Q. That is your information?

A. That is my understanding.

Q. And that is because of the close relations between the Union Pacific and the Southern Pacific, as you understand it?

A. That is my understanding.

Q. You understand, don't you, that previous to this joint
3700 control, the Denver & Rio Grande and the Union Pacific were able to compete on equal terms for the business moving east over the Southern Pacific to Ogden, without discrimination?

A. I don't understand anything to the contrary now, Mr. Severance. Why the Denver & Rio Grande is not able to compete on——

Q. What I was getting at is this. In line with your last statement, you understand now that the Union Pacific is the preferred route of the Southern Pacific?

A. On such business as the Southern Pacific controls.

Q. That is what I mean.

A. The Denver & Rio Grande might solicit business which the Southern Pacific, I suppose, would give it.

Q. How do you understand the business moves now, which the Southern Pacific Company can control in eastbound and which is to be routed via Ogden?

A. By the Union Pacific and the Denver & Rio Grande.

Q. You understand that the Southern Pacific solicits business and sends the business that it controls over the Rio Grande?

A. I understand they send some business.

Q. That they control themselves, that the Denver & Rio Grande doesn't get?

A. I understand they do. I haven't heard anything to the contrary of that. I am going on the assumption that the Denver & Rio Grande gives the Southern Pacific a lot of westbound business which the Southern Pacific did not control; and, in reciprocity, the Southern Pacific would give an amount equivalent to that to the Denver & Rio Grande even though the Denver & Rio Grande did not

control it at San Francisco. I cannot understand a line working in any other way, with such principles of traffic as I know Mr. Stubbs possesses.

3701 Q. Such what?

A. Such principles. Having such equitable traffic principles as I know he is governed by, I do not see why he would not reciprocate with the Denver & Rio Grande.

Q. That is, you cannot understand how so good a gentleman as Mr. Stubbs, representing both the Union Pacific and the Southern Pacific, would be unable to recognize the principle of reciprocity and give some business to the Rio Grande in opposition to the Union Pacific, which he represents?

A. I don't know anything about that.

Q. I say you cannot understand?

A. No, I can't.

Q. Well, Mr. Jeffery seems to have understood it.

A. I can understand, of course, that the Southern Pacific does not give the Denver & Rio Grande as much business as it formerly did.

Q. That is what I thought. Then, you do not think that this largeness of heart on the part of Mr. Stubbs goes to the extent of maintaining the impartiality that formerly existed as between the Denver & Rio Grande and the Union Pacific, when he represented only the Southern Pacific?

A. No; but I think he could probably give them a quid pro quo.

Q. But you don't understand, do you, that the Southern Pacific delivers to the Denver & Rio Grande at Ogden eastbound an equal amount of tonnage to that delivered to the Southern Pacific by the Denver & Rio Grande at Ogden westbound?

A. It wouldn't be obligated to do that.

Q. But you don't understand that they do it anyway?

A. No.

Q. Do you understand that formerly, when Mr. Stubbs's activities were confined wholly to the Southern Pacific, that his depart-

3702 ment was impartial as to eastbound traffic moving by Ogden, as between the Denver & Rio Grande and the Union Pacific?

A. No, I don't understand.

Q. I am speaking of the time before the amalgamation, when he represented only the Southern Pacific.

A. No, I——

Q. Do you understand he was a partisan of one line as against the other, then?

A. Yes, and I always thought he favored the Union Pacific.

Q. You always thought he treated with them——

Mr. LOVETT. Favored.

A. He naturally would; that would be the natural——

Q. Because they had more traffic to deliver?

A. Because they had more traffic.

Q. That is, you understand he gave them more because they gave him more; is that right?

A. Yes, sir; gave him more. There is another consideration: the Union Pacific, coming to the very portals of the traffic, you might say, to the Missouri River, and being fed by so many lines there, would naturally make Mr. Stubbs think, "Well, this is the natural line right straight through," and he would want to build that line up.

Q. Then, you think that the Union Pacific has always been very influential in controlling the transcontinental situation in the west, do you?

Mr. LOVETT. He hasn't said that. I object to that because it is not a fair statement of what the witness said.

Q. Do you think so?

A. Yes, sir; it has been influential. The importance of the line and the personality of the officers.

Q. Did traffic move east over the Southern Pacific from the Pacific coast by New Orleans and thence over the Illinois Central
3703 when you were with that company?

A. Yes, sir.

Q. What classes of traffic?

A. Fruit, largely, in its season.

Q. All classes of fruits?

A. No; I wouldn't say all classes. It was of a miscellaneous character.

Q. How far north over the Illinois Central did that move? As far as Chicago?

A. I think we got some at Chicago; and a good deal of it would go to eastern points via Cincinnati, Louisville and those gateways.

Q. Judge Lovett was asking you about the Missouri Pacific as part of some system, about the way you worked traffic because of your relations to the system. Is the Missouri Pacific an independent line, or is it an appendage of some other line?

A. An independent line.

Q. Is its busines worked wholly in its own interests, by its officers?

A. Wholly in its own interests.

Q. Judge Lovett was asking you about the comparative efficiency of the all-rail line composed of the Union Pacific and the Southern Pacific into San Francisco, from the Missouri River, and the route by Granger or Ogden up to Portland and thence down by boat. You said that the direct line was the more efficient. In its control of the transcontinental situation what do you regard the chief value of that line to Portland and the boat line?

A. I would consider it of value that it would enable the Union Pacific to always get fair and reasonable terms from the Southern Pacific from Ogden west.

Q. When you were with the Illinois Central, was there competition between the New Orleans route and the Ogden route on passenger business?

3704 A. Yes, sir. The Illinois Central, of course, was interested in taking the passenger business by way of New Orleans—that is, the tourist travel.

Q. That is what I mean—the tourist travel.

A. In the season.

Q. Is that tourist traffic a small or a large business?

A. It is a large business. I mean by that the total traffic; not the Illinois Central traffic.

Q. I understand. The total movement of people.

A. Yes, sir.

Q. Was there any difference in the westbound movement of transcontinental traffic originating, say, in Ohio, points north of the Ohio River, Indiana and Illinois, with respect to its movement over the two routes, the Ogden route and the New Orleans route, after the amalgamation of the control of the Union Pacific-Southern Pacific?

A. The Illinois Central tried to move that by the New Orleans route, but it oftentimes found that it was desired to route it by the Ogden route. Of course, in working with the Southern Pacific in such cases, if the Southern Pacific controlled it, it would move it one route or the other, according as it felt would pay the most money, I suppose.

Q. Did any facts come to your knowledge indicating a disposition on the part of the joint agency of the Southern Pacific and the Union Pacific to divide that traffic on geographical lines?

A. Yes, sir, there did.

Q. Where was the line?

A. Our soliciting men told us, as I recollect it now, a line drawn northeast from Cairo to some point on Lake Erie. All south of that line would go by New Orleans and all north of that line by the Ogden route.

3705 Q. That was after the joint control?

A. After the joint control.

Q. Did the Illinois Central participate in any coast traffic moving by the Southern Pacific-Sunset Route that was delivered to the Sunset Route at some points other than New Orleans?

A. It might. It might take it to Cairo and turn it over to the Iron Mountain there. If, for instance, the Iron Mountain would solicit that freight, they might give the Illinois Central the haul to Cairo, or it might take it to St. Louis and turn it over here to some of the various lines at St. Louis, and they would take it down to Texas junctions—El Paso or points east.

Re-cross examination by Mr. LOVETT:

Q. You were asked a moment ago about some change after the amalgamation of the agencies as the result of which the joint agents of the Southern Pacific and Union Pacific had a preference of route. I think you described some territory north of the Ohio River as being preferred for the Ogden route, didn't you?

A. Yes, sir.

Q. You mean by that, then, that the joint agent, if it were left to him, would prefer freight originating in that territory for California to move by way of Ogden rather than New Orleans; is that what you mean?

A. That is what I meant. But of course you know how all this information comes to us. It comes from soliciting agents.

Q. Yes. They were willing to take it either way, weren't
3706 they, but if they had any preference it was from that territory for the Ogden route?

A. Yes, sir; they wanted to take it either way.

Q. That didn't interfere at all with your solicitation, did it?

A. No. We preferred, of course, to take it south. We naturally would be glad to get it on the Ogden route rather than not get it at all.

Q. And if you were controlling the business, or were soliciting it, they did not work against your sending it by way of New Orleans, did they?

A. I don't think they did.

Q. They preferred the Ogden route? That was the shortest haul for the freight, too, wasn't it, from origin to destination?

A. Within certain territory.

Q. Yes. Practically all of the Chicago territory——

A. Yes, sir; that was the shortest.

Q. To San Francisco by the Ogden route was much the shorter, wasn't it?

A. That is right.

Q. And after the amalgamation of the agencies, they preferred the traffic for the Ogden route because it reached their joint line at Omaha, rather than New Orleans?

A. I don't know that that is so. I only——

Q. That is your understanding?

A. That is my understanding. That would be the natural bent of mind of any traffic man.

Q. Omaha, or other Missouri River crossings, was much closer to the joint line from that territory than New Orleans?

A. Yes, sir.

Q. It is perfectly natural that they should prefer it that way?

A. Perfectly natural.

Q. Being joint agents. You were asked by Mr. Severance whether distance was a very important factor in the matter of
3707 routes in connection with the possible line over the Union Pacific by way of Portland and boat line to San Francisco; and, as illustrative of the case he supposed, he asked you about a comparison of the distance by the Sunset route from New York to California with the all-rail route, and he asked you about the Panama route, if that wasn't much longer, and also asked if the Tehuantepec route was not much longer than the all rail route; and I believe he asked you also about Cape Horn—he usually does, but whether he asked you about that I don't recall.

A. He didn't ask about Cape Horn.

Mr. SEVERANCE. I forgot about Cape Horn.

Mr. LOVETT. It must have been an oversight.

Mr. SEVERANCE. The Straits of Magellan, too. Put them in separately.

Q. Now, isn't the situation of the Union Pacific, as compared with any of these lines, different in this very important respect: that the Union Pacific, you say, has two possible lines—one the direct line from Omaha by way of Ogden and its connection there with the Southern Pacific to California, and the other the indirect line by way of Portland and boats down from Portland to San Francisco, thus giving the Union Pacific the two possible ways? Now, that is not true of either of the other lines, is it—that is, of the Tehuantepec or the Panama or Sunset Route?

A. That is not true.

Q. The Sunset has no option except by way of the Gulf; the Panama has no option except by way of Panama; and the Tehuantepec route has no option except by Tehuantepec. The Union Pacific, if it were to take the long line, would be taking the
3708 impracticable line, or the line at a great disadvantage, as against the direct line and the line by which it would get the most revenue, as you have already testified, if it were to use the Portland line, wouldn't it?

A. Yes, sir.

Q. You do not wish to modify your previous statement that, as a railroad man, in your opinion, no matter what the Tehuantepec line may have to do, or the Sunset line, or the Panama line, that it would be very foolish railroading for the Union Pacific to attempt to work this indirect and handicapped line as against its direct line out of which it would get the most revenue, do you?

A. No, sir. "Foolish" is a very mild term for the havoc that would ensue.

Q. You were also asked as to whether, in the event the Southern Pacific did not treat the Union Pacific fairly in the matter of division, the Union Pacific could not work its line by way of Portland, and in that way bring about a disastrous rate war and a war in transcontinental rates. Now, I invite your attention to the fact that the Union Pacific does not extend east of the Missouri River, and it has many valuable connections that could work with the Denver & Rio Grande. For example, take the trunk lines east of Chicago, between Chicago and the Atlantic seaboard; they can work either with the Union Pacific or with the Atchison or with the Southern Pacific by way of El Paso for California business, can't they?

A. Yes, sir.

Q. The lines, then, extending westerly from Chicago, such as the Chicago and Northwestern, the St. Paul, the Burlington, the Rock Island, or the Missouri Pacific, can work with either the Union Pacific or the Denver & Rio Grande, can't they?

3709 A. Yes; the St. Paul, I suppose, could turn the business over to the Rock Island and the Burlington at Omaha.

Q. They would be very glad to get it, wouldn't they?

A. The Burlington would be very glad to get it, yes, sir. And in that way work by the D. & R. G.

Q. So, if the Union Pacific wanted to engage in a rate war on transcontinental rates, all of those lines could refuse to join it in cutting the rates, couldn't they, and divert their business to the Denver & Rio Grande and the Southern Pacific; and wouldn't the Union Pacific rather be left out in the cold in that situation?

A. It would be, so far as the business of those lines was concerned; but of course it could command a business of its own.

Q. Where?

A. It could solicit business in the Chicago or the central states territory or beyond, which, according to the present general practice, would be delivered to it by the other lines at Omaha.

Q. Well, but right there: the Union Pacific could not cut the through rate legally without the concurrence of its connections, could it?

A. Judge, there is the power it would have to make its rate from Omaha, irrespective of what the others did.

Q. And make it on the sum of the locals?

A. And make it on the sum of the locals.

Q. You understand the other lines would have a right to cancel their divisions with it?

A. They naturally would.

Q. Where with the Denver & Rio Grande?

A. They would come to Omaha on their local rate.

3710 Q. Don't you think, if the Union Pacific were to attempt a rate-war under those conditions, that it would be about as suicidal as——

A. Oh, dear, yes!

Q. You don't believe for a moment that any sane railroad man would attempt a thing of that sort seriously, do you?

A. Not unless the provocation was great. Of course if the Southern Pacific did not deal with it fairly at Ogden, there would be no other alternative left.

Q. What do you mean by dealing fairly?

A. I mean in dealing with the Union Pacific in the way that would be to the best interests of the Southern Pacific. I cannot conceive of the Southern Pacific not dealing (what I would call) fairly.

Q. Well, that is what I supposed. The condition that is supposed here is where they would not deal fairly, and that is scarcely a supposable case, is it?

A. That is right, on account of what the results would be in the event they did not—to both of them.

Q. It is to the interest of both of them to work together?

A. Yes, sir.

Q. And you never have known them to work any other way, have you?

A. Never.

Q. And it is to the interest of the Union Pacific not to use the Portland line to cut the rate against the short line, isn't it?

A. Entirely.

Q. And if the Union Pacific were to attempt to cut the rate as against the Southern Pacific and its connections, all of its connections on the transcontinental business are in a position where they could go around it and ignore it on transcontinental business,

3711 except such as it might get by cutting the local rate from Omaha?

A. They would be in such position.

Q. And in view of the disastrous consequences to the Union Pacific from alienating its connections and cutting its own rates, you do not think that would be thought of by any reasonable railroad man?

A. I can hardly conceive of any sensible traffic man at the present day, with the experience they have had of those things in the past, doing such a thing.

Q. Those disastrous consequences which the Union Pacific would suffer, would not reach the Southern Pacific very much, would they, because the transcontinental rates could be held up? The Union Pacific could not affect the transcontinental rates?

A. No, I don't think they could, Judge.

Mr. SEVERANCE. What is that answer?

WITNESS. I don't think they could be held up. The other line in the Southern Pacific could not afford to ignore the amount of business that the Union Pacific could take by the other route, by the Portland route.

Q. From where?

A. From Omaha and points east. You see I am going on the idea that this is life and death, because, with such giants, it would amount to that.

Q. Do you think that the Union Pacific by cutting the rate and trying to handle it on a local from the Missouri River by way of Portland to San Francisco, as against the work of all the other lines, could make any considerable impression on the transcontinental rates?

A. I do, sir.

Q. Do you think it would get any business of any consequence?

A. Yes; because the rates from the Missouri River are so very high that it could cut a great deal and still have a margin.

3712 Q. Do you know what percentage of revenue it gets on California business from the lines west of the Missouri River?

A. No, I do not. Of course it would get it all in this case.

Q. From the Missouri River?

A. From the Missouri River.

Q. But here is the revenue from the Chicago territory and from points east of the Missouri River. It would have to give——

A. It would have to give that amount of the through rate up.

Q. And they would have to pay the locals on that?

A. They would have to pay the locals on that.

Q. And the locals to the Missouri River from the east are a good deal higher than the eastern proportion of the through rate, aren't they?

A. I think they are. I think the locals are higher, and they always are. I am not quite sure as to the difference, what they will amount to.

Q. By the time the Union Pacific paid the local to the Missouri River, there wouldn't be very much left for it to get that business up to Portland and then by boat down to San Francisco, would there?

A. There wouldn't be much left for it.

Q. And wouldn't it be at a very great disadvantage in the matter of time?

A. Yes, sir.

Q. And in the transfer from the cars to the boats—that would be a disadvantage also at Portland?

A. Yes, sir.

By Mr. SEVERANCE:

Q. I suppose that rate wars are always very disastrous for all lines, are they not?

A. Yes, sir.

Q. There have been rate wars and transcontinental rate wars in this country, have there not?

A. Yes, sir.

Q. Have you ever known of a time when any line cut trans-
3713 continental rates and inaugurated a rate war, that the other lines did not participate in it and that it did not become general?

A. No, I don't know of any.

Q. Mr. Stubbs said the other day in Chicago that a cut on one line would bring it down on all the lines. You agree with that, don't you?

A. That is what they ought to do.

By Mr. LOVETT:

Q. You never knew of a war of that sort being inaugurated, except starting between terminal lines, did you?

A. I don't think I have.

Q. Such rate wars as ever existed in transcontinental rates, so far as you ever knew, originated either between the Southern Pacific and the Atchison, or the Southern Pacific and some of the water carriers, didn't it?

A. I think the only one I know was on the advent of the Atchison out there, in 1882 or 1883 some time.

Q. As a matter of fact, that is the only one you have ever known of in transcontinental rates, isn't it?

A. Yes, sir.

Q. That was back in 1882 or 1883 or 1884?

A. I think so.

Mr. SEVERANCE. 1886, wasn't it?

WITNESS. It might have been in 1886.

Mr. LOVETT. It was back in the eighties at all events.

Q. You never knew of a rate war anywhere arising between two connecting lines which could not agree on a division of a through rate, did you?

A. Never.

Q. In all your knowledge of railroading, you never heard of a rate war being started by two connecting lines falling out over the division of a through rate to which they were both parties?

A. I don't recall any.

3714 Q. They have always found some way of agreeing on the division or getting together on it. If they cannot agree they will settle it in some way without a rate war?

(No response.)

3715 CHARLES VON BEHREN,

being duly sworn as a witness on behalf of the Complainant, testified as follows:

Direct-examination by Mr. SEVERANCE:

Q. Mr. Von Behren, where do you live?

A. Evansville, Ind.

Q. And what is your business?

A. Manufacturer of vehicle wood stock.

Q. How long have you been in business?

A. About thirty years.

Q. And to what points do you ship your product?

A. All over the United States.

Q. Including the Pacific Coast?

A. Yes, sir.

Q. Who has charge of the traffic of your business?

A. I take charge of that principally myself.

Q. What is the name of your company?

A. Von Behren Manufacturing Company.

Q. What lines of railroad reach your town?

A. L. & N., I. C., E. & T. H., the Southern.

Q. Do you remember when the Union Pacific and Southern Pacific had separate soliciting agencies?

A. I remember at the time they had, yes.

Q. I don't mean the date, but you remember the fact?

A. Yes. I could not give dates, though.

Q. No; but you remember the fact?

A. Yes, sir.

Q. Was your business to the coast solicited by the Southern Pacific agents at that time?

A. Yes, sir.

Q. And what way did they solicit it?

A. By New Orleans.

Q. Did you ship to the coast by that route?

A. Yes, sir, frequently.

3716 Q. Over what lines did your traffic move from Evansville to New Orleans?

A. Principally the Illinois Central.

Q. Did the Union Pacific agency solicit your business at that time?

A. They did.

Q. By what route?

A. I think it was generally billed by the way of Omaha. I am not positive as to that, however.

Q. And did you ship that way?

A. Yes, sir.

Q. Do you recall the fact that the agencies were consolidated? Not the date, but the fact.

A. I knew they were, yes, sir.

Q. Who, if anyone, is the agent of the joint lines with whom you have to deal now? Who is it that looks after traffic in your locality?

A. Mr. Connor, I think his name is, from Cincinnati.

Q. Do the soliciting agents call on you now or not?

A. Not as frequently as they formerly did.

Q. And in asking for traffic since that time, which way, if either, do they endeavor to route it?

A. In answer to that I must say that the consignee gives the routing of our business principally.

Q. They come around and ask you to respect the routing?

A. To respect the routing, yes, sir.

Q. That is practically all they have to do about it?

A. Yes.

Q. Did the Southern Pacific people, in the old days, when they were separately represented, endeavor to route your business any other way than via New Orleans?

A. No, sir.

Cross-examination by Mr. LOVETT:

Q. Who solicited for the Southern Pacific prior to the amalgamation of the agencies?

3717 A. It would be impossible for me to recall his name now.

Q. Did he solicit or merely call for a confirmation of the routing by the consignee in California?

A. He used the usual means of railroad solicitors. He would come around, if he didn't have the routing order, and say, "Have you got anything for the coast?" etc.

Q. You understood he was soliciting for shipments by way of New Orleans?

A. Yes, sir.

Q. Did he say anything about the El Paso route?

A. No; we never knew anything beyond that, excepting when we would route our goods by way of New Orleans it would be the Southern Pacific.

Q. He never attempted to dissuade you from shipping by way of Ogden, did he?

A. No.

Q. Such shipments as you made over the Union Pacific to California always passed over the Southern Pacific from Ogden to destination, didn't they?

A. I don't know as to that. We would simply route them Union Pacific from Omaha, or whatever junction point it was.

Q. Did you know that the Southern Pacific was the only outlet for the Union Pacific to California?

A. I did not.

Q. You didn't know whether it passed over the Southern Pacific or not?

A. I did not.

Q. Weren't you concerned as to which line the delivery was on in California?

A. Nothing further than to satisfy our customers. They would want it routed a certain way, and we would respect their routing.

Q. What was the rule as to that? Did you route it or did they route it?

A. They routed it, principally.

3718 Q. It was routed principally by the California consignees?

A. Yes, sir.

Q. Was your traffic ever solicited by the Santa Fe?

A. Oh, yes.

Q. Have they continued to solicit it, or have they discontinued?

A. I don't know the last time I saw a Santa Fe man.

Q. Would you say they had discontinued it?

A. I wouldn't say either, because I know nothing about it.

Q. You do recollect, however, that the Southern Pacific and Union Pacific solicited it?

A. Yes, sir.

Q. Does the Rock Island solicit it?

A. Yes, sir.

Q. Which way?

A. Well, I don't know that they solicit coast business principally; they solicit our Missouri River business.

Q. You don't know whether they solicit coast business or not?

A. I don't know.

Q. Does the Missouri Pacific solicit your coast business?

A. I think not. Not that I remember of now.

Q. The Missouri, Kansas & Texas?

A. No, sir.

Q. Does the Burlington solicit California business? Of you, I mean.

A. Not directly, no sir.
Q. Do the Rock Island?
A. I don't think they do.
Q. Do the Denver & Rio Grande?
A. No, sir.
Q. The St. Paul?
A. No, sir.
Q. The North-Western?
A. No, sir.
Q. So your California business has been solicited only by the Southern Pacific and Union Pacific and Atchison?
A. I think the Great Northern takes our northern coast business principally.
Q. But not California business?
3719 A. No; I don't think they ever have taken any California business.
Q. Did the Union Pacific solicit your California business?
A. Yes, sir; some of it goes that way. It depends entirely on the consignee.
Q. You never shipped any by boat from Portland down to San Francisco, did you?
A. No, sir.
Q. You never were solicited to ship that way, were you?
A. Not to my recollection.
Q. Are your shipments to the Pacific coast large or small?
A. What am I to understand by that?
Q. Well, are they one carload or fifty carloads, or if not either what about between?
A. Oh, I suppose we ship about fifty cars a year to the coast.
Q. And that moves principally how?
A. By the Union & Southern Pacific. Some of it goes Santa Fe.
Q. By the Union and Southern Pacific, you mean by Ogden?
A. I don't know, sir.
Q. That which moves by the Southern Pacific, how does that go?
A. We route it no farther than via New Orleans, care of the Southern Pacific.
Q. And you still ship some that way, do you?
A. Yes, sir.
Q. You are not interested as a shipper in the division of the through rate between the carriers?
A. Not a particle.
Q. You are only interested in the aggregate through rate?
A. That is all.

By Mr. SEVERANCE:

Q. Judge Lovett asked you a question which you answered, and I think from your subsequent testimony perhaps you didn't
3720 catch his question. He asked you whether the Southern Pa-

cific agent ever tried to dissuade you from shipping by Ogden, and you said no. Now, did the Southern Pacific ever mention Ogden to you?

A. They never mentioned Ogden to me.

Q. You never knew anything about Ogden?

A. We never knew anything about Ogden. As I said, we never knew anything about it, except to route the goods via the Southern Pacific from New Orleans.

By Mr. LOVETT:

Q. You didn't know the Southern Pacific had a line to Ogden?

A. I didn't know anything about it. I never have been in Ogden. I don't know anything about the line of road.

(A recess was taken until 2 o'clock p. m.)

3721 C. H. MORRILL,

being duly sworn as a witness on behalf of the Complainant, testified as follows:

Direct-examination by Mr. SEVERANCE:

Q. Mr. Morrill, where do you live?

A. Kirkwood, Missouri; office in St. Louis.

Q. And what is your business?

A. Industrial agent of the Rock Island-Frisco lines.

Q. How long have you occupied that position?

A. A little over two years.

Q. Will you be kind enough to state your railroad experience chronologically, beginning at the commencement and running on down?

A. Traffic department since 1876, except about four years.

Q. What road?

A. M., K. & T.; Missouri Pacific; Cotton Belt; H. & T. C.; Southern Pacific; there was a skip of four years when I was in the mercantile business; the last two or three years with the Frisco-Rock Island.

Q. What year did you go with the H. & T. C.?

A. 1887.

Q. Where does that road run?

A. You mean at that time, or now?

Q. At that time.

A. It ran from Denison to Houston, trackage arrangement into Galveston; Hempsted to Austin, and the short line up to north of Waco, a little west, and then the Fort Worth branch.

Q. Up to what time were you connected with the Houston & Texas Central?

A. The Houston & Texas Central was taken over by the Southern Pacific in 1891 or 1892, I think; and I was with the
3722 joint properties or the Southern Pacific up to the end of 1893.

Q. What was your position with the Southern Pacific?

A. Commercial agent at St. Louis.

Q. And, in general, what were your duties—soliciting traffic?

A. Soliciting traffic, yes.

Q. How extensive an agency did they maintain here? What assistance did you have?

A. Contracting agent, stenographer, and one clerk.

Q. At that time did the Union Pacific have an agency here in St. Louis?

A. Yes, sir.

Q. Who was their agent?

A. Mr. James F. Aglar.

Q. Do you recall how many men Mr. Aglar had in his office at that time?

A. No, I do not. I knew two or three of them. I don't know what his total service was.

Q. Did he occupy a position similar to yourself with the Southern Pacific?

A. He had the title of general agent.

Q. Were his functions similar to yours—soliciting business out of here?

A. I think he had a little more authority than I had.

Q. But, in general, that was the business—to secure the routing of business?

A. Yes, sir.

Q. While you were with the Southern Pacific did you participate in Pacific coast business?

A. Yes, sir.

Q. On what classes of business?

A. Well, the general class that went to the coast.

Q. Can you give, briefly, about what class of traffic were included?

A. There were wooden-ware implements, beer, glass—prac-
3723 tically all of the traffic that moved; more or less of it found its way that way.

Q. And what territory did you cover?

A. What is known as the St. Louis territory.

Q. What did that include?

A. It was practically the Mississippi River points here, between Quincy, I think, and Cairo; and I had Missouri and some of the Missouri River points; used to go into Arkansas.

Q. In soliciting business for the Pacific coast at that time, what route did you solicit it by, preferably?

A. It depended altogether with me on local conditions. What I mean by local conditions is, where I found the freight.

Q. Well, take it from St. Louis and this region here.

A. It depended on where the industry was located that had the

shipment, on whose tracks they were located. I might want to move a shipment via New Orleans. I would be foolish to undertake it if it was an industry located on somebody's tracks who had a Missouri River line.

Q. I suppose there was considerable traffic originated here, where the shipper was not on any special track, wasn't there?

A. The bulk of the carloads was not; there was a good deal of less than carloads.

Q. In soliciting the business that was not controlled by some condition of that sort, which way did you try to work the business?

A. Naturally for our longest haul.

Q. And which way was that?

A. New Orleans.

Q. And what other route did you endeavor to work it by if you could not get it by New Orleans?

A. Well, I had two or three routes through El Paso; what
3724 I mean by that is, that you could use the Iron Mountain out of here in connection with the Texas & Pacific; could use the M. K. & T. I think at that time they had a connection via La Grange and Columbus, Texas, or the M. K. & T. could haul it to Fort Worth, and we had the lines through the Missouri River, either at Kansas City or Omaha. At Omaha it would be in connection with the Union Pacific; at Kansas it would be in connection with the several lines leading from there.

Q. Where were you able to get business by New Orleans, in connection with what initial line did you work?

A. About the only place we tried that was here at St. Louis, and that was the Illinois Central.

Q. Via the Illinois Central?

A. At that time the Cairo short line was under separate management.

Q. What other Southern gateways were there where you could pick up the traffic, aside from New Orleans and El Paso?

A. At La Grange, Texas, and Columbus.

Q. La Grange, Texas?

A. La Grange, Texas. At that time there was a connection in there with the M. K. & T., I think.

Q. How far is that east of El Paso?

A. I would say about 1,200 or 1,300 miles.

Mr. LOVETT. No.

Q. I say, how far is La Grange from El Paso?

A. Oh, probably about 700 or 800 miles.

Q. Did the traffic strike the Southern Pacific route at La Grange?

A. At La Grange and Columbus—I think that was the point they called it.

Q. And how far east of El Paso was Columbus?

3725 A. That is just a few miles from La Grange.

Q. Near together?

A. There was a little branch that ran up there, to my recollection.

Mr. LOVETT. Columbus is about 100 miles east of Houston.

WITNESS. West.

Mr. LOVETT. Or west of Houston.

WITNESS. Yes.

Mr. LOVETT. And La Grange is a little branch that runs up?

WITNESS. A little branch running up from Columbus.

Q. Which way was the Union Pacific endeavoring to route traffic at that time?

A. I don't know what their general policy was. I worked with Mr. Aglar on one or two occasions, and he was glad to get the business at Kansas City and glad to get it at Omaha.

Q. He worked to get it at either one place or the other—either Kansas City or Omaha?

A. Yes, sir.

Q. Did you ever, in the first instance, solicit business by way of Ogden for that haul?

A. On occasions, lots of times, yes, sir. As I say, it depends on the local conditions. I tried to stand in with the local man and get as much of the loaf as possible.

Q. I misunderstood you, then, in my talk with you the other day. I understood you to say you never worked it by Ogden.

A. Oh, yes.

Q. But you worked preferably the other way?

A. Naturally; because it gave us the longer haul.

Q. When you were with the M. K. & T. did you work Pacific coast business?

A. I had nothing to do with through business. I only had to do with the local business and the claim department.

3726 Just let me change that a little bit. When I was commercial agent?

Q. Yes.

A. When I was commercial agent I undertook to get Pacific coast business, yes, sir.

Q. How did that move?

A. For a while via La Grange, and one time we had in divisions, I think, via Fort Worth and the T. P. I think that was the junction. That would be El Paso.

Q. When you were working Pacific coast business for the M. K. & T. were you brought in contact with the Southern Pacific agency?

A. Yes, sir.

Q. Worked with them?

A. Yes, sir; we got lots of information from them.

Q. What nature of information?

A. About shipments to move.

Q. Was it a fact that at times when you were working for the Southern Pacific you would receive notice from San Francisco of shipments moving west by Ogden and routed that way?

A. Yes, sir; placed orders.

Q. What action did you take about future shipments in that case?

A. It would depend largely on who the shipper was and how he was located. If I thought it would be to our interest, I would let him alone; let him continue to route it that way. We always had the Santa Fe to look out for, as I considered it. At other times I would undertake to get a longer haul, naturally.

Q. That is, you would undertake to get on his future shipments?

A. I say at times; not always.

Q. Did you ever have instructions from San Francisco in connection with notifications that shipments had been routed via Ogden, to endeavor to secure the future shipments of the shipper

3727 via New Orleans and the southern gateways?

A. Not from any recollection that I have, no, sir. Let me explain this St. Louis territory. It was right along the Mississippi River here. Naturally the route via New Orleans would be rather a long one, and the local conditions would govern solicitation of freight.

Q. I will ask you a direct question, Mr. Morrill. Did you tell Mr. Husted and myself, when we talked with you about your testimony here, that the Southern Pacific people in San Francisco would notify you that shipments had been routed via Ogden, with the request, or instruction, that you call on them and endeavor to get their future business via New Orleans?

A. No, sir.

Q. Didn't you tell us that?

A. I told you that I got notices from the commercial offices on the coast that certain shipments had moved on certain routes, sometimes via the Santa Fe, which would give us the short haul, of course. As long as I was with the Southern Pacific I never got any instructions from my territory that there was any embargo on the Ogden route—if that is what you are leaning to.

Q. I didn't ask you that. I merely asked you whether you did not tell us what I am asking you.

A. I just explained what I told you.

Q. I will ask the question again, so we will not have a mistake about it.

A. All right, sir.

Q. Didn't you tell us that when the Southern Pacific people in San Francisco would notify you that shipments had been made or routed via Ogden, you would then call on the shippers and endeavor to get their future business via New Orleans or the southern gateway?

3728 A. No, sir. If you understood it that way, I either made myself indistinct or I did not understand your question. I meant to convey this idea: that at the time I was here the Mojave route, as they call it, was very active, and that route we undertook to get in future shipments via longer haul. That was the extent of any notifications that I have any recollection of coming from either the San Francisco offices or any of the commercial offices on the coast.

Q. Then, you did not intend to tell me what I understood you to tell me?

A. No, sir. If you got that idea from it, that was not my intention at all; because there were no such instructions ever came here as long as I was here.

Q. I did not misunderstand you about the fact that when you could get hold of business moving to the coast which was not controlled by some other condition, that you routed it by the south? There is no doubt about that, is there?

A. How is that?

Q. Where business was free, so that you could secure it and send it either way, I didn't misunderstand you (in telling me) that you would endeavor to route it by New Orleans or the Texas junctions to get the long haul?

A. Wherever we could get the most revenue, yes, sir; always keeping in view the local conditions.

Q. And the Union Pacific, I suppose, worked all their business by the Missouri River?

A. As far as I know, yes, sir.

Q. And were you often in competition with them for coast
3729 business, trying to get the same business?

A. No, not very often that I have any knowledge of.

Q. Never heard of such a thing, did you?

A. Oh, yes, I did too.

Q. Oh, you did.

A. I said, not very often.

Q. That did happen, did it?

A. Yes, sir.

Q. Were they running an active agency here?

A. Very.

Q. Were you an active agent?

A. I tried to be.

Q. Trying to get all the business you could?

A. Yes.

Q. Trying to get all the revenue you could?

A. Yes.

Q. Trying to get the long haul, if you could?

A. Keeping in view the local conditions, as I explained to you a while ago?

Q. Well, you couldn't get it in that case. I say where you could get it?

A. Yes.

Cross-examination by Mr. LOVETT:

Q. I understood you to testify, Mr. Morrill, that your solicitation with respect to the route depended on local conditions. Do you mean by that the tracks on which the industry was located?

A. Yes, sir.

Q. Isn't it true that your principal work was with the local line, the line on which the traffic originated?

3730 A. Naturally, unless I could control it direct with the shipper.

Q. It was to your interest, as soliciting agent, to work with the local line on which the traffic originated, wasn't it?

A. Yes, sir.

Q. And try to get it to work with you?

A. That was the idea, yes, sir.

Q. And about the only carload business out of here that you worked very successfully by way of New Orleans, I believe you said, was traffic originating on the tracks of the Illinois Central?

A. No; the tracks of what we call the Terminal Company here, on this side of the river. We would frequently get that business, because they would handle it across the river.

Q. They would handle it anyway?

Mr. SEVERANCE. Who would handle it across the river?

WITNESS. The Terminal Company.

Mr. LOVETT. He said, as I understood him to testify, that they got business not only that originated on the tracks of the Illinois Central, but business that originated on the terminals, because they would handle it anyway.

Mr. SEVERANCE. That is, the Terminal Company, you mean, would handle it across the river?

WITNESS. Yes.

Mr. SEVERANCE. And deliver it to the Illinois Central?

WITNESS. Yes; the Terminal Company would handle it on the other side.

Q. The Terminal Company was impartial as between the different companies, and carried it whichever way they desired?

3731 A. As far as I know, yes, sir.

Q. And where you learned of shipments originating on a line, you would naturally try to work with that line, wouldn't you?

A. Yes, sir.

Q. And where you attempted independent solicitation, it was with respect to traffic that was not on any private track, wasn't it?

A. That we tried to get for the longest haul.

Q. And wherever it was not controlled by some other line, you would naturally prefer the long route?

A. Yes, sir.

Q. But you never attempted to divert traffic from a line on which the business was located?

A. No; I never thought that was good business.

Q. You never attempted to divert any business going by way of Ogden to some other way, did you?

A. Not that I recollect of; I don't think I did, to my knowledge.

Q. If the Union Pacific got control of business and was moving it by way of Ogden, the Southern Pacific would get that anyway, wouldn't it?

A. Yes, sir.

Q. And you would not attempt to get that business away from the Union Pacific?

A. I never did; no, sir.

Q. All the lines leading westerly and southwesterly from this territory were soliciting California business more or less, weren't they, either by way of the Missouri River or——

A. At that time, yes. I don't know that the Frisco was, but the Missouri River lines were, the Texas lines were. I do not recall whether the Frisco had in any route to El Paso at that time or not.

Q. You mean the Iron Mountain line of the Missouri Pacific?

3732 A. The Iron Mountain and the M., K. & T.

Q. What is that?

A. The Iron Mountain and the M., K. & T. had in southern connections.

Q. You mean all of the lines leading to the southwest and westerly that existed at that time?

A. Yes, sir.

Q. There may have been some extensions and changes since?

A. Yes, sir.

Q. But all in existence at that time were soliciting that business?

A. As I say, I don't know what the Frisco were doing at that time, but I think the balance of them were, yes.

Q. And you worked with all of them?

A. Yes, sir.

Q. By whatever route or gateway you could get the business?

A. Could get the business.

Q. When did your connections with the M., K. & T., as solicitor, cease, Mr. Morrill?

A. I was commercial agent here for two or three years, and was afterward made assistant general freight agent.

Q. During what period did that connection continue—commercial agent and assistant general freight agent combined?

A. Up to 1902, I think it was.

Q. The Missouri, Kansas & Texas solicited the California business, didn't it?

A. Yes, sir.

Q. And it attempted to work it by way of Texas?

A. Yes, sir.

Q. And I presume it tried to get the long haul wherever it could, did it not?

A. Naturally, yes.

Q. It would sometimes take it to a connection with the Sunset Route in Texas, and sometimes it would deliver it to the Texas and Pacific at Fort Worth?

A. I think Fort Worth was the junction.

3733 Q. There are others with the Texas & Pacific, but that is one?

A. That was the one at that time; it crossed it.

Q. Its commercial agents worked on the same principle as the Southern Pacific commercial agents did, didn't they? Didn't they attempt to work with the other lines, the Texas & Pacific for example?

A. The line beyond, yes, sir.

Q. If the Texas & Pacific could control a car from Fort Worth westerly or from some other Texas junction, the Missouri, Kansas & Texas would naturally try to work with the Texas & Pacific to get that car, would it not?

A. Yes; they didn't get lots of encouragement, but they used to try it.

Q. They didn't get encouragement because the Texas & Pacific were working with the Gould lines—the Iron Mountain—is that true?

A. Yes, sir, the Texarkana.

Q. Have you been connected with the Frisco, soliciting freight?

A. No, sir. Industrial agent.

Q. You had no occasion to notice the routing of traffic by it?

A. No, sir.

Re-direct examination by Mr. SEVERANCE:

Q. What industries were located on this terminal line that you speak of?

A. There is an awful lot of them.

Q. What kind of industries?

A. Implements, wooden ware, canned goods; pretty nearly everything shipped out of Cupples station is a terminal proposition. That is a pretty big place in itself.

Q. Mr. Morrill, did you work directly with the gentlemen who had industries on the terminal lines, soliciting California business?

3734 A. Yes, sir, I knew a great many of them.

Q. You solicited them personally, I mean?

A. Yes, sir.

Q. Not through another railroad, but personally?

A. Sometimes through the railroad and sometimes personally.

Q. And there was no reason why you should not solicit them personally?

A. No, sir.

Q. There was no reason why you should stand back and let some other railroad get the first control of the business? You were free to go in there and solicit the business, weren't you?

A. Free to go in there and solicit the business, yes, sir.

Q. If I understood you correctly, in answer to Judge Lovett, you said that that business was free to anybody who could get it, being on that terminal line. You worked by way of New Orleans?

A. That was the unrouted business, yes, sir.

Q. That is what I mean.

A. Yes.

Q. Unrouted business that you were able to secure, you worked by New Orleans? Where does that terminal line run?

A. St. Louis and East St. Louis.

Q. It is kind of a belt line?

A. It is a belt line, or terminal connecting company.

Q. A switching company. Is that what they did?

A. Yes, sir.

Q. When that business was secured by you and routed by New Orleans, who paid the switching charges?

A. Well, the conditions sometimes were different. Most of the time I think the local lines paid the switching.

Q. The Illinois Central?

A. The lines from the other side, yes, sir.

Q. Did you ever absorb that switching?

3735 A. What do you mean by "you?"

Q. The Southern Pacific?

A. No.

Q. That was paid by the local line that got the initial haul?

A. I don't think they were noted for absorbing many arbitraries beyond their own line.

Q. I don't think they ever did it if they could help it.

A. I don't blame them.

Q. I wondered if that might have been the case. And was the Union Pacific agency, Mr. Aglar, soliciting business for that terminal line, too?

A. I imagine so, yes, sir.

Q. And whatever business they secured they did not send by New Orleans but by the Missouri River; isn't that true?

A. I would say so.

Q. They were not sending any business by New Orleans?

A. No, sir.

Q. Mr. Lovett asked you whether in cases where the Union Pacific had got control of business you undertook to take it away from them, and you said you did not. Did you undertake to take business away from any road that had gotten control of it?

A. No; as I said, I think well towards the front of my testimony, I undertook to work with the local people, and if I found a shipment routed, for example, Missouri Pacific and Ogden, I never undertook to break it up.

Q. To divert it?

A. No, sir.

Q. Suppose you found that the Santa Fe had secured a shipment: you never tried to take it away from them, did you?

A. Early in my testimony I said that we did.

3736 Q. You did try to take it away from them?

A. Yes, sir.

Q. I didn't hear you say that.

A. Well, I intended to, and I think I said that. That was the Mojave route.

Q. Oh, the Mojave route.

A. What they call the Mojave route, yes, sir.

Q. Now, the Mojave route of the Santa Fe at that time gave the Southern Pacific a haul into San Francisco, did it not? It got a haul from Southern California up?

A. Yes, sir. I don't know what the arrangement was, though. I never knew anything about it.

Q. That line was competitive with the Sunset and with the Union Pacific both, wasn't it?

A. Yes, sir.

Q. You said a moment ago, I believe, that you worked with the Missouri Pacific and Denver & Rio Grande at times where they had secured shipments?

A. Yes, sir.

Q. What necessity was there for your doing any work with the Union Pacific or the Rio Grande after they had secured the business? It had to go by the Southern Pacific from Ogden, hadn't it?

A. Yes, sir.

Q. It didn't take any labor on your part to insure that business, then, did it?

A. It used to take considerable labor to keep the Santa Fe from getting a good deal of freight that moved out of this territory.

Q. I understand, but I am speaking of business that had already been secured by the Union Pacific. Judge Lovett's question was as to cases where the Union Pacific had secured control of the business. Now, if they had secured control of the business, it did not take any work on your part in relation to that shipment, did it?

A. No.

3737 Mr. LOVETT. That is a very technical interpretation of my question, Bro. Severance.

Mr. SEVERANCE. No, I think not. That is what the question means, if I understand English.

WITNESS. We did not bother with those shipments.

Q. Did not bother with them; that is what I thought. Then, as I understand you, the Union Pacific were on that terminal line trying to get business to the coast, soliciting business, weren't they?

A. I would naturally suppose so. I don't know that.

Q. You naturally suppose the Atchison were, too, don't you?

A. Yes, sir.

Q. And you know you were?

A. Yes, sir.

Q. And each of you were trying to get all of the business you could?

A. Yes, sir.

Q. Whatever you secured you sent via New Orleans?

A. If I could control it that way, yes, sir; if I could not, I would send it the other way.

Recross-examination by Mr. LOVETT:

Q. When you heard of a shipment that you understood was going to move, or was likely to move, by the Union Pacific, you never attempted to divert it to the Sunset Route, did you?

A. No, sir. I answered that question a while ago, I think.

Q. In that case you would co-operate with the Union Pacific to get it by way of Ogden, wouldn't you?

A. If there was any work necessary on our part, yes, sir.

Q. Whereas, if you heard of a shipment to move, and which was likely to move by the Atchison, you went to work to get it,
3738 didn't you?

A. Yes, sir.

Q. Did you ever turn it loose until it was actually controlled by the Atchison?

A. Naturally our first move would be with the shipper here, and if he controlled the routing we would keep after him until the matter was settled. If it was controlled by the consignee, we would naturally keep after our man on the coast.

Q. You regarded the Atchison as the real competitor for California business, didn't you?

A. I did, from this territory that I had charge of, yes, sir.

Q. You never regarded the Union Pacific as a competitor for California business, did you?

A. No, sir, not to the extent that I did the Atchison.

Q. You regarded the Union Pacific only as affording you the shorter route?

A. Yes, sir.

Q. Than by way of New Orleans or the Texas gateways; is that true?

A. As the longer one, yes, sir.

Q. This terminal company that you testified about, is the St. Louis Terminal Company, is it not?

A. Yes, sir.

Q. It serves practically all roads entering St. Louis?

A. That is my understanding—that they are all interested in it to a more or less extent. I don't know what.

Q. Isn't it your understanding that the Missouri Pacific and the Frisco and the Missouri, Kansas & Texas, the Wabash, the Chicago & Alton, and practically all of the lines running from here to the west and northwest or southwest are served by the St. Louis Terminal Company in the same way that it serves the Illinois Central?

A. Yes, sir.

3739 Q. In other words, its track is open to all the lines?

A. All the lines, yes, sir.

Q. And the representatives of every line entering St. Louis could go to the industries on the tracks of the Terminal Company and solicit business, couldn't they?

A. Yes, sir.

Q. And did, constantly?
A. They did, yes, sir.

By Mr. SEVERANCE:

Q. You were asked by Judge Lovett, if the Atchison was not your chief competitor (I think that was his question) and you said, Yes; and he asked you whether you regarded the Union Pacific as a competitor, and you said, Not to the extent that you did the Atchison. But you did come in direct competition with the Union Pacific in the solicitation of Pacific coast business, didn't you?

A. Just as I outlined a while ago—and taking into consideration the local conditions.

Q. Where it was on the terminal road that you have spoken of, where it was free to go anywhere, there weren't any terminal conditions governing it, were there?

A. I think there were.

Q. What were they?

A. These houses here.

Q. What were they?

A. The local houses had their arrangements to carry out with their lines. Now, if I could go around and find a shipment that was routed to the Pacific coast by the Union Pacific, I did not undertake, as I said a while ago, to break that up.

Q. If it was routed by the M. K. & T. you didn't, did you?

A. No, sir.

Q. But where you found a shipment going to the Pacific coast that wasn't routed at all, and you were able to get it, on the terminal line, then you sent it by New Orleans?

3740 A. If I could control it, yes, sir.

Q. Yes, if you could control it. And as to business that was where you could control it, you were competing with the Atchison and with the Union Pacific both, weren't you?

A. With all the other lines, naturally.

Q. You were competing with those two at least, weren't you?

A. Yes, sir.

By Mr. LOVETT:

Q. You were very careful to avoid antagonisms of any of the lines that were working with you out of here, weren't you?

A. Yes, sir; that was one of my main points.

Q. You weren't afraid, however, to antagonize a shipment going by the Atchison—because that is what you were after?

A. Yes, sir.

Q. And whatever competition existed by the Union Pacific, was in connection with the Southern Pacific from Ogden west, wasn't it?

A. Yes, sir.

Q. And so far as the Southern Pacific is concerned, and so far as your soliciting is concerned, it was a question of division wholly, wasn't it?

A. You mean revenue?
Q. Yes.
A. Yes, sir.

By Mr. SEVERANCE:

Q. Now, let us understand this, Mr. Morrill. I don't think you intended to contradict what you said in answer to my question, but apparently it does contradict it.

Mr. LOVETT. He didn't.

3741 Q. You say that the Union Pacific's solicitation was in connection with the Southern Pacific. Now, you didn't mean that, did you? You didn't mean the solicitation; you meant the movement of traffic?

A. I didn't intend to say that.

Mr. LOVETT. He didn't say that, and I didn't ask him that.

Q. I think you did say that. That is what Judge Lovett asked you.

A. I don't think the Judge asked that question.

Q. Isn't this what you intended to say: that business secured by the Union Pacific necessarily had to move over the Southern Pacific from Ogden?

A. From Ogden, yes, sir.

Q. In the solicitation of business—independent, free business—that could move any way and was not entangled in any of these ways you have stated, you solicited that business by New Orleans, and the Union Pacific by their route?

A. I solicited by New Orleans, yes, sir.

Q. And they by their route?

A. Yes, sir.

Q. And the Atchison by its route?

A. Yes, sir.

By Mr. LOVETT:

Q. And you also testified that you solicited by way of Ogden in connection with the Union Pacific and other lines moving west, didn't you?

A. I have done that lots of times, yes, sir.

Q. You testified several times, as I understood you, that you solicited the business, and you took it the long haul whenever you could get it?

A. Yes, sir.

Q. And if you couldn't, you would take it any way you could get it?

A. Yes, sir.

Q. Now, the question that I asked you, and that Mr. Severance misunderstood, was this, which I will repeat: Whatever com-

3742 petition there was by the Union Pacific, referred to in your answers to Mr. Severance, was the competition of the line made up of the Union Pacific and the Southern Pacific by way of Ogden?

A. Yes, sir.

Q. And that, so far as the Southern Pacific was concerned, it was a question of division, of revenue?

A. Yes, sir.

Q. That is true, isn't it?

A. Yes, sir.

By Mr. SEVERANCE:

Q. Now, that necessitates another question. You answered Judge Lovett affirmatively, as you did me, in answer to my question. You say the competition (to use his language) such as there was, with the Union Pacific, was with the line made up of the Union Pacific and the Southern Pacific. Now, all you mean to state by that is, is it not, that the traffic——

Mr. LOVETT. I object to leading questions.

Mr. SEVERANCE. Well, this is re-direct.

Q. —is that the traffic secured by the Union Pacific had to move over Southern Pacific rails from Ogden? That is what you mean by that answer, isn't it?

A. It did have to.

Q. Yes. I say, that is all you meant by that answer, isn't it?

A. Yes, sir.

By Mr. LOVETT:

Q. And that so far as the Southern Pacific was concerned, it was a question of division of revenue, wasn't it?

A. On that particular business?

Q. Yes.

A. Yes, sir.

Q. That you could get more revenue if it went by way of New Orleans than by way of Ogden; that is true, isn't it?

3743 A. Naturally.

Q. And that you naturally solicited by the way that afforded you the most revenue?

A. Where I could control it, yes, sir.

Q. And if you could not get it by way of New Orleans, which afforded you the long revenue, you would work with the Union Pacific to get it by way of Ogden?

A. If they came to us with the information, yes, sir.

Q. We have gone over that half a dozen times, but Mr. Severance seems to dispute it; so I will have it on record again. That is all.

By Mr. SEVERANCE:

Q. Did any business ever move to the coast by water from here?

A. Not to my knowledge.

Q. Did any business ever move from any of your territory by the Panama route to the coast?

A. Not to my knowledge, no, sir.

Q. Where you ran onto business which you could control, as you have stated, you didn't go and tell the Union Pacific about it, did you?
A. No, sir.

By Mr. LOVETT:

Q. If you found that the business was not going to move by way of New Orleans, but was liable to move by the Atchison, did you ever inform the Union Pacific of that and try to get it by way of Ogden?
A. Yes; I have informed the Union Pacific, and the other lines too.
Q. Any line that would work it by way of Ogden?
A. Any line that I thought would be the strongest help for me.

3744 By Mr. SEVERANCE:

Q. That is, where you could not get it by New Orleans ——
A. Yes, that was the question.
Q. —which was your first love; if you found it was going to move by some other line, you worked with the Union Pacific or with the Texas lines, or any way you could get some revenue out of it?
A. Some revenue out of it, yes, sir.

3745 JAMES C. LINCOLN

Being duly sworn as a witness on behalf of the Complainant, testified as follows:

Direct examination by Mr. SEVERANCE:

Q. Mr. Lincoln, where do you live?
A. St. Louis.
Q. What is your business?
A. Commissioner of the Merchants' Exchange Traffic Bureau.
Q. How long have you occupied that position?
A. Since May 1, 1905.
Q. Previous to that time what was your business?
A. I was assistant freight traffic manager of the Missouri Pacific, at the time of leaving that company.
Q. Will you state your railroad experience, commencing at the beginning and running down to the time you left the railroad service?
A. I entered the railway service in the car service department of what was known as the St. Joseph & Denver City railroad, in September, 1876. I was with that company, through its various departments, transportation and traffic, until September, 1888. In September, 1888, I entered the employ of the Missouri Pacific Company, as Commercial agent, at Atchison, Kansas, where I remained a little over a year, and came to St. Louis in November, 1889, since which date I was with the Missouri Pacific until I went into my present position.

Q. And what were your duties with the Missouri Pacific, beginning in 1889, and running down?

A. For the first two months I was known as traffic clerk in the General Freight Office. On the first of January, 1890, I was
3746 made assistant general freight agent, retaining that position until about 1898, I think it was, when I was made first assistant general freight agent, then general freight agent; and in November, 1904, I was made assistant freight traffic manager. I should change that date to 1905, instead of 1904.

Q. Mr. Lincoln, in these various positions which you held with the Missouri Pacific, were you brought into contact with the transcontinental business?

A. Yes, sir.

Q. Did the Missouri Pacific maintain commercial agencies on the Pacific coast?

A. They did; at San Francisco, Portland and Los Angeles.

Q. Do you remember the occasion—I don't mean the date, but the fact—of the joint control of the Union Pacific and Southern Pacific coming in?

A. I wouldn't say as to dates, but it was about 1901.

Q. I say you remember the fact?

A. Yes, sir.

Q. I am not asking you to fix the date. Previous to that time, did the Missouri Pacific work Pacific coast business or participate in it?

A. At that time and previous thereto.

Q. And afterwards, too, I believe?

A. And afterwards.

Q. Did you have a line leading to Pueblo?

A. The Missouri Pacific had a line leading from St. Louis to Pueblo—the Iron Mountain, from St. Louis to Texarkana, there connecting with the T. & P. to El Paso.

Q. And what lines did you connect with at Pueblo on coast business?

A. On Pacific coast business we connected with and worked more prominently with the D. & R. G. and Rio Grande Western. The D. & R. G. was the connection at Pueblo.

3747 Q. Did you maintain commercial agencies in the east as well as on the coast?

A. Yes, sir; we had commercial agents at the principal cities in the east, such as Pittsburg, New York, Boston and Philadelphia, at that time.

Q. How did your business going west by Pueblo, the D. & R. G. and the D. & R. G. W. reach San Francisco and other California points?

A. It reached San Francisco in connection with the Central Pacific, and Portland, Oregon, by the Oregon Short Line and the Central Pacific.

Q. The Central Pacific was what was called the Shasta route to Portland?

A. The Shasta route to Portland.

Q. How did the bulk of your Southern California business move to Los Angeles?

A. The bulk of it moved by way of El Paso out of St. Louis.

Q. In the case of San Francisco business, which you were seeking in the East, through your eastern agents—take New York; what was your strongest competitor for Pacific coast business out of New York?

A. The strongest competitor for Pacific coast business out of New York was the Sunset route.

Q. Boat and rail?

A. Boat and rail; the Morgan line and Southern Pacific.

Q. You said a moment ago that such business as you were able to secure moved to Portland, Oregon, over the D. & R. G., either over the Oregon Short Line or Shasta route. Was there any change in that situation after the joint control of the Union Pacific and Southern Pacific?

A. Yes; there was a change in that, so far as Portland business was concerned, the Southern Pacific was not open for the use; it worked by the Oregon Short Line.

3748 Q. Exclusively?

A. Yes, sir; on Portland business.

Q. That is what I mean—on Portland business. You said you maintained agencies at Pittsburg.

A. Yes, sir, Pittsburg.

Q. And which way did you endeavor to route your Pacific coast business of which you obtained control out of Pittsburg?

A. Out of Pittsburg, on San Francisco, we endeavored to control by way of St. Louis; Missouri Pacific, to Pueblo, and D. & R. G. to Ogden, Southern Pacific beyond; the lower California business, by way of the Iron Mountain and the Texas & Pacific to El Paso.

Q. That is, Southern California?

A. Southern California. North Pacific coast, by way of Pueblo and the Ogden gateway.

Q. As to that business out of Pittsburg, did you likewise meet with the competition of the Sunset and its connections?

A. Not to the same extent that we did at the seaboard. Pittsburg proper would move all rail; but east of Pittsburg there was the water route competition.

Q. I am not speaking of the Sunset in the sense of the boat and rail route. Did you meet with the competition of the Sunset line of the Southern Pacific by New Orleans? I mean the New Orleans gateway.

A. Met with it anywhere on and east of the Mississippi River.

Q. East of the Mississippi?

A. On and east of the Mississippi River.

Q. On and east of the Mississippi River you met with the competition by the New Orleans gateway?

A. Yes, sir. I might qualify that remark as to the Mississippi River, where I stated on and east of the Mississippi River, by
3749 saying to the south of and including St. Louis. Not the Upper Mississippi River, of course.

Q. But out of St. Louis?

A. Out of St. Louis.

Q. You met with competition out of St. Louis?

A. The competition existed out of St. Louis.

Q. Mr. Lincoln, what effect did the common control of the Union Pacific and Southern Pacific have on eastbound business out of California, so far as it came under your observation and in connection with your line?

A. It had the effect of diminishing the business of the Missouri Pacific through the Ogden gateway, by Pueblo.

Q. Where did that business go? How did that business that you lost move?

A. Why, if secured by the Southern Pacific, very naturally to the Union Pacific for the long haul. A business proposition.

Q. Did traffic move to the east from California by New Orleans, as well as to the west?

A. I would assume so, yes, sir; for the territory so far as it is controlled by the Southern Pacific railway, their rails running to New Orleans. They would certainly solicit the business for the longest haul.

Q. And into what territory did that traffic move from California by New Orleans?

A. Why, it moved to all the territory east of the Mississippi River north of St. Louis, and business moved to Chicago that way.

Q. So that movement was both ways?

A. Both ways.

Q. And the solicitation, or the effort to move it, so far as you observed it, was both ways?

A. The effort would apply the same in each direction.

3750 Q. You stated a few moments ago that the effect of the amalgamation of these two lines, the Southern Pacific and the Union Pacific, had been to diminish the Missouri Pacific's business, and you said that it was because they worked for the long haul. What did you mean by that, exactly, Mr. Lincoln?

A. I meant that they worked to secure the transportation of the property from the coast to Omaha over its own rails, or to New Orleans over its own rails,—the territory of origin and destination having something to do with the gateway that was used, where time was a factor.

Q. That is what I wanted to get at. I am speaking now of after the amalgamation. As to what territory did they use the Ogden gateway as against the New Orleans gateway, and as to what territory did they use the New Orleans as against the Ogden? Where was the line drawn?

2271

A. Well, from St. Louis and this more northern territory my observation was that they used the route through Omaha and Ogden; from south of the Ohio River they used the route through New Orleans; from this middle territory they used the New Orleans route to Southern California. That was my observation.

Mr. LOVETT. During what period was that?

Mr. SEVERANCE. After the amalgamation.

WITNESS. In 1903, 1904 and 1905, up to the time I left the company. He is asking about after the consolidation.

Q. Mr. Lincoln, in what way, if at all, did the handling of these two properties differ from what it would have been, from a
3751 railroad standpoint (I mean after the amalgamation) if they had been actually owned by one company? Was there any difference in the movement of traffic so far as you could see?

A. I don't know as I quite understand the question. Is it this: What is the difference in the operation and in the solicitation of traffic after the consolidation from that which would ordinarily obtain if the roads were in fact one line originally?

Q. That is right—one company.

A. I have construed it as though they were operating those roads as one line, undertaking to secure (as a business proposition they should) the longest haul possible over their own rails.

Q. Treating both lines together, you mean, as their own rails?

A. Yes, sir.

Cross-examination by Mr. LOVETT:

Q. The Missouri Pacific and Texas & Pacific have been operated precisely that way with respect to California business, haven't they, Mr. Lincoln?

A. Treating them as one line?

Q. Yes.

A. Yes, sir.

Q. Wherever they could get the long haul by the joint line, they naturally attempted to get it, didn't they?

A. Whenever they could get the joint haul they undertook to secure the long haul over both lines.

Q. The Missouri Pacific has at least two outlets for California business, has it not—one by way of Texarkana, to a connection with the Texas & Pacific, and another by the way of Pueblo and Ogden?

A. They have the two outlets, or two roads, where they are undertaking to secure the long haul. I presume that is what you mean.

3752 Q. That is what I mean.

A. Yes, sir.

Q. And in all their solicitation for California business, they would naturally try to work it by the gateway that affords them the most revenue?

A. Yes, sir.

Q. Just as the Southern Pacific and Union Pacific have since the amalgamation?

A. Identically the same.

Q. Now, before the amalgamation of the agencies, the Southern Pacific ordinarily attempted to solicit the freight by the gateway that afforded it the most revenue, didn't it?

A. Yes, sir. Where the solicitation was in their own hands they did that.

Q. Isn't that a universal practice among railroads?

A. Yes, sir.

Q. Unless, on account of the locality, it may be bad business to attempt to work it too far up on their own line?

A. Well, I should possibly make a slight exception to it being a universal practice. Of course, there are connections where a line, by getting a very long haul, would employ an impracticable route; so they would not be advocating freight via that route, where time entered into consideration, and in fact might not solicit business by such an irregular route.

Q. Shippers would become dissatisfied with the route?

A. But where the routes are reasonable, all roads undertake to get the business for the longest haul possible.

Q. Now, the solicitation of the Southern Pacific south of the Ohio River and east of the Mississippi River was very active for the New Orleans gateway, prior to the amalgamation, wasn't it?

A. Very active.

3753 Q. Wasn't it less active by that gateway as you went farther north of the Ohio River? For example, in the Chicago territory, didn't the Southern Pacific solicit preferentially by Ogden?

A. I wish to state that I have not actively solicited the business myself, but my information is based upon the reports made by our agencies. I have found that the Southern Pacific was soliciting business somewhat actively for lower California, in Illinois territory, where it was served by the Illinois Central Railroad; not where it was served by other lines than the Illinois Central.

Q. Working with the Illinois Central?

A. Working with the Illinois Central. But outside of that territory served by the Illinois Central Railroad they were operating largely through the Ogden gateway.

Q. They were cooperating through the Ogden gateway?

A. Yes, sir.

Q. With the Union Pacific, the Missouri Pacific, or any lines that would take it to the Southern Pacific at Ogden?

A. Prior to the consolidation, yes, sir.

Q. But you never knew of them to be soliciting in the Chicago territory by way of New Orleans except in connection with the Illinois Central?

A. Well, the Illinois Central particularly in Chicago territory—that being the through line from Chicago to New Orleans.

Q. And that for Southern California?

A. And that for Southern California particularly.

Q. Did you ever know them to be soliciting that way for San Francisco from Chicago territory?

3754 A. Well, I have not noticed it to an active extent.

Q. Such knowledge as you have of the Southern Pacific's solicitation in the Chicago territory for traffic by way of New Orleans is based upon reports of your agents and representatives, I believe you stated?

A. Based upon the reports of our agents and representatives on the coast and in Chicago.

Q. And that you never got any information even that way, that you recall, that it was soliciting in that territory for San Francisco?

A. I could not point to an individual case, but it is certainly my recollection that the Sunset Route were soliciting business out of that territory by way of New Orleans.

Q. Out of the Chicago territory?

A. Yes, sir. My recollection is that was the case for Southern California.

Q. I didn't say Southern California. I said San Francisco.

A. Well, I qualified my remark originally. I said so far as San Francisco was concerned, I thought the solicitation was more directly through the Missouri River gateways, on account of service.

Q. Well, you misunderstood the question just now.

A. My statement was with reference particularly to Southern California.

Q. Your statement, then, is that through the reports of your agencies, your information was that the Southern Pacific, in connection with the Illinois Central, was soliciting Southern California business by way of New Orleans, and that you did not know of any solicitation in the Chicago territory by the Southern Pacific by way of New Orleans for San Francisco business.

3755 A. That I said, yes, sir.

Q. What railroad lines on the Pacific coast reached eastwardly and were large factors in the transcontinental business during the time of your railroad career, Mr. Lincoln? I mean the lines on the Pacific coast—the terminal lines, we will call them.

A. There was the Oregon Railroad & Navigation Company——

Q. I am asking about California business.

A. Oh, to California? I will distinguish them. The Southern Pacific, the Central Pacific, which is one company, as indicating the different gateways, the Santa Fe, and the San Pedro route.

Q. The San Pedro route wasn't opened until 1905, was it?

A. I was under the impression it opened the year before, but that——

Q. Well, it was May 1, 1905, as a matter of fact.

A. About 1905.

Q. Prior to that time there were but two terminal lines out there, weren't there?

A. The Santa Fe and the Southern Pacific systems.

Q. The Southern Pacific having the two gateways—one by way of El Paso, called the Sunset Route, and the other by way of Ogden, over the Central Pacific?

A. Yes, sir.

Q. In connection with the Union Pacific?

A. Yes, sir.

Q. What practically controlled the rate situation in California during your time with the railroads?

A. The rate adjustment?

Q. No; I mean what company or what carrier or what system.

A. The Southern Pacific system was a large controller of the California transcontinental business.

3756 Q. It always practically dominated that situation?

A. Dominated it, yes, sir, all the time.

Q. The Union Pacific had no outlet to California except over the Southern Pacific from Ogden west, had it?

A. That was their only outlet.

Q. Prior to the construction of the San Pedro line?

A. Yes, sir.

Q. Now, if I understand your testimony, prior to the amalgamation of the agencies, the Union Pacific and its connections were actively soliciting California business by way of Ogden; the Missouri Pacific and the Denver & Rio Grande and their connections were actively soliciting business by way of Ogden, and many other lines, were they not?

A. Yes, sir.

Q. And isn't it true that all of the business of the Union Pacific, the Missouri Pacific, the Denver & Rio Grande, the Burlington, and the Rock Island (except what went by way of El Paso), for California, or practically all, went over the Southern Pacific from Ogden to destination?

A. Practically all of it.

Q. They all fed that line?

A. That is the line they fed, yes, sir.

Q. After the amalgamation of the agencies, in 1901, you testified that the Missouri Pacific's California business by way of Ogden diminished?

A. Yes, that is what I testified.

Q. That was because the Union Pacific then became the preferential route of the Southern Pacific, wasn't it? That is to say, isn't it true that a great deal of traffic originates on the Southern Pacific lines in California, and that a great deal is destined from the

3757 east to points on the Southern Pacific lines in California, and that the general policy of the Southern Pacific, after the amalgamation of the agencies, was to work the traffic it could control by the Union Pacific rather than by the Denver and Rio Grande and Missouri Pacific?

A. I think that is correct, and would appear to be the only business proposition.

Q. Whereas, formerly, the Union Pacific and the Missouri Pacific and the Denver and Rio Grande were treated alike at Ogden?

A. They were all connections of the Southern Pacific, allied with them in securing business for themselves and the Southern Pacific.

Q. But that upon the consolidation of the agencies, the Union Pacific became the preferred connection of the Southern Pacific at Ogden?

A. Yes, sir.

Q. Was there any change in the policy of the Missouri Pacific with respect to its California business after the relations between the Missouri Pacific and the Denver & Rio Grande became closer? That is to say, prior to that time the Missouri Pacific had the long haul, preferring the El Paso route for California business?

A. Not the Missouri Pacific.

Q. I beg your pardon.

A. For Southern California we operated by the Iron Mountain and the El Paso route. For San Francisco we always operated by the Ogden gateway.

Q. After the Denver & Rio Grande and the Missouri Pacific became more closely related, was there any change in that policy?

A. Well, the efforts of the Missouri Pacific, after its relations with the D. & R. G., were, of course, much stronger to get the busi-
3758 ness over the D. & R. G. to the Ogden gateway; but, necessarily, even before that time they were very closely allied, because they had to depend very largely on the Ogden gateway.

Q. Yes; but the Missouri Pacific became a little more strenuous for the Ogden gateway and a little less strenuous for the El Paso gateway, didn't it?

A. I should say yes, it did.

Q. But the Missouri Pacific has had the two gateways for many years—one by way of El Paso and the other by way of Pueblo?

A. Yes, sir.

Q. And I believe you have already testified it attempted to send the business the way the joint line realized the most revenue?

A. Yes, sir. I am considering the service at the same time.

Q. All lines in this territory leading to the west and southwest have always solicited California business, haven't they?

A. All lines leading to the west?

Q. Yes, and southwest.

A. I know of no exception.

Q. The Iron Mountain, the Texas & Pacific, the Missouri, Kansas & Texas, and possibly the Frisco——

A. The Frisco.

Q. ——all attempted to work it by way of El Paso, didn't they?

A. Those lines all undertook to work it via El Paso.

Q. And the Rock Island, too, after it opened its El Paso line?

A. After the opening of the El Paso line, yes; but prior thereto it was working the other gateway.

Q. The Rock Island also has two gateways for California business, has it not? One by way of Denver and the other by way of El Paso?

A. Yes; one by way of El Paso and the other by way of Denver, Colorado Springs, and Pueblo.

3759 Q. Is it your understanding that it, like the Southern Pacific and all other railroads, tries to work business by the gateway which affords the most revenue?

A. Well, I answered that by making a general answer, that all of them try to get the long haul.

Q. That is the universal practice?

A. The universal practice.

Q. You never attempted for the Missouri Pacific to send any business to California by way of Portland and the boat-line down, did you?

A. I don't recall of a single instance. If I ever tried to do that——

Q. You never knew of it to be solicited that way, did you?

A. I don't recall, no.

Q. You never had any rates in effect that way to California, so far as you know, had you?

A. I do not recall any.

Q. How did the Union Pacific try to work its business in this territory for California?

A. The Union Pacific?

Q. Yes.

A. Out of St. Louis?

Q. Yes, and this territory.

A. Well, the Union Pacific, in working business out of St. Louis, as it always impressed me, worked in connection with the Wabash and the Chicago & Alton.

Q. And then westwardly where?

A. And then westwardly over the Union Pacific road to Ogden, thence Southern Pacific.

Q. You never knew it to attempt to work business for California by way of Portland and then down, did you?

A. I have no knowledge of it; I don't recall it.

Q. Did I understand you to testify that, while you were connected with the Missouri Pacific, you had moved business to Portland by way of Ogden and the Shasta route of the Southern Pacific?

3760 A. Oh, yes; business has moved that way.

Q. It has moved that way?

A. Yes, sir.

Q. What was its character?

A. I should say general merchandising business.

Q. Was that the best route from this territory to Portland?

A. I wouldn't go into the detail of answering that. I should have thought the Oregon Short Line was the better route; but, of course, using the Oregon Short Line, the Missouri Pacific came in competition with the Union Pacific; and necessarily it worked, where it could not get business through the Ogden gateway, meeting the competition of the Union Pacific as a factor, we could get assistance from the Southern Pacific in the solicitation of business over their own rails.

Q. If it did not work the Oregon Short Line, it was because the Union Pacific controlled the Oregon Short Line, was it not?

A. The Union Pacific controlled the Oregon Short Line; even prior to the consolidation they controlled the policy.

Q. And the Union Pacific was a competitor of the Missouri Pacific?

A. The Union Pacific was a competitor of the Missouri Pacific from the Missouri River.

Q. Yes, that is it.

A. And naturally it became a competitor with it from St. Louis.

Q. The Union Pacific is a competitor of the Missouri Pacific from the Missouri River. Taking the Missouri Pacific in connection with the Denver & Rio Grande, it is a competitor of the Missouri Pacific and Denver & Rio Grande from the Missouri River to Ogden?

A. To Ogden.

Q. Do you remember that during a certain period in the nineties the Oregon Short Line was controlled by a receiver,
3761 separate from the Union Pacific?

A. It was in the hands of a receiver, I presume about 1894. I would not attempt to designate the dates without reference, but I think that was about the time.

Q. And that was a separate receiver from the receivers of the Union Pacific, was it?

A. It is my recollection it was.

Q. There was a change in its relations at that time to the Denver & Rio Grande and your line on Portland business, wasn't there?

A. I would not like to testify as to that, not having had an opportunity to refresh my memory. It is a good many years ago—ten or twelve years ago. There have been changes in relation to these rate matters through the different years.

Q. It is your understanding that a shipper is not interested in the division of the through rate between the carriers?

A. I do not think he has any interest in the division.

Redirect examination by Mr. SEVERANCE:

Q. Mr. Lincoln, in reference to that Oregon situation: Did the Missouri Pacific participate in the eastbound traffic in hops and wool from Oregon?

A. Oh, yes, it did.

Q. The hop traffic was a large traffic out of Oregon, wasn't it?

Mr. LOVETT. Don't lead the witness, Mr. Severance.

Q. Was it or not a large traffic?

A. There was some traffic moving from there to St. Louis, for the breweries, yes.

Q. Over which route did that traffic move out of Oregon to the connection at Ogden, or did it move by both routes—the Shasta route and the Oregon Short Line?

3762 A. I could not answer that. I only know in a general way of that tonnage that was there, but how it was moving I could not answer at this time.

Q. Did wool move over your line, too, by the Ogden gateway?

A. Oh, yes, wool moved from Oregon Short Line territory by the Ogden gateway, over the D. & R. G. and the Missouri Pacific.

Q. That came mostly out of Idaho and that region?

A. Well, that does come mostly out of Idaho, but from the territory I had in mind.

Q. Judge Lovett was asking you a moment ago with reference to the Portland business, as to whether the Union Pacific was not, as far as up to Ogden from the Missouri River, a competitor with the Missouri Pacific and the Rio Grande. You testified that it was.

A. Let me have that question again.

Q. I say Judge Lovett just asked you, in directing your attention to the Portland business, whether the Union Pacific from the Missouri River to Ogden was not competing with the Missouri Pacific and the Rio Grande, and you said yes, they were competitive lines.

A. Yes, sir.

Q. Prior to the amalgamation, the Southern Pacific was competing with the Short Line from Ogden to Portland, likewise, wasn't it?

A. It was.

Q. Do you remember that business ceased to move by Sacramento sometime after this amalgamation?

A. I do not recall the dates. It did cease.

Q. You remember it ceased?

A. Yes; it was not moving that way.

3763 Q. Then what was the sole route left into Portland from Ogden?

A. By the Ogden gateway, the Oregon Short Line.

Q. The Oregon Short Line?

A. Through the Ogden gateway.

Q. Yes; that is what I mean. Through the Ogden gateway. In the movement of business from the Atlantic seaboard, which you said was competed for by your line, among others, against the Sunset Route, did that competition extend to Portland business?

A. I do not recall of it being such a factor in the Portland business. It was a factor as to California business, but not as to the Oregon business. I do not recall it as being a serious factor there, because of other routes.

Q. Which way does the Missouri Pacific have the longer haul from St. Louis to California—by Pueblo or by the southwest?

A. Well, you are speaking of the so-called Gould lines. The longest haul is from St. Louis to Ogden; but exclusive of the D. & R. G., the longer haul would have been from St. Louis to El Paso. It is a greater distance from St. Louis to El Paso than from St. Louis to Pueblo.

Q. The Missouri Pacific does not extend to El Paso, does it?

A. No; it extends to Texarkana.

Q. I am speaking of the Missouri Pacific as a separate road.

A. The Missouri Pacific, the separate road, its longest haul is to Pueblo. Mr. Severance, in order that there may be no misunderstanding on the point of my response as to the Missouri Pacific, my official connection was general freight agent of the Missouri Pacific system, which was the Iron Mountain and the Missouri Pacific road; and when you speak of the Missouri Pacific I am very apt to answer with reference to the Missouri Pacific rather than the separate properties.

3764 Q. Judge Lovett was asking you with reference to the movement of traffic from Chicago territory. You testified, as I understood it, that the movement by the south was only in connection with the Illinois Central or places reached by the Illinois Central. What is the Chicago territory? How far does that extend?

A. It depends on which way you are going. Going to Pacific Coast points, Chicago territory almost, but not absolutely, follows the Illinois-Indiana state line down to the Ohio River. It would also take in Milwaukee. But going south, if New Orleans were the destination, for example, Milwaukee is not in Chicago territory. It is a differential higher. But speaking of Pacific coast territory, Milwaukee, Chicago, and following almost (not identically) the Indiana-Illinois state line down to the Ohio River is Chicago territory.

Q. St. Louis is not in Chicago territory, is it?

A. No. St. Louis is the St. Louis territory. There is the Chicago territory, the Memphis territory, and the Mississippi River territory.

Q. Counsel asked you with reference to the making of through rates to the coast, and as to the domination of the Southern Pacific. How are transcontinental rates made, as a matter of fact, and how have they always been made since you went into the railroad service? Are they made independently, or are they made in conference?

A. Oh, railroad rates have usually been made by conference.

Q. What was the association that had charge of the transcontinental rates during the time you were in the railroad service, Mr. Lincoln?

3765 A. The Transcontinental Association. It was known as Transcontinental Association and Transcontinental Freight Bureau. It had several different names, had it not, Mr. Stubbs?

Mr. STUBBS. That is right.

WITNESS. But practically it is the Transcontinental Association throughout.

Q. Where were the headquarters of the association?

A. Well, they have moved. They were in Cincinnati, and in Chicago, in both places.

Q. Latterly in Chicago?

A. Yes, sir.

Q. Will you describe, for the purpose of having it in the record, about the course that is usually taken when any line desires to suggest a change either in classification or in transcontinental rates to the coast, or transcontinental classification?

A. It was customary for a line to submit its proposition as to the change in the rates to Pacific coast points—I am speaking of transcontinental rates now——

Q. Yes, that is what I am talking about.

A. ——to the secretary of the association, so that it might be docketed for discussion at their meeting, or conference, at which time the matters were discussed and decision arrived at as to whether or not it was a proper rate.

Q. Was that decision necessarily a unanimous decision, or otherwise?

A. I do not recall the particular rules of the different committees. Some committees can adopt by three-fourths vote, and others require a unanimous vote. Ordinarily, to secure association action, it requires unanimous vote, or unanimous recommendation, as the term is.

3766 Q. Yes, I understand.

A. But most of the organizations still leave the right of initiative with some individual member.

Q. What I wanted to get at is this: Did the Southern Pacific road have any monopoly in initiating such action, or could any member of the association initiate it?

A. Oh, any member could initiate a proposition to change the rate.

Mr. LOVETT. Do you want to stop there?

Q. And that matter was discussed in committee, or in the whole association?

A. Then it was discussed in the committee of the full association.

Q. Now you say that the Southern Pacific dominated the situation in the way of rates. Suppose the other members of the association favored a change in the rate, and the Union Pacific, when it was independent, did not favor it; what was the result?

A. Well, I always felt if the Southern Pacific wanted to do it, they could; because they had their own rails from the coast to the Mississippi River. We were usually very largely guided by their views.

Q. But what was the result when an important line like the Union Pacific strenuously objected and persisted in the objection?

Mr. LOVETT. I object, because it has not been shown that that ever occurred.

Q. Well, if that ever happened?

A. I couldn't state a definite answer to that proposition.

Q. You don't remember definite instances?

A. I don't know of any cases, but I have known that where
3767 the Southern Pacific wished to establish a rate, they established it; gave notice that they wished to put in the rate. The same thing is true of the Santa Fe. But it is not often the case. Usually they meet in conference and the rates are approved.

Q. Approved unanimously, as you stated? The association actions require a unanimous vote?

A. Yes; I think that is the rule in that association.

Q. In view of the relations the different roads always bore to each other in the way of exchanging business, reaching business, wasn't that about the only way that rates could be adjusted?

A. In my judgment the only way you can get uniformity of adjustment of rates is through associations and conference.

Q. And it is essential that the rates be uniform, is it not?

A. I believe so, absolutely.

Q. In those association meetings, did each road have one vote; that is, did each road speak as a single unit?

A. I get a little confused on the representation that is permitted in some of the meetings, but it is my recollection that each separate road is entitled to its representative and a vote.

Q. Prior to the amalgamation of the Southern Pacific and the Union Pacific were they separately represented in those meetings?

A. The Union Pacific and the Southern Pacific?

Q. Yes, sir.

A. Oh, yes. Very ably represented.

Q. Is it a fact, Mr. Lincoln, that the matter of initiating rates often arises because some new industry is about to be established on some particular line, which needs a rate?

A. Oh, there are various reasons for initiating a rate. It
3768 may be for some new industry; it may be for some industry that is established and needs some relief in the way of reduction to promote its business; or it may be that a rate is initiated by reason of overproduction. There are various reasons why a change in rate might be initiated.

Q. Did you regard it as a valuable privilege to these roads to have a voice in that adjustment through those associations? Would you regard it as valuable to the roads interested?

A. Oh, I think it is valuable to all parties concerned to have conferences in regard to rates.

Q. That is, you did not feel that you were in just the same position that you would have been if you had turned the entire business over even to so able and charming a gentleman as Mr. Stubbs?

A. Oh, no. I think we should present our views and ideas.

Q. And even with all the predominant influence of the Southern Pacific, Mr. Stubbs did not undertake to overrule everybody's objections in those meetings, did he?

A. No, sir.

Q. What?

A. No. I didn't find him doing so.

Q. There was one matter which I did not think to ask you about on direct-examination, Mr. Lincoln. That is the matter of the eastbound business from California. You stated that you maintained commercial agencies in Los Angeles, Portland and San Francisco. What competition did your line meet with in the routing of eastbound business? That is, was the business competed for by the Sunset and by the Atchison and by the different lines east of Ogden?

A. Oh, the eastbound business from the coast was competed for by the different lines east of Ogden. We also had the addi-
3769 tional competition of the solicitation by all the lines east of Ogden, and as between the lines taking the business up to the different gateways, Ogden or El Paso.

Q. I am speaking now of eastbound business.

A. Eastbound business from the Pacific coast. We had the competition of all lines participating in the business east of Ogden.

Q. Did you have the competition of the Sunset Route of the Southern Pacific also?

A. We had their competition as to every gateway.

Q. That is what I mean.

A. Yes, sir.

Q. The Sunset Route participated in the competition on eastbound business?

A. Oh, yes.

Q. As against all of them?

A. Yes, sir; against all of us.

Q. Do you remember the names of the gentlemen who represented the Southern Pacific here in those days when the agencies were separate?

A. Mr. Lothrop, Mr. Townsley—Mr. Prim was here prior to Mr. Lothrop—and Mr. Aglar.

Q. I say when they were separately represented. Aglar never represented the Southern Pacific?

A. No, he never represented any but the Union Pacific.

Q. He represented the Union Pacific?

A. Yes, sir.

Q. And after the amalgamation he represented both lines, didn't he?

A. I think Mr. Aglar died before that amalgamation. I think Mr. Townsley was the first man here who represented the consolidated companies. I don't know whether it was before or afterward. Mr. Aglar has been dead about six years.

Q. Since the amalgamation of the two lines here, has this separate representation been done away with?

3770 A. It has been done away with since the amalgamation, yes. There is one agency here now.

Q. One agency. When was that established, if you remember?

A. I don't remember the year. Mr. Townsley, I think, was the first joint agent. Mr. Aglar may have been.

Mr. STUBBS. No. Mr. Lathrop.

WITNESS. I meant to say Mr. Lathrop. Mr. Lathrop was the first.

Q. And who is the present joint agent?

A. Mr. Lowe.

Q. Mr. Lincoln, you stated both on direct and cross-examination that the business eastbound of the Missouri Pacific fell off after the amalgamation of the Union Pacific and the Southern Pacific, for the reason which you gave. How soon after that amalgamation took place did you first observe that lessening in business?

A. I could not give the date. It wasn't very long afterwards until we commenced feeling the effect of the consolidation.

Q. That is what I meant.

A. It is very natural that we should feel it almost immediately, if they had good soliciting men.

Recross-examination by Mr. LOVETT.

Q. Wouldn't these solicitors that the Southern Pacific had in here before the amalgamation of the agencies, work with your line for business by way of El Paso, Mr. Lincoln?

A. If our representatives on the coast would have a routing order, for example, to be routed by the Iron Mountain or by the Mis-
3771 souri Pacific care of the Southern Pacific, either at Ogden or at El Paso, they would usually put their heads together to see that the business did not get away from either one of them; and both claimed credit for the business.

Q. That is usual, isn't it?

A. That is usual, yes.

Q. And so with business originating in this territory, it was the same way?

A. The same way with business originating in this territory. If the Pacific coast man controlled the business and wished to favor the Missouri Pacific man with it up to the gateway, the Southern Pacific and the Missouri Pacific man would be very thick on that business.

Q. If the Southern Pacific man found that California business could be moved by the Missouri Pacific and not by New Orleans, he would work with the Missouri Pacific to get it as against the Atchison, wouldn't he?

A. Certainly, yes, sir.

Q. Were not practically all of the Pacific coast agencies of these eastern lines, like the Missouri Pacific agency? That is to say, if the Denver and Rio Grande agent on the Pacific coast heard of a car moving from this territory west, and he had a chance to get it, wouldn't he also take it up with the Santa Fe agent, and they would work together to get it?

A. I think the position of the representative of the D. & R. G. was separate and distinct from that of the terminal lines. They were the intermediate carrier. They could not very well go to the Southern Pacific, either as an eastbound or westbound proposition, because they had to work with other lines either eastbound or westbound. They

are not situated the same as a line that originates and destinates business.

Q. Being an intermediate carrier, they are not in position
3772 to exert the influence?

A. They could not do it very well, because they would antagonize the connections.

Q. That was the position of the Union Pacific too, wasn't it, like the Denver & Rio Grande?

A. It was from certain territory, yes, sir.

Q. Well, it is an intermediate carrier between Ogden and the Missouri River?

A. An intermediate carrier between Ogden and the Missouri River, yes, sir.

Q. Now, the Burlington and the Rock Island and other lines east of the Missouri River, on which traffic originates, would work with the Southern Pacific man, and the Southern Pacific man would work with them, just as the Missouri Pacific man, wouldn't they?

A. Well, yes, if they both happened to know about the shipment.

Q. In other words, it is largely the business of the commercial agent to work with the line on which the traffic originates, or which controls it, isn't it?

A. Well, your proposition is a little bit different from the way I have given it. Of course, if a shipment is secured by a Burlington representative in California, to be moved in connection with the Southern Pacific railway through Ogden, the two representatives would probably work together to see that the business did not get away from their lines, as against the Santa Fe for example, or as against the Iron Mountain and the Southern Pacific to the El Paso gateway, or the M. K. & T. and some other line. But if the Southern Pacific representative was not informed that the Burlington was after the business and had control of the business, I doubt if the
3773 Burlington man would go to the Southern Pacific in regard to it, because he would route it his own way.

Q. But if the Southern Pacific man heard that the Burlington was after the business by the way of the Ogden line, wouldn't he work with the Burlington to get it as against the Santa Fe?

A. Not until he had tried the shipper first.

Q. Not until he tried the long——

A. Not until he tried the shipper first, to find out whether that was a fact or not.

Q. Not until he tried to get the long haul out of it by going to the shipper; is that what you mean?

A. Yes, sir.

Q. And then he would work with the Burlington man to get it?

A. Yes, after he found that the Burlington had the "inside," as the saying goes.

Q. He would work with the line that had the inside on it, to get it as against the Atchison?

A. To get it as against all competition.

Q. That is customary among all railroads, isn't it?

A. Yes, sir; that is customary. We have strange bed-fellows sometimes.

Q. Mr. Severance asked you whether any line in the transcontinental association could not originate a proposition to change rates, and you very properly answered that it could. He did not ask whether any line in that association could change transcontinental rates?

A. No, sir, it can not. Any line can not.

Q. It takes the consent of either the Southern Pacific or the Atchison to change the rail rates to California, does it not?

A. From all outside lines, yes, sir.

Q. The Missouri Pacific could not make a rate to California
3774 without the consent of the Southern Pacific, could it?

A. It could not.

Q. Neither could the Union Pacific?

A. Well, treating the Union Pacific as a consolidated company, or are you speaking of prior to the consolidation?

Q. I speak of it as a consolidated company. You mean consolidated with the Short Line and the Navigation Company?

A. No, consolidated with the Southern Pacific.

Q. No, I am speaking of it as a separate line.

A. As a separate line it could not.

Q. Suppose it were under a separate management from the Southern Pacific: it could not, without the consent of the Southern Pacific?

A. It could not without the consent of the Southern Pacific.

Q. So, any number of suggestions for changes might be made by lines parties to the transcontinental association, but the changes could not be made effective without the consent of the Southern Pacific or the Atchison? Isn't that true?

A. That is true as to transcontinental traffic—California business.

Q. Because, prior to the opening of the San Pedro line, it had to reach destination over one or the other of those lines?

A. Yes, sir.

Q. The fact that lines have separate representatives in a transcontinental or any other association, does not necessarily mean that they are competing lines, does it, Mr. Lincoln?

A. I don't believe I quite understand the question.

Q. For instance, connecting lines, in establishing through rates, must confer, must they not?

3775 A. They must: unless there is some agreement by which one represents the other and has the right to control—that, is, the right to initiate rates.

Q. So the fact that two connecting lines have separate representatives in the association does not necessarily indicate they are competing lines, does it?

A. Not necessarily.

Q. I believe you have already testified that prior to the acquisition of the Southern Pacific stock by the Union Pacific, the Southern

Pacific was impartial as between the Union Pacific and its connections and the Denver and Rio Grande and its connections, by way of Ogden?

A. We always felt so and believed so, yes, sir.

Q. So the Denver & Rio Grande and the Missouri Pacific and the Union Pacific had their separate representatives?

A. They had their separate representatives on the coast and in the East.

Q. I believe you testified that after the amalgamation the Union Pacific became the preferred representative of the Southern Pacific, and the same necessity for separate representation of the Union Pacific did not exist?

A. I don't understand the necessity existed after that at all. I believe they consolidated their offices.

Q. Suppose, for instance, that the Southern Pacific and the Denver & Rio Grande, rather than the Southern Pacific and the Union Pacific, had been brought into such relations: there would have been no necessity for separate representation of the Denver & Rio Grande and the Southern Pacific, would there?

A. The Denver & Rio Grande and the Southern Pacific being together?

3776 Q. Yes.

A. I would construe it that there would be no necessity for the separate representation.

Q. If the Denver & Rio Grande were the preferred connection of the Southern Pacific, and were under——

A. If the Southern Pacific Company were the preferred connection?

Q. In answer to questions by Mr. Severance, on your direct examination, you testified, or answered affirmatively his question, as to whether the Southern Pacific and the Oregon Short Line were not competing for Portland business, meaning, I suppose, business from Ogden.

A. They were competing.

Q. You said they were. Now, what business were they competing for, Mr. Lincoln?

A. Oh, they were competing for practically all the traffic that moved through the Ogden gateway. The Southern Pacific would compete as against the Oregon Short Line and the Oregon Railroad & Navigation Company.

Q. To Portland?

A. To Portland.

Q. Competing as between their connecting lines?

A. The Southern Pacific, on the one hand, working with its connections; the Oregon Short Line, with its connections.

Q. The Missouri Pacific working with the Southern Pacific?

A. The Missouri Pacific, until the Union Pacific influenced the movement of the business over the Oregon Short Line, could work with both. Thereafter it worked with the Southern Pacific, if it

could not secure the business as against the Union Pacific and the Oregon Short Line.

Q. Have you ever been over those lines, Mr. Lincoln?

A. I have not.

Q. Have you ever been to Portland?

3777 A. No, sir. I have been to San Francisco over the lines there, and southern lines, but not north.

Q. You don't know the relative character of the two lines?

A. I do not. Merely from hearsay. I know nothing about it personally.

By Mr. SEVERANCE:

Q. You testified a moment ago, in answer to Judge Lovett, that a rate could not be made to California points without the consent of either the Santa Fe or the Southern Pacific, prior to the inauguration of the Salt Lake route.

A. Yes, sir.

Q. Did you take into account the fact that the Union Pacific had a through line to Portland and a boat line to San Francisco from Portland, which it could operate independently and with which it could have made a rate to the Missouri River?

A. Well, I did not consider that line.

Q. You were speaking of all-rail lines?

A. I was speaking of all-rail lines. I did not consider that line, anyway.

Q. Do you remember that for ten or eleven years the Canadian Pacific maintained a differential rate into San Francisco by rail to Vancouver and thence by boat-line to San Francisco?

A. Oh, I don't remember the details of those transactions. That rate adjustment was from the east, and not from this territory. I don't remember the details of it.

Q. But you recall the fact that that line was operated and a great deal of traffic went over it?

A. They were operating, yes, sir.

Q. And our distinguished friend, Mr. Stubbs, was the means of getting away with it, by his eloquent argument and statement

3778 of facts. Now, is there any reason why, if the Canadian Pacific could make rates to San Francisco, the Union Pacific could not do the same thing, by using their boat line from Portland, as long as they reached tide-water there?

A. Oh, they could do it.

Q. They could do it?

A. They could do it, yes, sir.

Q. You said something, which I did not catch owing to the noise, with reference to the inability of the Rio Grande to solicit business directly from the shipper on account of being an intermediate line. I could not quite catch what it was. What did you say in that regard?

A. I said that the Rio Grande could not very well solicit business in connection with the Southern Pacific Company because it was an

intermediate line, and it might offend its connections who were giving it business.

Q. Well, for instance, the Denver & Rio Grande exchanged business at Colorado points with the Rock Island, didn't it?

A. The Denver & Rio Grande has to be friendly with the Rock Island, with the C. B. & Q., with the Missouri Pacific, and with the Frisco lines. Now, when I spoke of notifying the Southern Pacific, I had reference to business in and out of this territory east of the common points. Of course, the D. & R. G. could very safely communicate, if it were an independent and intermediate line, on eastbound business from the Pacific coast. It could deal with the Southern Pacific representative, because it is the one line, and the Southern Pacific is its only connection. But on the westbound business delivered to it at Pueblo it has various connections.

3779 Q. The Union Pacific always maintained agencies throughout the east, who directly solicited business, didn't they?

A. Yes, sir.

Q. From the shipper?

A. From the shipper, in competition with the other lines.

By Mr. LOVETT:

Q. The Union Pacific in that competition was competing with the Missouri Pacific, the Denver & Rio Grande, and the other lines that were working with the Denver and Rio Grande?

A. Yes, sir.

Q. Mr. Severance asked you if the Union Pacific could have made rates from the east to California by way of Portland and boat line down.

A. From the Missouri River only.

Q. Yes. And you said that it could. It would have been a very foolish thing for it to have done, wouldn't it, Mr. Lincoln? As a railroad man wouldn't you say so?

A. Why, I would hate to tie my kite to such a string.

Q. Isn't there this very important difference between the situation of the Canadian Pacific and the Union Pacific with reference to California business about which Mr. Severance interrogated you? The Canadian Pacific has but the one way of reaching San Francisco—that is, by way of its rails to Puget Sound, and then by boats down Puget Sound and the Pacific ocean to San Francisco; whereas the Union Pacific has a direct line from Omaha to Ogden, and there a connection with the southern Pacific, making a short line to California, and then it has the indirect line around by way of Portland?

In other words its best line is its direct line by way of Ogden

3780 in connection with the Southern Pacific, isn't it?

A. The Union Pacific's best line, by far.

Q. Well, hasn't it a very great advantage with respect to California business over the Canadian Pacific?

A. A. I believe it has.

Q. You never knew of a railroad company which had two lines—one first class and the other a mixed and indirect line—one very much inferior to the other, that attempted to work its indirect and inefficient line as against its direct and more profitable line, did you?

A. Oh, no. They don't do that.

Q. They don't do such things as that?

A. They do a good many things, but hardly that.

By Mr. SEVERANCE:

Q. In the case of traffic moving to San Francisco by Portland, the Union Pacific would get the entire haul from the Missouri River, would it not?

A. From the Missouri River they would get the entire haul. But, Mr. Severance, I did not make any explanation as to my answer. The bulk of the business originates east of the Missouri River, and there is a large California business that would not move by Portland and water, and therefore I consider it an impracticable route to be used for the purpose of forcing a rate situation.

Q. Let me ask this in that connection: The position of that route over which traffic could be moved to San Francisco from the east could have been——

Mr. LOVETT. Don't lead the witness. He doesn't need it.

Mr. SEVERANCE. Strike out the question. I will commence over again. The Judge thinks I am trying to lead you, Mr. Lincoln.

3781 Q. Wouldn't you consider the position of that route of value in case the Southern Pacific should endeavor to make unreasonable demands as to divisions from the Union Pacific, in view of the fact that rates could be put in there which would go all along the line and cut the Sunset rates and everything else? I mean as a retaliatory measure.

A. It would be valuable in that way only.

Q. But it is a route which you would not use, since the Union Pacific use the Southern Pacific eastwardly. Counsel asked you whether you did not regard the Union Pacific, by reason of the possession of the connection at Ogden, in addition to its route by Portland and the boat, as being in a stronger position than the Canadian Pacific. There is no question about that, is there,—that it was in a much stronger position?

A. There is no question about that; and I was going to say that there was no comparison between the strength of the two lines in all of this territory.

Q. Then, if they had that strength, and even if this weak sister, the Canadian Pacific, as was testified by Mr. Stubbs on Friday, was able, by its differential, to demoralize the whole rate situation in the transcontinental territory, there is no doubt as to the efficacy of that power in the hands of the Union Pacific if they had to use it, is there?

A. I presume if they would put in the facilities of a water connection there and use it, they could disturb a great deal. You see, those things occur every now and then.

By Mr. LOVETT:

Q. What do you think would happen to the Union Pacific if it did attempt to disturb the whole transcontinental situation? Don't you think that it would be a good deal like the man who got out on a limb and sawed it off between himself and the tree, for the Union Pacific to attempt to work against the Southern Pacific in its connection at Ogden, in favor of the Portland route?

3782

A. I don't think it would be good judgment, with the conditions.

Q. The Canadian Pacific, as I understood you to testify just now, has the one outlet by Puget Sound, and if it disturbs rates to San Francisco, it is interested only in the traffic that passes through Puget Sound; whereas, if the Union Pacific were to attempt to cut the rate or to reduce the rate to San Francisco, it would be reducing it by way of Ogden as well as by Portland, and the great bulk of its business goes by way of Ogden.

A. You mean under existing conditions to-day?

Q. Yes, sir.

A. It would reduce its rate by the direct route, certainly.

Q. Well, it would be a very large sufferer from that, wouldn't it?

A. Yes, it would be a sufferer in my mind, when I consider the territory served by the Union Pacific road to reach the California terminals and the territory which is served by the Canadian Pacific. The Canadian Pacific cannot come and solicit business even, or get business from a very large tonnage-producing territory in this country that goes to the coast.

Q. Don't you think as a railroad man it would be suicidal for the Union Pacific to attempt to work the Portland route as against its direct route by Ogden?

A. I think it would be bad business judgment, under existing conditions.

Q. Assuming that the Southern Pacific and Union Pacific were entirely independent in management, as they were formerly, and the Union Pacific should attempt to cut the rate by way of Portland, in opposition to the wishes of the Southern Pacific, and you were responsible for the management of the Southern Pacific, what would you do with the Denver & Rio Grande connection at your command?

3783

A. Oh, your question leads into a very broad field. It cannot be answered offhand, because it is a movement strategic from one point to another. You could not make up your mind in advance what you would do.

Q. Wouldn't you do this, as one thing absolutely certain: that if the Union Pacific, against the wishes of the Southern Pacific, reduced the rate by way of Portland, wouldn't the Southern Pacific retaliate by diverting all the traffic it could from the Union Pacific to the Denver & Rio Grande and its connections?

A. As I stated, I believe it would be a very bad business policy for the Union Pacific to take any action to divert its business by way of Pueblo and the water routes, under the existing conditions.

Q. I am speaking of the Union Pacific.

A. The Union Pacific, under existing conditions.

Q. You said Pueblo; you meant Portland?

A. By Portland. But the Union Pacific might be compelled to make use of such a line if the Southern Pacific, for example,—the Central Pacific—were to withdraw all of its friendly support and divert its business through an El Paso gateway or in connection with the D. & G. R., and become an unfriendly connection, which it has not been.

3784 Q. Even if it were not a friendly connection, do you think the Union Pacific might attempt to use the Portland gateway as against the Southern Pacific at Ogden?

A. If it were not getting a fair share of the business through the Ogden gateway.

Q. You think it would attempt to use the Portland gateway?

A. I should think it would, yes.

Q. Don't you think that it would lose a great deal more than it could possibly gain by attempting to use that impracticable route as against the short line to San Francisco?

A. Well, it is deprived of using the short line. My conclusion is drawn upon the premises that it is being deprived of using the short line from Ogden to Frisco. In other words, the Southern Pacific is an unfriendly connection and is not giving the Union Pacific any business, but is delivering it to the D. & R. G., or is diverting it through other gateways. Just as I stated when you asked the question in the first instance, it is a very broad question and could not be answered, and it would depend on the different steps that would be taken and as to the action that would be taken by the line offended.

Q. That wasn't my question, Mr. Lincoln. Of course if the Southern Pacific would not handle its freight and if it cut off all connection with it at Ogden, the Union Pacific would not have any option.

A. That is my answer to you—that under the conditions I believe it would be improper to put in the rates via Portland. Then you say would it not be improper for them to put in the rates by way of Portland, in view of the short line to Frisco.

3785 Q. Isn't it almost inconceivable that the Southern Pacific would absolutely refuse to take the Union Pacific business at Ogden?

A. I so stated; that their relations have always been friendly, when I answered your original question, and I thought that using that water line from Portland to Frisco would be a very poor kite to tie your string to.

Q. But it is entirely probable, isn't it, that if the Union Pacific should want to make a rate to California which was not satisfactory to the Southern Pacific and should put it in by way of Portland, against the wish of the Southern Pacific, that the Southern Pacific might take up with the Denver & Rio Grande as its preferred connection?

A. I have not thought of such a probability.

Q. You do not think that the Union Pacific would ever want to do that?

A. I would not think either the Union Pacific or the Southern Pacific would wish to do that.

Q. The Southern Pacific and Union Pacific would interchange business there, at least as long as they could agree on rates, naturally, wouldn't they?

A. Naturally they would, as they have.

Q. Suppose that the Union Pacific did cut the rate to California by way of Portland; don't you think in that case that the only sensible action for the Southern Pacific to take would be to divert whatever traffic it could from the Union Pacific to the Union Pacific's competitors—the Denver & Rio Grande and their connections?

A. That is a very broad question. It is a very natural conclusion to say that if a connection of a road proves offensive and introduces low rates, rates which are believed to be unreasonable, regard-
3786 less of the protests of their connection, that they have always used, it would be natural for that connection to retaliate by joining issue with another road that was friendly.

Q. But you do not think that there is a traffic man in the United States, or ever was, who would continue to interchange business and treat impartially a line that was cutting his rate, when there was another connection there that he could use on equal terms?

A. I don't think that a road will treat its connection impartially when that connection is constantly resorting to acts that may be against the judgment of that road.

Q. In view of the large traffic that has origin or destination on the Southern Pacific lines and Pacific coast, don't you think that if the Union Pacific should ever attempt to cut rates by way of Portland, in hostility to the Southern Pacific, that the Southern Pacific would be able to inflict enormously more damage on the Union Pacific, by diverting this traffic controlled by the Southern Pacific to the Denver & Rio Grande, than the Union Pacific would benefit by the cut rate to Portland?

A. I think the Union Pacific would be more seriously injured than the Southern Pacific.

Q. You never heard of a rate war starting from a difference between two connecting lines over the division of a rate, did you, Mr. Lincoln?

A. No, I have not.

Q. On the mere matter of the division of the through rate?

A. Not on the mere question of division. I do not recall any rate war on that account.

Q. They generally get together somewhere, don't they?

3787 A. They usually do.

Q. Connecting lines, on the division of a through rate.

A. Yes, sir.

By Mr. SEVERANCE:

Q. You just stated in answer to Judge Lovett that you thought the Union Pacific would suffer more injury in such a contest than the Southern Pacific. In giving that answer, did you take into consideration the fact that the majority of the traffic from the seaboard is moved to California by the Sunset Route, and that if this cut-rate war became effective all lines would be forced into it, and the Sunset would lose on all that traffic as well as whatever it would lose on the Ogden connections?

Mr. LOVETT. I object to that question because there is no evidence, unfortunately, that the majority of the traffic to California moved by the Sunset Route.

Mr. SEVERANCE. The only evidence, as given by Mr. Hawley, is that it had gone as high as 85 per cent from the New York seaboard territory, when he quit the business. I don't know how it has run down under Mr. Stubbs; but at that time it was in excess of 50 per cent. That is what Hawley swore to.

Mr. LOVETT. I still object, because Mr. Hawley did not so testify. You misunderstood him.

Mr. SEVERANCE. Why, I beg your pardon, Judge Lovett; that is exactly what Mr. Hawley said.

Mr. LOVETT. He said the New York.

Mr. SEVERANCE. No, he said the New York pier tonnage had gone as high as 85 per cent.

Mr. LOVETT. Well, the New York pier tonnage.

3788 Mr. SEVERANCE. Wait a moment. And then I asked him what the percentage was out of New York territory east of Pittsburg and Buffalo, and he said he should say upwards of 50 per cent.

Mr. LOVETT. All right. Go ahead.

Mr. SEVERANCE. We will assume that is what he said, anyway, for the purpose of this question.

Q. I say did you take into account the enormous loss that the Southern Pacific Sunset Route would sustain when you gave that answer, or were you only considering the losses that would happen to the Ogden route of the Southern Pacific and the losses that would accrue to the Union Pacific?

A. When I made the answer I considered the loss to the Union Pacific road by reason of the more favorable position of the Southern Pacific in California; that they practically can control the business of California by reason of the terminal facilities, whereas in meeting the competition, the Union Pacific would suffer because they could not get in there, and they would lose all their business.

Q. Oh, you are figuring on the Ogden gateway being entirely closed to the Union Pacific?

A. Closed to the Union Pacific.

Q. Not simply being in the position the Rio Grande is now, but closed to the Union Pacific?

A. Being closed, as I made the answer. If the Ogden gateway were closed, the effect——

By Mr. LOVETT:

Q. I want to ask if you took into consideration, as it occurred to me, the eastern termini of the Union Pacific, or the Missouri River?

A. I took that into account, too.

3789 Q. The Burlington, the Rock Island, the Missouri Pacific, the Northwestern, the St. Paul, the Chicago & Alton, and in fact all the lines from Chicago to the Missouri River, and all the lines east of Chicago, extending from Chicago to the Atlantic seaboard, can get to California without going over the Union Pacific, can't they?

A. Yes, sir.

Q. So, if the Union Pacific were to attempt to cut the rate by way of Portland, and these lines were opposed to a reduction of the rate, they could divert their business to the Denver & Rio Grande, or to the Atchison, and leave the Union Pacific practically bottled up, could they not?

Mr. SEVERANCE. I object to that, because it presupposes that the Southern Pacific controls all of these lines east of the Missouri River. There are still two or three left that it does not control.

Mr. LOVETT. No such pre-supposition. It supposes that each line is interested in preserving its own revenue.

Mr. SEVERANCE. Yes, but the Union Pacific is the only one that is doing the cutting—not their connections east.

Q. Will you answer the question?

Mr. SEVERANCE. I want him to understand what he is answering.

A. I would state that I do not think these other roads would be interested in the question to any serious extent east of the Missouri River, because the cut would start from the Missouri River.

Q. You don't think that they would object to a cut of a through rate?

3790 A. From the Missouri River to the Pacific coast terminals?

Q. By the Union Pacific, yes.

A. I don't think the lines east of the Missouri River would object to that cut. The lines west would; not east.

Q. Didn't you testify that such a cut might demoralize transcontinental rates generally?

A. It will demoralize them; there is no question about it.

Q. Would these other lines be indifferent?

A. They can stand up and demand their local rates up to the crossings.

Q. As against what?

A. As against all routes that operate through the upper gateways.

Q. But if this cut by the Union Pacific would result in general demoralization of transcontinental rates, wouldn't all of these lines

that I have mentioned east of the Missouri River be interested in preventing that?

A. They are all interested in preventing a rate demoralization when it affects their own revenue. They are not interested when it affects only somebody's else revenue.

Q. Suppose the Union Pacific were to cut the rate to San Francisco by way of Portland and general demoralization would ensue; what would that demoralization be?

A. The demoralization that would ensue under that proposition would affect the lines other than the Union Pacific the worst. I appreciated that. That is what I said. If the Ogden gateway were closed to the Union Pacific railroad, it would have no other recourse to do Frisco business.

3791 Q. That is not my question, Mr. Lincoln. I want to know who would be affected by the demoralization of rates which you said would ensue from a cut of the rate by the Union Pacific by way of Portland. Now, you testified in answer to Mr. Severance, as I understood you, that it would affect the Sunset Route.

A. I said that it would affect the Sunset Route. If it were not carried east of the Missouri River, it would affect the lines west of the Missouri River only.

Q. Well, that is a very important difference.

A. Now, where the cut might be spread to is another question.

Q. That is a pretty broad "if." You did testify it would affect the Sunset Route, didn't you?

A. It would affect the Sunset Route.

Q. If it affected the Sunset Route, wouldn't it necessarily affect all of the all-rail lines?

A. Well, where they could draw the line on it is a matter of guesswork entirely.

Q. If the Sunset Route were to cut the rates from the Atlantic seaboard and all of this territory east of the Mississippi to the Pacific coast, in order to meet a cut by the Union Pacific, would not all these rail lines meet that cut?

A. No. I only say "no" because of what I find to be the case.

Q. What is that?

A. I say no, they would not.

Q. They would not meet the cut?

A. No, sir.

Q. Why?

A. I only judge by what they are doing.

Q. What are they doing?

A. The rates have been cut from New York to Galveston very low and the all-rail lines have not met it.

3792 Q. Why, do you know?

A. I presume they thought it was too low. The rates into Texas have been reduced so that the business is moving almost from

Cincinnati to New York and New York to Galveston and other territory operated by the same lines.

Q. You are speaking now of the rates by boat from New York to Texas City, aren't you?

A. Yes, sir.

Q. I was asking you about rates from New York to California.

A. By the Sunset route?

Q. Yes, by the Sunset Route.

A. In connection with the water line?

Q. Yes, that is it.

A. Necessarily in connection with their water line in order to control the through route.

Q. In the case that has been supposed here, of the Union Pacific cutting the rate by the way of Portland, and the Sunset Route meeting that cut, you think that the all-rail lines would be indifferent to it?

A. No, I did not say so. You asked me would not all the lines have to reduce their rates. That is the question you asked me. I said I couldn't say. But judging by a recent example, no.

Q. Mr. Lincoln, as a railroad man, what do you think would be the attitude of the lines that I have mentioned toward the Union Pacific if it were to inaugurate a scheme of that sort to cut the rates to California by way of Portland?

A. If it affected their revenues it would be antagonistic. If the reduced rate spread in the way you have indicated, it would be bound to affect the revenues of nearly every line in the country.

Q. Do you think it would spread?

A. I say I have thought it would spread. You indicated
3793 that it would spread. I have always thought it would spread, although in recent examples it has not spread.

Q. To California?

A. To Texas.

Q. I am not talking about Texas.

A. I know; but you are drawing a conclusion as to what the railroads would do if there was a very low rate established.

Q. Yes.

A. We have had a very low rate established under identically the same situations, the use of a water line from New York to Galveston, and it has not disturbed our all-rail rates.

Q. I will come to that New York to Galveston line directly. I want to stay with the California situation till I get an answer to my question.

A. Well, all right.

Q. Is it your opinion or not that such a case as you were asked to suppose by Mr. Severance would affect the all-rail lines?

A. It is my judgment that if the rates were reduced in the manner indicated, to transcontinental points, that the rates from Chicago, New Orleans and the Mississippi River would be affected; that if

the rates from New York were affected, I doubt if the rates between the Atlantic seaboard and the Mississippi River and Chicago would be changed, except as the accommodation of locals changed them.

Q. Now, in this supposed rate war between the Union Pacific and the Sunset Route of the Southern Pacific, don't you think that the Southern Pacific would try to work business where it formerly worked it, against the Union Pacific?

A. Certainly.

Q. And don't you think that would affect all of the lines east of the Missouri River?

3794 A. I said in my last answer that it would affect all of the lines west of Chicago and west of the Mississippi River and New Orleans. It would also affect the rates from New York, but I doubt if there would be a complete rate adjustment in the territory east of Chicago and east of the Mississippi River.

Q. Don't you think, as it would affect them in that way, that all of these lines, or practically all of them, extending east of the Missouri River and east of Chicago, would very much oppose the action of the Union Pacific?

A. Would do what?

Q. Would very much oppose the action of the Union Pacific?

A. Oh, as a general principle they are opposed to rate wars.

Q. And couldn't they coerce the Union Pacific very easily by diverting their business to the Denver & Rio Grande and the Southern Pacific in that way?

A. Well, we are going a long way on supposition.

Q. You don't think they would do that? You think they would stand by, with power to avoid the Union Pacific line altogether, and suffer it to demoralize your rate situation? Is that your opinion?

A. Oh, I think all the intermediate lines west of Chicago and St. Louis would do all they can to adjust the situation if unreasonably low rates were established.

Q. Well, I won't say anything about unreasonably low; we will say reasonably low, established by the Union Pacific without the concurrence of the others. Don't you think the lines opposed to that would refuse to join with it, and would make their rates via other lines?

A. I don't believe any such conclusion as you have suggested would follow from the Union Pacific putting in reasonably low rates

3795 from Omaha and Kansas City to San Francisco by Portland.

Q. You think that all the lines would keep up their rates and their relations with the Union Pacific and handle the business by the Union Pacific just the same?

A. Yes, sir.

Mr. SEVERANCE. You did not mean to imply by that question that the rates are now unreasonably high, did you?

Mr. LOVETT. I did not mean to imply anything. I just merely asked the question.

WITNESS. I had in mind—you spoke about rate wars, that if some very low rate was established it would affect all the rates in the United States and all the roads.

Q. So it is your opinion as a railroad man that the Union Pacific could now put in a differential rate by way of Portland, and the others would not pay any attention to it?

A. I didn't say that, Mr. Lovett.

Q. Well, that the others wouldn't meet it.

A. Well——

Mr. SEVERANCE. He didn't say that.

WITNESS. I haven't drawn any conclusion of that kind. I am not familiar enough with the route to say how far they would go toward meeting it, or would not meet it. I say they would hesitate a very long time before they would meet a rate established by that route.

Q. You did say, however, didn't you, that it would not affect their relations to the Union Pacific, that they would interchange business just the same?

A. I did not think it would affect the relations between the connections of the Union Pacific and the Union Pacific road.

Q. You think that they would go on interchanging business
3796 just the same?

A. I certainly do.

Q. And yet every one of them can get to California without using the Union Pacific, can't they?

A. There are a great many of them for whom it is very difficult to get to Colorado without using it, and to Utah without using it; so the Union Pacific can do some retaliating itself.

Q. Well, what ones are there that can't get to Colorado and Utah without using the Union Pacific? I am curious to know.

A. Well, I don't know as there is any line. The North-Western would have to use the Union Pacific pretty well. It could use the Missouri Pacific, that is true.

Q. Why?

A. It could use the Missouri Pacific.

Q. Don't you know that the North-Western now uses the Burlington?

A. Yes, they use the Burlington. There are different routes to use, but the Union Pacific is a very strong line in Utah.

Q. You were not correcting your first statement that a great many of them could not get to Colorado and Utah without using the Union Pacific?

A. I say that that is true, to a good many Missouri River common points they couldn't. I mean they can get in by other lines. I had in mind Utah territory very largely when I spoke.

Q. So all the lines can get into Colorado, Utah and California, without using the Union Pacific, can't they?

A. They can get into most all of the territory without using the Union Pacific, in the three states and territories mentioned.

Q. What is it they can't get into? What important town is
3797 there in Colorado, or what town is there of five thousand population, that they cannot get into, in Colorado?

A. I don't know of any.

Q. And Utah?

A. I don't know of any.

Q. California?

A. I don't know of any.

Q. They can get into every place in California without using the Union Pacific that they can get in by using it, can't they?

A. Yes, they can get into the different points in the territories, as a general proposition. There might be some local points on the Union Pacific——

Q. Now, in this controversy, if these lines were opposed to the action of the Union Pacific, the power that they would have by reason of the opportunity to divert traffic from the Union Pacific to its competitors, would not be used by them, you think, to coerce the Union Pacific?

A. I think the Union Pacific would be even more powerful in the Colorado-Utah situation, particularly the Utah situation, than all the efforts the others could make to combine against them.

Q. Why?

A. Because they have very valuable facilities, and they have a large tonnage they can offer their connections.

Q. Where does it come from?

A. It comes from all over the line. The Union Pacific has a large tonnage outside of the trancontinental business.

Q. Does it handle it to Colorado and Utah?

A. There is not a great deal that originates on its line.

Q. But that which does not originate on its line, but comes from connections, it would divert to other lines?

A. The Union Pacific would be a very serious factor in a
3798 rate war and could disturb the other lines' revenues just as much as they could disturb its.

Q. Yes, any large railroad system.

A. Now, as I stated in answering this question of what demoralization might result from a cut rate, I can follow it down so far that there is nothing left for anybody. These questions are presuming a great deal.

Q. We are dealing with the probabilities, or want to deal with the probabilities of the situation, Mr. Lincoln.

A. I will undertake to answer in the same way.

Q. You say that the Union Pacific could hurt the other lines as much as they could hurt it. What lines?

A. I believe the Union Pacific could hurt the Burlington, the Missouri Pacific, the North-Western, the Chicago, Rock Island & Pacific railroads—injure them just as much as those lines could injure the Union Pacific.

Q. How?

A. By demoralizing the rates between the Missouri River and the Colorado and Utah points.

Q. That is, the local points, local territory?

A. The whole territory. If we are going into a rate war we will go into it all, into the whole thing.

Q. Do you think it is in the range of possibility——

A. For all this to occur?

Q. For all this to occur?

A. I think not. I said I thought not, in the first instance.

Q. Do you think that for the mere sake of making a rate around by way of Portland on such business as it could get from there, that there is a possibility of the Union Pacific antagonizing its con-
3799 nections and destroying its local revenue or injuring its local revenue—in order to injure its rivals? Do you think that is a possibility?

A. I think it is the most improbable thing. And the question asked in the first instance was a theoretical question, and every question since has been theoretical, and every answer has been more or less theoretical.

By Mr. SEVERANCE:

Q. And while you regard that as improbable, you regard it as equally improbable that the Southern Pacific would make of the Union Pacific such unfair demands as to divisions or otherwise as to precipitate such a situation, don't you?

A. I stated that in the first instance, that I thought it was improbable that such a thing should be done; that the whole thing is theory, and I started to answer the first question and was stopped, that it was going beyond the answer.

Q. And your testimony as to the potential strength of the Union Pacific by reason of its location and its reaching tidewater and the boats and all that, is based upon the proposition that it could use that line, if necessary, by way of retaliation and to insure fair treatment? That is all you intended to testify?

A. That is all I intended, to show the strength of the Union Pacific in the territory it occupies.

Q. What is the situation in Texas that you have spoken of?

A. Well, that is a very extreme and awkward situation.

Q. Who created it?

A. The Texas Steamship Company are assumed to have created it by rates from New York to Texas City.

Q. Has that cut been met by other lines?

A. The all-rail lines have not reduced their rates.

3800 Q. I meant the steamship lines.

A. Yes, sir, the steamship lines, I understand, have met the rates made from New York to Galveston.

Q. What steamship line?

A. The Morgan line, the Mallory line——

Q. The Morgan line? Mr. Stubbs' line? Made a cut? How long ago?

A. I could not give you definite information on that, because the rates are not published. The rates are made from port to port, as may be necessary.

Mr. LOVETT. Did you finish your answer when you said the Morgan line?

WITNESS. I understand the Morgan and Mallory line, both, met the rate.

Mr. LOVETT. The Mallory. You didn't hear that.

Q. They both participated in the cut, did they? The all-rail rates, you say, have not been reduced?

A. The all-rail rates haven't been reduced.

Q. What has been the result of that situation as to the diversion of traffic? Has it diverted the movement of traffic, or changed it?

A. Yes, sir, it has changed the movement of business through the St. Louis gateway and by the regular all-rail lines.

Q. Let me ask you, Mr. Lincoln, whether you know of any traffic from the Mississippi Valley being taken to New York and sent around to Texas under those steamship rates, since that war began?

A. Well, I don't know of any from what we term the Mississippi Valley. Freight as far west as Cincinnati has gone that way.

3801 Q. You have not heard of any up here on the river above St. Louis?

A. No, I haven't heard of it.

By Mr. LOVETT:

Q. Mr. Severance suggested whether this line of the Union Pacific to Portland and the boat line down did not give the Union Pacific power with reference to transcontinental rates. Have you already testified that it has never attempted to use that, as far as you know?

A. I don't know that they have ever undertaken to use it. I testified to that.

Q. If it gives it any power in respect to transcontinental rates, you never——

A. It has never exercised that power.

An adjournment was here taken until Tuesday, March 23, 1909, at 10.30 a. m.

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3802 404 FEDERAL BUILDING, ST. LOUIS, MO.,
*Tuesday, March 23, 1909—10.30 o'clock a. m.*

The hearing was resumed before the Special Examiner, Hon. Sylvester G. Williams, at the above time and place.

Present: On behalf of the Complainant, Mr. C. A. Severance, Mr. G. E. Husted; on behalf of the Defendants, Mr. R. S. Lovett, Mr. N. H. Loomis.

J. L. WEST,

being duly sworn as a witness on behalf of the Complainant, testified as follows:

Direct examination by Mr. SEVERANCE:

Q. Where do you live, Mr. West?
A. At St. Louis.
Q. What is your business?
A. Assistant general freight agent of the M. K. & T. Railway Company.
Q. How long have you been connected with the M. K. & T.?
A. For twenty years.
Q. In what capacities?
A. Various capacities, beginning as stenographer.
Q. How long have you been assistant general freight agent?
A. Eleven years; not all of that time at St. Louis; on various parts of the line.
Q. Where were you other than at St. Louis?
A. At Houston, at Kansas City and at St. Louis.
Q. When were you in Kansas City?
A. I was in Kansas City during 1901.
Q. Previous to that where were you?
3803 A. At Houston, for two years.
Q. And before that at St. Louis?
A. Before that I was at Dallas. I was Chief Clerk in the general freight office at Dallas.
Q. Is the M. K. & T. now, and has it always been since you have been with it, participating in Pacific coast shipments?
A. Yes, sir.
Q. Where is the eastern terminus of the M. K. & T.?
A. At Hannibal, Alton and St. Louis,—the eastern termini.
Q. And to where does it run in the southwest?
A. It runs down through Missouri, Kansas, Oklahoma, Texas, reaching San Antonio and Galveston on the south.
Q. At what points, if any, does it connect with the Southern Pacific Sunset Route?
A. It connects with the Sunset Route at Houston, La Grange and San Antonio.
Q. In working for transcontinental business how is it customary for the M. K. & T., where it is free to do so, to route the traffic? Where do you deliver it over—at what junction point?
A. We deliver probably the most of it to the Texas Pacific at Fort Worth, and by them it is delivered to the Southern Pacific at El Paso. We do, however, handle a great deal of business via San Antonio and the Southern Pacific.
Q. Where the business is handled by San Antonio there is no intervening carrier between you and the Southern Pacific, is there?

A. No, none.

Q. What is the length of your haul to take it to San Antonio?

A. About a thousand miles.

3804 Q. What is the length of your haul if you deliver it to the Texas & Pacific at Fort Worth?

A. About 750 or 760; that is the mileage from St. Louis.

Q. That is what I mean.

A. Yes, sir.

Q. Do you recall the time when the Southern Pacific and Union Pacific were separately represented here?

A. Yes, sir.

Q. At that time which way did the Southern Pacific route its traffic, where it could,—north or south? I mean by the southern gateways or northern gateways?

A. Why, the Southern Pacific, as I remember it, solicited their business through New Orleans and through Texas junctions,—preferably New Orleans, I understand.

Q. Did you handle business out of Chicago with your eastern connections?

A. Yes, sir.

Q. And Illinois points?

A. Yes, sir.

Q. Did you, in your endeavor to route traffic to Texas junction points at any places, meet with the competition of the Southern Pacific New Orleans route?

A. Oh, yes.

Q. Whereabouts? In what territory?

A. Oh, everywhere on and east of the Mississippi river.

Q. And which way did the Union Pacific, when it was separate, endeavor to route its business from this locality?

A. They worked their business through Omaha or Kansas City, and, as far as our line was concerned, through Junction City, Kansas.

Q. You had a connection with it at Junction City, Kansas?

A. Yes, sir.

3805 Q. Did you take traffic from St. Louis up there?

A. Yes, sir.

Q. How far north on the Northern Pacific coast did business move through the Texas gateways, or has it moved?

A. To San Francisco.

Q. It didn't move to Portland?

A. No.

Q. That is what I understood. What about the movement of fruit to the east from California? Did you participate in that?

A. Yes, sir, very largely at times.

Q. And how is that brought?

A. We received that from the Texas & Pacific at Fort Worth, brought to the Texas & Pacific by the Southern Pacific and given to the T. & P. at El Paso.

Q. What advantage, if any, is there to fruit shippers in shipping by the southern gateway from California to the east?

A. I don't know of any advantage aside from the possible good service, except the greater possibilities of diversion in transit.

Q. That is what I had in mind when I asked the question. Just explain that, will you, please?

A. I understand that the California citrus fruit, because of the great distance from the markets, is started out and a great deal of it, if not all of it, is sold while it is on the rail. That being the case, when it is billed out from the points of origin, it must be consigned to some particular place, and the carrier is instructed, while it is en route to change it to other destinations. Now, I believe that the movement through by the southern route enables the shippers
3806 to reach a greater territory, a larger number of destinations, by diverting it. For illustration, if a car starts out destined to Kansas City, if it is moving through Texas, it can be changed and sent to Atlanta, Georgia, or to any point in the southeast, or it can go on to Kansas City and there be diverted to Chicago or to St. Louis or to northeastern points in this country; while, if it is routed by the northern routes, it cannot very well reach the southeast by diversion. And to that extent I think the possibilities of diversion on shipments coming by the southern route are greater than by the northern route.

Q. What is the difference in the distance to San Francisco by El Paso and by Ogden, if you know?

A. I don't know the exact figures, but I don't believe there is a great deal of difference. My recollection is there is not a great deal of difference in the mileage as between the route via our line to Fort Worth, T. & P. to El Paso, and Southern Pacific to Southern California, as against a route from St. Louis to Kansas City by direct line and thence via Union Pacific, Ogden, and Southern Pacific to Southern California. I believe that that is not true in the case of northern California points. I believe the northern route is, perhaps, the shortest.

Q. You say, as I understand you (it is so noisy here I can't hear very well) that to Southern California the route via El Paso is shorter?

A. No; I think there is not much difference.

Q. And to San Francisco the northern route is shorter?

A. I think so. I have not the exact figures but that is my impression about it.

3807 Q. Since the consolidation of the agencies of the Southern Pacific and the Union Pacific here at St. Louis and at other points, have you observed any preference shown by the joint agency as to the direction in which trans-continental traffic should move—whether south or north—so long as they got a haul out of it?

A. No.

Q. They have competed against other outside lines, have they not?

A. Oh, yes.

Cross-examination by Mr. LOVETT:

Q. The Southern Pacific representative has always worked with your line in securing business by way of El Paso as against the Atchison, hasn't he, Mr. West?

A. Yes, sir.

Q. And he was always quite ready to co-operate in getting it via El Paso?

A. I have never seen any objection on their part at all.

Q. That was before the amalgamation of the agencies as well as after?

A. It is true of both times, yes, sir.

Q. You stated on your direct-examination that your recollection was that before the amalgamation of the agencies the Southern Pacific agent sought to route the traffic by way of New Orleans?

A. Yes.

Q. But at the same time they were quite willing to get it by either gateway, weren't they?

A. Yes. The situation was this: that if the Southern Pacific representatives could control the routing they would naturally take it via New Orleans from territory where the movement via that
3808 route would not be detrimental to the traffic; but if, on the other hand, some of their Texas connections—among other lines ours—had an influence in the movement of it, I never saw any evidence of their placing serious obstacles in the way of our sending it that way and getting the business.

Q. Did they ever place any obstacles in the way of your getting the business by way of El Paso?

A. Yes. It was an obstacle, of course, for them to try to get it via New Orleans.

Q. But did you ever know of them to try to get it by way of New Orleans when you had any sort of a call on it by way of El Paso?

A. Well, when we were both soliciting the business—as frequently occurred, of course,—the influence of the Southern Pacific representatives would be in favor of the New Orleans route on business originating in territory on and east of the Mississippi river.

Q. I believe you have already stated that they would co-operate with you in working it by way of El Paso.

A. Well, I did say that—in co-operation. I meant to say that they would not work against us particularly. But they were willing, if we secured the business, to take it that way, as the route was open.

Q. Do you know what percentage they got out of it by way of El Paso?

A. Why, roughly speaking, I think the rate was divided about half and half east and west of El Paso, but I would not be certain of it.

Q. Do you know what portion they would get out of it by way of New Orleans?

3809 A. I am not familiar with the divisions through New Orleans.

Q. It was a question of divisions, so far as the Southern Pacific was concerned, wasn't it?

A. Yes; an increased revenue.

Q. They would naturally try to get it by that route which would afford them the most revenue?

A. Yes, sir.

Q. Did you ever know of them co-operating with the lines leading westerly to move business by the way of Ogden, as against the Atchison?

A. That situation never came to my attention. It would not be likely to.

Q. As you were not interested in that territory?

A. No, sir.

Q. That would be a very natural thing for the Southern Pacific representative to do under those conditions, wouldn't it—try to work by the lines leading to Ogden, as against the Atchison?

A. I would say that if he found it was going to move by a northern route, that the Southern Pacific man would co-operate with lines which could handle it through Ogden as against lines which would handle it with the Santa Fe.

Q. With reference to the citrus fruit traffic, the right of the shipper to divert traffic while en route lies by all lines, does it not?

A. Yes, sir.

Q. Isn't the routing largely controlled by the season of the year? Isn't it true that up to and including February it moves almost exclusively by the El Paso route, and later on it moves by the northern lines?

A. That has a great influence in the routing. I don't know
3810 just the full extent of it. I have no doubt that in the early spring, when the northern routes are likely to be interrupted by bad weather, that the shippers would naturally choose the southern routes, and the carriers themselves would prefer to take it that way.

Q. What do you mean by the early spring?

A. Why, March, February, possibly.

Q. All lines leading west and southwesterly from this territory have always solicited California business, haven't they?

A. Yes, sir.

Q. And do yet?

A. Yes, sir.

Q. The shipper is not interested in the division of the through rate between the different carriers that participate in the haul, is he?

A. Not at all.

3811 J. R. PEACHY,

being duly sworn as a witness on behalf of the Complainant, testified as follows:

Direct-examination by Mr. SEVERANCE:

Q. Mr. Peachy, where do you live?

A. St. Louis.

Q. And what is your business?

A. I am traffic manager of the Chester, Perryville & Ste. Genevieve Railroad.

Q. How long have you been with that company?

A. I have been with them since the middle of February this year.

Q. Previous to that time what was your business?

A. Previous to that time, during the past year and a half, I have been in private business—not in the railroad business.

Q. You were previously in the railroad service?

A. I was with the Illinois Central Railroad from the 2nd of January, 1885, until the 1st of July, 1907—twenty-two and a half years.

Q. And what was your position—commencing at the end and working back—what was your last position?

A. The last thirteen years of my service with the Illinois Central Railroad I was assistant general freight agent at Chicago and St. Louis; nearly three years in St. Louis, prior to that in Chicago.

Q. You have been in traffic all the time; that is, you have been in the traffic end of railroading?

A. Traffic, yes, sir.

3812 Q. When you were with the Illinois Central at Chicago and St. Louis, did that line participate in Pacific coast traffic?

A. Yes, sir.

Q. And which way did it move that traffic?

A. Prior to the building of the line to Omaha, all of the traffic was operated via New Orleans, because that was practically the only gateway that we had, with the exception for a time, many years back, we had a route by Sioux City, the Omaha line, Norfolk and Union Pacific, but that was not a very practical route.

Q. From what territory did the Illinois Central move traffic to the coast by way of New Orleans prior to the connection at Omaha?

A. From all of its territory, which was all east of the Mississippi River?

Q. From Chicago and south?

A. From Chicago and south and east.

Q. You recall the time that the Southern Pacific and Union Pacific agencies were separate, do you not?

A. Yes, sir.

Q. I don't mean the date, but the fact that they were saparate commercial agencies?

A. Yes, sir.

Q. At that time what was the attitude of the Southern Pacific toward the movement of that traffic, so far as came under your observation?

A. So far as working with the Illinois Central Railroad is concerned, naturally its attitude was to secure the business via New Orleans, because that was the only Illinois Central outlet that was profitable to that road.

Q. Didn't that route give the Southern Pacific their
3813 greatest percentage of any through haul they could get?

A. It gave them their longest haul. Whether it gave them their greatest percentage in net earnings, I can't say.

Q. Previous to the time that you built into Omaha, and when you were sending all transcontinental traffic that you controlled by New Orleans, did you meet with the competition of the Union Pacific in that business?

A. We did, yes, sir.

Q. And of the Santa Fe, I suppose?

A. And the Santa Fe.

Q. What year did you get into Omaha?

A. I could not give the year, exactly, but I think it was probably 1901 or 1902, but I am not quite sure as to the year.

Q. After you got your line into Omaha the traffic departments of the Southern Pacific and Union Pacific had been consolidated, hadn't they?

A. I am not sure as to that; but I think the consolidation took place just about simultaneously with the opening of our Omaha branch.

Q. Yes, that is what I thought. After that consolidation, over which one of your lines did this consolidated agency attempt to work Pacific coast traffic; and if it was divided as between your New Orleans gateway and your Omaha gateway, how was it divided, if you know?

A. Roughly speaking, my recollection is that whatever originated upon the lines of the Illinois Central Railroad south of the Ohio river, or on its connections operating between Louisville, Evansville, Cincinnati or via Cairo, would be solicited by both the Illinois Central and the representative of the Union Pacific-Southern
3814 Pacific, via New Orleans, because that would be the natural way to send the business.

Q. And how about the business north of the Ohio river?

A. The business north would naturally seek an outlet by the Missouri river on account of the——

Q. I am asking you as to the attitude of this joint agency in connection with the Illinois Central.

A. The joint agency would, and so would the Illinois Central officials, recognize that the Missouri river routes were the most practicable; but if the shipper desired to ship any other way—if he preferred to ship by New Orleans—there wouldn't be any obstacles placed to the business moving that way.

Q. Then, the change in the situation was, as I take it from your testimony, that previous to the amalgamation the Southern Pacific would endeavor to move all its business in connection with you by New Orleans, and after that west?

A. Well, to a certain extent, yes; but the interests of the Illinois Central Railroad centered in the New Orleans route; hence it assisted the Southern Pacific in securing that traffic that way.

Q. Yes, I understand. After the Illinois Central was built into Omaha, which way did it secure the most revenue—by Omaha or by New Orleans?

A. Via New Orleans, but with a much longer haul; about double the haul to New Orleans as compared with the haul to Omaha.

Q. Do you recall the difference in the percentages?

A. No, I do not, but I should say that so far as the Illinois Central was concerned, the earnings via one gateway would be ap-
3815 proximately as good as by the other, in a general way, considering the difference in the haul.

Q. Let me ask you, to refresh your recollection: Wasn't the Illinois Central's percentage by Omaha about 15 per cent; wasn't its percentage by New Orleans about 24.3 per cent, plus two cents?

A. Well, I could not give you the exact figures, but I thought that I answered your query by saying that if the business were handled via New Orleans or via Omaha the net result would be about the same to the Illinois Central.

Q. Yes, but I was trying to get at the basis of that opinion.

A. I cannot give you the exact figures. From my recollection I would say that the figures you have mentioned are about correct.

Q. From points in southern Illinois, you say the haul to New Orleans is about double what it is to Omaha?

A. No, not from southern Illinois.

Q. From Chicago, you mean?

A. The large movement of traffic would not be from southern Illinois.

Q. From Chicago?

A. From Chicago the big traffic would be.

Q. What is the distance from New Orleans to Chicago?

A. 918 miles.

Q. And the distance from Chicago to Omaha?

A. Approximately 513, by the Illinois Central, I think.

Q. It is a little over half, then?

A. It is a little over half, yes.

Q. And how are the grades the two ways?

3816 A. Well, the grades between Chicago and Omaha I don't think are as great as they are between Chicago and New Orleans.

Q. You think not?

A. No; except when the Illinois Central Railroad should divert its business by its river line, which is the Y. & M. V.

Q. How is that?

A. I say, unless the Illinois Central should divert some of the business from the Y. & M. V., which is a river grade line, and where the grades are less than they are on the Illinois Central proper; but they could not divert all the traffic that way, because the Y. & M. V. could not take care of it.

Q. I had the impression that they had a water grade line, part of the way, at least.

A. Well, that is over the Y. & M. V., but they cannot send all of their business that way, but only a part of it.

Q. Are you familiar with the state of Iowa?

A. Yes, sir, so far as the I. C. is concerned.

Q. Do you know what kind of country the Illinois Central runs through going across the state of Iowa?

A. I did not catch that.

Q. Do you know the kind of country it runs through?

A. It is mostly agricultural; very little manufacturing.

Q. And how is it as to being level or hilly?

A. It is, I should say, rather prairie-like.

Q. You have to cross a good many water courses?

A. We have to cross a few, yes.

Q. Including the Mississippi River, among others?

A. Cross the Mississippi river at Dubuque, yes, sir.

Q. You have a lot of grades in that vicinity, haven't you?

3817 A. There is a grade east of the Mississippi river in the neighborhood of Galena.

Q. By "you," of course, I am referring to the old company, not to the present company.

A. Yes.

Cross-examination by Mr. LOVETT:

Q. I understood you to testify that prior to the opening of the Illinois Central line to Omaha, that company endeavored to route its Pacific coast traffic by way of New Orleans, because that was its only route: is that correct?

A. That is correct.

Q. And that after the opening of the Illinois Central line to Omaha, it generally worked by way of Omaha, California traffic originating north of the Ohio river; and by way of New Orleans, California traffic originating south of the Ohio river; is that correct?

A. That is correct.

Q. Prior to the amalgamation of the agencies of the Union Pacific and the Southern Pacific, I believe you testified that the Southern Pacific's agents worked with the Illinois Central for traffic by way of New Orleans?

A. Yes, sir.

Q. Now, in the Chicago territory, didn't the Southern Pacific's agents also work with lines which were working the traffic by way of Ogden?

A. Yes, sir, very extensively.
Q. In other words, they worked it by all lines, by all gateways?
A. By all gateways, yes, sir.

3818 Re-direct-examination by Mr. SEVERANCE:

Q. Their preferred route was by New Orleans, wasn't it, where they got the long haul?
A. You refer to the Southern Pacific?
Q. Yes, sir.
A. Well, I don't think that they have evidenced that since the consolidation.
Q. No, no. I mean before.
A. Oh, before the consolidation? Yes.
Q. They worked the southern gateways, then, to get the long haul?
A. Yes.
Q. The Union Pacific, of course, worked exclusively the Missouri river gateway?
A. The Missouri river gateway, via Omaha.
Q. They were competitive with each other in that way?
A. Yes.

Re-cross-examination by Mr. LOVETT:

Q. You don't mean that from the Chicago territory the New Orleans route was the preferred route of the Southern Pacific, prior to the amalgamation, do you?
A. No, I don't mean to say that, because I have already stated in reply to your question that the Southern Pacific prior to the consolidation worked the Ogden gateway very extensively, much to our chagrin very often, if we didn't get their co-operation sufficiently by New Orleans.
Q. That was particularly true in the Chicago territory?
A. Yes, sir, that is correct.

3819 Q. This competition that Mr. Severance just asked about, as existing between the Union Pacific and Southern Pacific prior to the amalgamation, if it existed, it was merely a question of gateways and divisions as far as the Southern Pacific was concerned, wasn't it?
A. That is correct.
Q. They preferring the long haul whenever it was practicable and they could get it?
A. As all roads do.

By Mr. SEVERANCE:

Q. But the Union Pacific was always against the New Orleans gateway, because it had no interest in it, wasn't it,—up to the amalgamation, I mean?
A. Well, naturally it would be against the New Orleans gateway, because it would then get no haul at all.

Q. Yes; that is it.
A. No revenue.
Q. However the Southern Pacific may at times have waived its interest in the long haul, the Union Pacific never waived its interest in its haul from the Missouri river to Ogden in favor of the southern gateway, did it?
A. No.
Q. Because it would get no revenue at all?
A. That would have been throwing away money.
Q. That would be losing business, wouldn't it?
A. Yes.
Q. And the Union Pacific was actively working all the time to get business by the Missouri river, wasn't it?
A. Yes, sir.

By Mr. LOVETT:

Q. But in working for itself for California business it was also working for the Southern Pacific, wasn't it, Mr. Peachy?
A. It was, absolutely so.
Q. That is, it never got any business for California without getting it over the Southern Pacific?
3820 A. All the time that the Union Pacific tried to get earnings it was earning money for the Southern Pacific by the Ogden gateway into California.

3821 C. W. SWINGLEY,

being duly sworn as a witness on behalf of the Complainant, testified as follows:

Direct examination by Mr. SEVERANCE:

Q. Mr. Swingley, what is your business?
A. I am in the coal business at present.
Q. How long have you been in the coal business?
A. Since last May.
Q. Previous to that time what was your business?
A. I was traffic manager for the St. Louis Car Company, since 1902.
Q. I want to ask you about the movement of large traffic to the coast. What does the St. Louis Car Company manufacture?
A. Street cars.
Q. Are they large manufacturers?
A. Yes, sir.
Q. What else do they make besides street cars?
A. Automobiles, car trucks and all accessories for cars.
Q. Railroad cars, too?
A. Yes, sir.
Q. Steam railroad cars?

A. Yes, sir.

Q. Did they ship their product to the Pacific coast?

A. Yes, sir.

Q. In routing that traffic during the time you were with the St. Louis Car Company, how was it your custom to route it to the Pacific coast for California points—over what lines?

A. Well, you know, we could not always route street cars according to the preference of the consignee or our own desire; we had to take into consideration the overhead clearances—the conditions, you
3822 know, that would permit the cars to move; and, as a natural consequence, we routed a great many cars Illinois Central by New Orleans and the Southern Pacific. Since 1900, about, if you will recall, they have been building street cars, interurban cars, a great deal larger than they ever did, and they require a much larger clearance; so that we were not always in position to ship the cars as the consignee may want them, or as we may want to route them.

Q. That is what I want to get at. What obstacles did you meet with on the northern lines, if any, which you did not meet with when you shipped by New Orleans?

A. What do you mean by "northern lines," Mr. Severance?

Q. Well, the Union Pacific and Ogden gateway, for instance.

A. Why, the clearances were not as high on the Union Pacific road as they were via New Orleans.

Q. Did that in itself cause you to ship some stuff by way of the South?

A. That and the fact that during a period say from 1902 until 1905 we had great difficulty in getting flat-car equipment, and the Illinois Central, as a general rule, had an abundance of that equipment available for that traffic. That would govern, too.

Q. That is another thing I wanted to ask you about. Now, what influence does the furnishing of equipment have in securing traffic? Is that an important influence in the street-car business?

A. In the street-car business it controlled it very extensively, yes, sir.

Q. That is one way to get business, is it—to have satisfactory equipment?

A. Well, yes, sir.

Q. What were the clearances that bothered you on the Og-
3823 den route—tunnels, or snow-sheds, or what were they?

A. Well, really, I don't know. Of course, I had a clearance guide, which was published by the Railway Equipment Company, that I would refer to in loading cars; and frequently I had no method of reducing the clearance, because the parties to whom we sold those cars would purchase them set up ready for operation, and if we attempted to take the trucks out, load the trucks separately, the car, technically, was not set up for operation, don't you know. Now, I don't know where those low places were without referring to that guide.

Q. That is what I wanted to ask. Do the railroads put out a guide of that kind?

A. No, sir. Some of the lines, I believe, now publish that, but I was always governed by a guide that was gotten out by the Official Railway Equipment Guide Company.

Q. Where is that published?

A. Why, I believe it is in the same building that the—well, I don't recall, but it is in New York City. I can't give you the exact street number.

Q. The Railway Equipment Guide Book, is that the name of it?

A. I will tell you, it is the same people who publish the Official Railway Guide.

Q. They have tables, do they, showing the clearances by the different lines?

A. Yes, sir; they show all the clearances by all the lines.

Q. During the time that you were with the car company here, the Union Pacific and Southern Pacific had a joint agency here all the time, hadn't they?

A. Yes, sir.

3824 Q. That was after the days of the separate agency?

A. Yes, sir.

Q. And did they solicit your business?

A. Yes, sir.

Q. Did they prefer one route over another in soliciting business?

A. As I say, the railroad people knew generally how the cars would move after they found out about the clearances, and it would be a very difficult matter for me to say whether they solicited the business by Ogden or New Orleans. They knew, as a natural consequence that if the cars were a certain height they would have to go via New Orleans.

Q. Previous to the time you were with the Car Company what was your business?

A. I was in the tobacco business.

Q. What company?

A. Liggett & Myers Tobacco Company.

Q. Was the Liggett & Myers Tobacco Company engaged in trade on the Pacific coast?

A. Yes, sir.

Q. How did that traffic move?

A. That traffic all moved over the Wabash to Kansas City or Council Bluffs and Union Pacific to Ogden, and the Southern Pacific.

Q. All of it?

A. Yes, sir.

Q. The Union Pacific had an agency here in those days of its own, didn't it?

A. Yes, sir.

Q. And was that traffic solicited by that agency?

A. Yes, sir.

Q. Did any of that business ever go by El Paso, Mr. Swingley?
A. No, sir.
Q. It all went Union Pacific?
A. Yes, sir.
Q. Did you ship to Portland?
A. Yes, sir.
Q. How did that traffic go?
3825 A. Over the Burlington route and the Northern Pacific.
Q. Altogether?
A. Yes, sir.
Q. None by the Union Pacific?
A. No, sir.
Q. How did it happen that that traffic to the coast was all routed by the Union Pacific? Was there some personal reason why you sent it that way?
A. The principal reason was that the service that we got that way was far superior to the service that we figured we could get the other way. What I mean by "the other way" is via New Orleans. That traffic was all less than carload business, which we attempted to consolidate as much as possible into a car, to get the service. For instance, take a point like San Francisco; we would get all of the business we could gather to justify those people in loading it, whoever handled it—in that instance it was the Wabash—so that they would not have to transfer it at the Missouri River, if possible.
Q. You knew Colonel Aglar very well, didn't you?
A. Yes, sir.
Q. Was he a personal friend of yours?
A. He was.
Q. Did your friendship for Colonel Aglar influence you to some extent in giving him the business, other things being equal?
A. It did.
Q. What is your opinion from your experience in the traffic business, as to whether business is influenced by the personality of the general agents or soliciting agents?
A. It has been my experience that personality has a great influence, provided conditions are any way equal.
Q. If they are anywhere nearly equal, or substantially equal?
A. Yes, sir.
3826 Q. It is your opinion, then, that soliciting agents are of value in securing business for their companies?
A. It is. That is my opinion.

Cross-examination by Mr. LOVETT:

Q. I understood you to testify, Mr. Swingley, that for some years—1902, 1903, 1904, 1905, I think you said, and perhaps 1906—that most of the cars shipped to California were shipped by way of New Orleans because you could get the equipment that you needed from the Illinois Central. That is correct, is it?
A. Yes, sir.

Q. That route has always been open for such shipments, hasn't it?
A. Yes, sir.
Q. No difficulty in moving that way?
A. No, sir.

3827 A. M. FIELD,

being duly sworn as a witness on behalf of the Complainant, testified as follows:

Direct examination by Mr. SEVERANCE:

Q. Mr. Field, where do you live?
A. St. Louis.
Q. What is your business?
A. Traffic manager of the Wrought Iron Range Company.
Q. What is the business of the Wrought Iron Range Company?
A. Manufacturers of ranges.
Q. Stoves?
A. Stoves, yes, sir.
Q. How long have you been with them?
A. Since August, 1905.
Q. That is the largest concern of the kind in the country, isn't it?
A. I think it is, yes, sir.
Q. To what parts of the country do you ship your product?
A. All over the United States.
Q. How does your product move to the Pacific coast, to California terminals?
A. Why, we ship via the various routes—the Wabash, Omaha, Burlington, via Denver, and the Missouri Pacific, Denver & Rio Grande at Ogden; some business goes by the Santa Fe. I think that is about all.
Q. The M. K. & T. and Texas & Pacific?
A. No.
Q. Nothing south—it all goes north?
A. Nothing south. It is a matter of time with us. We have got to have good service.
Q. How does your business move to Portland?
A. We do not do any business to Portland proper. We ship on the Southern Pacific between Portland and San Francisco.
3828 Some of that business goes via the Wabash, care of the Union Pacific at Omaha; some by the Burlington and Northern Pacific at Billings.
Q. And then it is delivered to the Southern Pacific at Portland?
A. At Portland.
Q. By the Northern Pacific or the Oregon Railroad & Navigation Company?
A. Yes. Now, that is since the first of January; before that we couldn't ship that way.
Q. Before that you couldn't ship which way?

A. Via Portland, care of the Southern Pacific; the rates wouldn't apply that way.

Mr. LOVETT. What was he testifying to there?

Mr. SEVERANCE. I was asking about the amount of business. He said they had none to Portland proper, but they had some to Southern Pacific points south of Portland.

Q. Now, will you just explain again about the change in the routes that you were able to take since the first of January?

A. As I understand, the rates would not apply in connection with the Northern Pacific via Portland, care of the Southern Pacific at Portland prior to January first.

Q. It had to go by the Oregon Railroad & Navigation Company, Union Pacific, into Portland, and then out?

A. Yes, sir.

Q. You understand that has been changed since the first of January, do you?

A. I understand.

Q. Have you made shipments that way since the first of January?

A. Yes, sir.

Q. By Billings and Northern Pacific?

A. By Billings, and also by the Union Pacific at Omaha.

3829 Q. Previous to the time you were with the Wrought Iron Company, what was your business?

A. I was with the Illinois Central Railroad for about twelve years.

Q. In what position?

A. Contracting freight agent for about ten years, and billing-clerk for about a year, and tracing clerk for about a year.

Q. Where were you contracting freight agent?

A. At St. Louis.

Q. When you were with the Illinois Central as contracting freight agent did you know Mr. Peachy?

A. Yes, sir.

Q. And Mr. Markham?

A. No, sir.

Q. You didn't know Mr. Markham?

A. No, sir.

Q. Did you at that time work Pacific coast business?

A. Yes, sir.

Q. By what route?

A. By New Orleans.

Q. What was the attitude of the Southern Pacific agency here previous to the consolidation of the agencies, as to that traffic?

A. That I don't remember; it is going back a good many years.

Q. You simply remember your own connection in the matter?

A. Yes, sir.

Q. Did the Illinois Central have an agent at San Francisco?

A. Yes, sir.

Q. Were you brought in business contact with him by correspondence, or otherwise?

A. Yes, sir, we had letters from him.

Q. What class of business was he working on—east-bound
3830 or west-bound, or both?

A. Why, principally west-bound with us here in St. Louis.

Q. What?

A. Principally west-bound.

Q. And how was he endeavoring to route the business, the same as you were here?

A. Why, this is after the merger?

Q. No, before.

A. I don't think that agency was out there before the merger of the Southern Pacific and the Union Pacific.

Q. You think he was there afterwards?

A. Since the Omaha gateway was opened.

Q. What was the attitude of the joint agency here of the Union Pacific and Southern Pacific, after they were united, as to the movement of Pacific coast business? I understand you were here on the street at that time soliciting business?

A. Yes, sir.

Q. Did they play any favorites, or were they impartial?

A. They didn't play any favorites at all, no, sir.

Q. Had no favorites?

A. No, sir.

Q. What was the attitude of your agent with whom you were brought in contact in a business way, we will say, in San Francisco, as to the movement of Pacific coast business, after the merger?

A. Well, he would give us information on business going to the coast, and it was up to us to get it either via New Orleans or via Omaha.

Q. Which was the long haul for you?

A. The New Orleans gateway.

Q. Was it a part of his business to secure shipments from the consignee and sent to you to have the routing?

3831 A. To secure routing orders. Nearly all that Pacific coast business was controlled at the other end.

Q. That is what I am getting at. That was your agent's business out there, was it?

A. Yes, sir.

Q. Where was he stationed?

A. At San Francisco.

Q. You don't know personally, I suppose, as to how he endeavored to work the business out there?

A. That I don't know, no.

Cross-examination by Mr. LOVETT:

Q. After the extension of the Illinois Central line to Omaha you endeavored to work California business both ways, did you not, Mr. Field, by way of New Orleans and also by way of Omaha?

A. Yes, sir.

Q. Tried to send it the way that would afford you the most revenue, didn't you?
A. Yes, sir.
Q. Provided there were not disadvantages that would interfere with the traffic?
A. Yes, sir.

3832 P. M. HANSON,

being duly sworn as a witness on behalf of the Complainant, testified as follows:

Direct examination by Mr. SEVERANCE:

Q. Colonel, what is your business?
A. Traffic manager of the National Enameling & Stamping Company.
Q. What is the business of that company?
A. Manufacturers of enamel ware, cane ware, sheet iron, galvanized iron, stove pipe elbows and kindred articles.
Q. How long have you been the traffic manager of that company?
A. Since 1899.
Q. Previous to that time what was your business, Colonel?
A. Traffic Manager of the St. Louis Stamping Company.
Q. For how long?
A. From 1894 to 1899.
Q. Did that company become a part of your present company?
A. Yes, sir.
Q. Where are the plants of your company located?
A. Granite City, St. Louis, Baltimore, Long Island—that is, Berlin Siding, Long Island—New Orleans and Milwaukee.
Q. Do you have charge of all their traffic?
A. Yes, sir.
Q. Where, if at all, is the traffic from your New York plant and your Baltimore plant solicited?
A. I did not catch that question, Mr. Severance.
Q. I say, where is your company solicited for the movement of its traffic from your New York plant? Does that solicitation come to you or to some representative you have in New York?
3833 A. Representative in New York.
Q. And through him to you?
A. Yes, sir.
Q. To what places do you ship your product?
A. All over the United States.
Q. Do you ship any abroad?
A. Some, yes, sir.
Q. To what countries?
A. England, Germany.

Q. Anything to the Orient?
A. Yes, sir.
Q. From what plants do you ship to the Orient?
A. New York and Baltimore.
Q. Does any of that go by the Pacific coast, or does it all go by the Suez?
A. Very little by the Pacific coast.
Q. How does the movement that way now compare with what it was a few years ago? Has there been any change?
A. I am not informed on the movement of that business, for the reason that it is all handled in New York and Baltimore, and I have no advice on that subject.
Q. From what plants do you ship to your Pacific coast trade?
A. From Milwaukee and St. Louis.
Q. None from New York or Baltimore?
A. No, sir.
Q. Which plant supplies the California trade?
A. Milwaukee and St. Louis.
Q. Both?
A. Both, yes, sir.
Q. Do you have distributing agencies on the coast?
A. Yes, sir.
Q. Where are they located?
A. San Francisco.
Q. Was the business which was conducted by your former corporation—the St. Louis Company—the same as the present corporation, except as to the extent of business?
3834 A. Yes, sir.
Q. And in what territory did they sell their product?
A. They sold their product in all territories of the United States, wherever they could find a buyer.
Q. Practically no change, then, except an enlargement of the business?
A. That is all.
Q. Over what lines do you move your product to your distributing agency in San Francisco, we will say?
A. All lines.
Q. Well, take it out of your St. Louis plant, which way does the traffic move?
A. Do you mean Pacific coast—San Francisco?
Q. Yes.
A. Pacific coast terminals. We would move that principally in accordance with the desire of the purchaser on the coast.
Q. I understand you to say that you had a distributing agency in San Francisco. I assume that to that agency you would route your own cars; is that so?
A. Well, not entirely. The shipments consigned to the agency we route, but we sell direct to jobbers on the Pacific coast and we respect their routing to a considerable extent.

Q. Do you ship to other points than to San Francisco on the Pacific coast?

A. Oh, yes; we cover the entire Pacific coast.

Q. Do you sell to retailers or only to jobbers?

A. To jobbers.

Q. To what towns in California, if you recall, do you ship?

A. San Francisco and Los Angeles, and all jobbing towns on the coast.

3835 Q. Also to Portland?

A. To Portland, yes, sir.

Q. Oregon?

A. Yes, sir.

Q. Do you remember when the Union Pacific and Southern Pacific had separate agencies here?

A. Yes, sir.

Q. Who were the men that represented those agencies? Who were the heads?

A. Mr. Aglar represented the Union Pacific, and Mr. Lothrop represented the Southern Pacific.

Q. Did both of those gentlemen solicit Pacific coast business from you in those days?

A. Yes, sir.

Q. How about the Illinois Central and the Louisville & Nashville; did they solicit your business, too, to the coast?

A. The Illinois Central solicited business.

Q. Which route?

A. Via New Orleans.

Q. You stated a few moments ago that your business now moves to the coast over all routes. Will you kindly state what you mean by "all routes," Colonel?

A. The Burlington, Wabash, Rock Island, M., K. & T., and the Frisco; and, to northern coast points, via the Northern Pacific and the Great Northern.

Q. Then, some of it moves by the El Paso gateway, and some by the Ogden gateway?

A. Yes, sir.

Q. Does the Illinois Central still solicit that traffic by New Orleans?

A. No, sir; they are not at present soliciting anything that way.

Q. When did they cease soliciting traffic that way, as near as you can remember? I don't suppose you can fix it definitely.

A. I can not call to mind just when they ceased to solicit the business.

3836 Q. Have they quit soliciting entirely?

A. We haven't had any business that way for some time.

Q. They don't call on you any more?

A. No, sir.

Q. Do you ship at all over the Illinois Central via Omaha? It would be a roundabout route, wouldn't it?

A. Yes, sir; we have had business to Omaha over the Illinois Central.

Q. You have shipped that way?

A. Yes, sir.

Q. How recently?

A. Very recently, in the past month or two.

Q. Where was that business routed?

A. On the coast.

Q. And you respected the routing?

A. Yes, sir.

Q. It was routed by the Illinois Central to Omaha, was it?

A. Yes, sir.

Q. Where did the business move which got to Omaha over the Illinois Central? Do you know where their rails run?

A. I can not recall the junction point. It is southwest of Chicago.

Q. How far out of Chicago, do you remember?

A. Their Omaha line runs up through Freeport, I believe.

Q. Yes, that is right. Then, the business, to get to Omaha over the Illinois Central, as you understand it, has to go pretty near up to Chicago?

A. Yes, sir.

Q. And then back again, across the northern end of Illinois?

A. Across the country. It don't come back, it keeps on going northwest.

Q. How is that?

A. The line is drawn northwest and west; it doesn't return south.

Q. No; I know it doesn't come back south.

A. No.

Q. It first goes northeast and then northwest?

3837 A. Yes, sir.

Q. Does very much business go that way, Colonel?

A. Not a very great amount from our company.

Q. As I understood you, the Illinois Central agency here does not solicit your business at all now either way—that is, your coast business, I mean.

A. Not recently.

Q. That is what I mean. At the present time are you acquainted with the joint agent of the Southern Pacific and Union Pacific?

A. Yes, sir.

Q. What is his name?

A. J. G. Lowe.

Q. Is he the man you are brought personally in contact with, or do you meet his soliciting agents?

A. I meet both of them.

Q. Are they active in the solicitation of coast traffic now?

A. Yes, sir.

Q. By what route?

A. Southern Pacific and Union Pacific.

Q. By Omaha?

A. Either way.

Q. Or Kansas City?

A. Yes, sir.

Q. Those are the only two ways that the Union and Southern join in their solicitation?

A. Yes, sir.

Q. And their solicitation is for the joint line, isn't it?

A. Yes, sir.

Q. Has the Southern Pacific Sunset route any friend in their camp at present who tries to get business that way?

A. I don't come in contact with the Sunset route.

Q. You don't?

A. Not here.

Q. Then, as I understand it, in the old days, the Southern
3838 Pacific Sunset route participated in this business—the Illinois Central man solicited business that way, and now the Illinois Central man has ceased to do that, and the Southern Pacific man does not do it: that is a correct statement, isn't it?

A. Except insofar as I said both routes. Mr. Lowe would not object to taking business by the Sunset route if I wanted to give it to him.

Q. Yes; but he doesn't ask for it that way.

A. He isn't particular.

Q. Well, does he ask for it that way?

A. Well, he——

Q. Ask for business?

A. He generally has a routing order, when he comes into my office, through his representative, Mr. Dowdell.

Q. His representative where?

A. I say, when he comes into my office, through his representative, Mr. Dowdell, he would have a request from the consignee for the routing of the shipment, and we usually respect the consignee's request as to routing.

Q. And it usually goes by Kansas City or Omaha?

A. Yes, sir.

Q. Treating the Union Pacific and the Southern Pacific as a single line—a joint line—which way is their long haul to the coast from St. Louis?

A. Via New Orleans.

Q. That is longer than from Kansas City or Omaha?

A. Yes, sir.

Q. But if it goes by New Orleans the Union Pacific does not participate in it?

A. No, sir.

Q. Does the matter of equipment cut any figure in the movement of your business?

A. Yes, sir.

3839 Q. Just explain that, will you, please?

A. Under the rules and regulations of the Western Classification and trans-continental conditions, our goods are classified, with the exception of sheet-iron, under the light and bulky article term; and it behooves us, in order to reach the required minimum, to have the large-sized cars—for instance, 40-foot cars. There are times that those cars cannot be obtained from various lines, and we frequently ask the consignees to leave the matter of routing in our hands so that we can secure equipment by other roads.

Q. Well, in your opinion, Colonel, from your experience, is the matter of furnishing equipment of influence in securing business by railroads?

A. Yes, sir.

Q. What is your opinion as to the usefulness to railroads of active soliciting agencies? Do you think they secure the movement of business?

A. Yes, sir.

Q. Who are your representatives in San Francisco?

A. The W. F. Boardman Company.

Q. They are hardware people?

A. No, they are salesmen for our products.

Q. Do they handle your business exclusively?

A. Not exclusively, no, sir; they are manufacturers' agents.

Cross-examination by Mr. LOVETT:

Q. Mr. Lowe and his assistants solicit your business generally for the Southern Pacific and for the Union Pacific, don't they?

A. Yes, sir.

3840 Q. And they solicit it by whichever way you want to send it, either by way of El Paso or the Missouri river gateways, don't they?

A. Yes, sir.

Q. Mr. Severance, in summing up your answer to some questions a while ago, assumed—stated on the record—that their solicitation was only by way of Kansas City and Omaha, that they did not solicit in any other way. You did not mean to so testify, did you?

A. No, sir.

Q. They will take it any other way that you want to send it, by any of the gateways?

A. Yes, sir.

Q. You say that the Illinois Central have not been soliciting your business for California recently. Would you be a little more explicit as to that, as to how recently you mean? Do you mean a few months, or years? I don't mean for you to be exact. You said that they had not been soliciting it recently, and I would like it a little more definite.

A. Oh, they have not solicited it for several years.

Q. For four or five years, would you say?

A. Yes, sir.

Q. They have not solicited it for four or five years?

A. No, sir.

Q. It is solicited by most of the lines leading from the west and southwest from here, isn't it?

A. Yes, sir.

Q. I think you testified that it moved by all of the principal lines?

A. Yes, sir.

Q. Naming all of them, except the Missouri Pacific and Iron Mountain; you did not mention those lines when you stated, a while ago, the lines over which your business moved to the Pacific coast. Does any of it move over those lines?

A. Yes, sir; they solicit the business in connection with
3841 the California lines.

Q. Your California business, then, moves over the Missouri, Kansas & Texas, the Iron Mountain, the Texas & Pacific, the Frisco-Rock Island, the Missouri Pacific, the Burlington and the Union Pacific?

A. Yes, sir.

Q. Lines moving by the El Paso and Ogden gateways?

A. Yes, sir.

Q. Isn't the routing of Pacific coast business very largely controlled from the Pacific coast?

A. Yes, sir.

Q. All the principal lines have agencies out there who keep in pretty close touch with the shippers, don't they?

A. Yes, sir.

Redirect examination by Mr. SEVERANCE:

Q. Judge Lovett asked you if the agencies here did not solicit business by El Paso. Do they solicit business by El Paso, or is it the connecting lines that solicit business by El Paso, the Texas & Pacific, the M. K. & T. and the Rock Island?

A. The agents here solicit business via El Paso.

Q. Which agents?

A. The Missouri Pacific—Iron Mountain.

Q. That is what I thought. But so far as the Southern Pacific and Union Pacific agents are concerned, while they respect routing orders by way of El Paso, where they control the business themselves, they endeavor to send it by the Union Pacific and the Ogden route, don't they?

Mr. LOVETT. I don't think it is fair to lead the witness,
3842 in view of what he has already testified about that, Mr. Severance.

Mr. SEVERANCE. Well, it is re-direct; I will clear it up quickly. I will strike out the question, if Judge Lovett objects to the form, and I will ask you this question, Colonel, which I think he will not find objectionable: When the connecting lines to El Paso don't control the business and it is free business to be obtained by the trans-continental lines, and they are plowing in virgin soil, so to speak, how

does the Union Pacific and Southern Pacific joint agency solicit coast business? How do they ask for it? How do they try to route it?

A. Well, it would depend upon who the man was that was in the office.

Q. What?

A. That would depend upon the representative soliciting the business, as to how he would ask the shipment to go.

Q. I am speaking about the present situation when they are joint agents.

A. Under the joint agency.

Q. That is what I am speaking about, at the present time, under the joint agency.

A. You mean Mr. Lowe?

Q. Yes, sir.

A. Mr. Lowe representing the Southern Pacific-Union Pacific?

Q. Yes, sir.

A. Why, he would have no preference, as far as I know; he would want to get a haul for either line.

Q. He is impartial as between the——

A. Impartial as to whether it go by the southern route or the Omaha route.

Q. That is what I wanted to get at.

A. Yes, sir.

Q. He would simply ask for the haul, and would not desig-
3843 nate any particular route?

A. Unless it is so stated on the routing order that he may present to us.

Q. I am not speaking of cases where the routing may have been secured on the Pacific coast, but where he comes in on a new proposition and asks for some business.

A. He is glad to get it either route.

Q. He is impartial, is he, between the two routes?

(No response.)

3844 THOMAS E. ROOT,

being duly sworn as a witness on behalf of the Complainant, testified as follows:

Direct examination by Mr. SEVERANCE:

Q. Mr. Root, where do you live?

A. St. Louis.

Q. And what is your business at present?

A. I am connected with the Wabash Railway, the freight claim department.

Q. How long have you been with the Wabash?

A. Since March first.

Q. Previous to that what was your business?

A. I was traffic manager for the Banner Buggy Company.

Q. Where is that concern located?

A. In St. Louis.

Q. Could you state how long you were with them?

A. Fifteen years.

Q. To what parts of the country do they ship their products?

A. Texas, Oklahoma, Kansas, Nebraska, Iowa, Minnesota, Wisconsin, some in California; not very much.

Q. Some in California but not very much?

A. Very little.

Q. Mr. Root, do you remember the time when the Union Pacific and Southern Pacific had separate soliciting agencies here?

A. Yes, sir.

Q. Were they both trying to work California business?

A. Well, I can't say that they were, because I cannot recall either office ever soliciting any business from us, because we had so little of it.

Q. You don't remember that they called on you?

A. No, sir, I do not.

3845 Q. Do you remember the separate offices here?

A. Yes, sir.

Q. Which way did the Banner Buggy Company ship coast business?

A. Well, we have shipped what we had by the Wabash and Santa Fe, the Iron Mountain, T. & P. and Southern Pacific. We have shipped two cars by the Illinois Central and Southern Pacific, according to my recollection, and we have shipped over the Missouri Pacific via Pueblo.

Q. But, in the days when the Union Pacific and the Southern Pacific had separate agencies, you don't recall that either one of those agencies called personally on you, do you?

A. Well, the representatives have called; but the Southern Pacific solicited for business via Texas and the Union Pacific for points in Kansas and Colorado.

Q. So, your business to the coast was small?

A. Very small, yes, sir, very light.

Q. Did it afterwards grow at all?

A. No, sir; it has diminished in the last few years.

Q. Well, do you remember whether the Illinois Central was soliciting coast business in those days?

A. Yes, sir.

Q. Via what route—New Orleans?

A. Via New Orleans, yes, sir.

Q. Do you remember whether, after the Union Pacific and Southern Pacific was consolidated here, that consolidated agency ever called upon you soliciting coast business?

A. I cannot recall their ever soliciting California business.

Q. They were just the same as before, in that regard?
A. Yes, sir.
Q. Did you ever ship to Portland?
3846 A. No, sir.
(No cross-examination.)

3847 L. A. GESARICH,

being duly sworn as a witness on behalf of the Complainant, testified as follows:

Direct examination by Mr. SEVERANCE:

Q. Mr. Gesarich, what is your business?
A. I am in the carriage business.
Q. With what company?
A. Moon Bros. Carriage Company.
Q. How long have you been with them?
A. Since February, 1892.
Q. What is the size of that company? Is it a large company? I don't mean their exact output, but is it one of the large carriage companies?
A. Yes; we are about one of the largest carriage concerns here, builders of high-grade work.
Q. What is that?
A. We are the largest high-grade builders in St. Louis.
Q. To what parts of the country do you ship your product?
A. Everywhere west of the Mississippi River, some in Illinois, some in Indiana, and a very little in the southeast.
Q. How does your traffic move to the Pacific coast, or how has it moved?
A. We have shipped some business by different lines.
Q. Which ones, Mr. Gesarich?
A. We have shipped business to the Pacific coast principally by the Santa Fe, some by the Union Pacific via the Ogden route.
Q. And have you shipped via El Paso?
3848 A. Yes, sir, we have shipped some business via El Paso.
Q. Have you ever used the Salt Lake route, the new road?
A. I think we shipped one or two cars via that route.
Q. Have you shipped to Portland?
A. Yes, sir, we ship to Portland.
Q. Over what lines?
A. By the Burlington, some shipments, and some shipments by the Union Pacific, O. R. & N.
Q. Do you remember when the Union Pacific and Southern Pacific had separate agencies here?
A. Yes, sir.
Q. Were you acquainted with the gentlemen who ran those agencies?

A. Mr. J. F. Aglar represented the Union Pacific Railroad, and Mr. L. E. Townsley represented the Southern Pacific road.

Q. Did those gentlemen solicit your business?

A. Yes, sir.

Q. Which way did the Southern Pacific representative endeavor to route the business when he could?

A. The longest possible haul for his company, which would be the southern route.

Q. New Orleans?

A. Either that, or via some Texas junction.

Q. And the Union Pacific, via Missouri river points?

A. Missouri river, Omaha, Denver.

Q. Since the agencies here were consolidated, does the representative of the joint agency call on you and solicit business?

A. Mr. Lothrop, who was the first agent representing the joint lines, never did call on us. I knew him, however. Mr. Townsley, who succeeded him, called on us once; and the present general agent, representing both lines through his contracting men, solicits our business.

Q. Do they solicit in favor of one line as against the
3849 other; that is, the southern line as against the Union Pacific line, and vice versa?

A. Nearly all of our business is sold f. o. b. destination, and the majority of it is covered by routing requests, and in view of that fact, they solicit the business whichever way they can get a haul.

Q. That is, they simply come in with those routing orders and ask you to respect them?

A. Occasionally they present routing orders; frequently we advise them that we have routing requests covering the shipments, and if routed favorably, they simply make a note of it.

Q. Do you route any of your own business, or is it all sold f. o. b.?

A. Yes, sir, we route a great deal of our business irrespective of routing requests.

Q. Then there is business free to be sent from here any route by your company?

A. Oh, yes.

Q. And as to that business, does this joint agency express any preference between their two lines?

A. They never have.

Cross-examination by Mr. LOOMIS:

Q. In soliciting business for California points does the joint agency here solicit for both routes—the Southern Pacific and Union Pacific?

A. I don't know that they have.

Q. I believe you stated that they expressed no preference as to which way the traffic move, whether through the Ogden or El Paso gateway?

A. No, sir, they didn't express any preference.

3850 Q. Then I understand that they solicited business for either gateway?

A. They do, I believe.

Q. Solicited business for both gateways, expressing no preference for either one, is that correct?

A. They solicit business, yes, sir.

Mr. SEVERANCE. Now let me understand, Mr. Loomis; you are asking about the present agency—the joint agency—aren't you?

Mr. LOOMIS. Yes, sir; I am asking about the present joint agency.

Q. That is what you understood, I believe?

A. Yes, sir; they solicited business both ways.

Q. What road did I understand you to say carried the bulk of your business to California points?

A. The Santa Fe did, formerly.

Q. And at the present time?

A. We divide it up.

Q. Divide it up between what lines?

A. We forward some of our business via the Salt Lake route, some via the Union Pacific-Southern Pacific, care of the Southern Pacific at Ogden, and we have forwarded some of our business via the Rock Island, care of the Southern Pacific at El Paso.

Q. Before the amalgamation of the agencies at St. Louis, your business was solicited by the Southern Pacific through which gateways, Mr. Gesarich?

A. Mr. Townsley solicited that business via the southern line.

Q. If it could not be obtained by the southern line, was it solicited for the northern line via Ogden?

A. You say prior to the amalgamation?

Q. Yes, sir, prior to the amalgamation.

3851 A. The Union Pacific have solicited business that way.

Q. And the Southern Pacific also?

A. Yes, sir, the Southern Pacific also, via the southern route, prior to the amalgamation.

Q. Yes, I understood that: prior to the amalgamation, not only by the Southern route but also by the Ogden route? If it could not get it by the Southern route, it would take it by the Ogden route?

A. In their solicitation prior to the amalgamation Mr. Townsley always solicited the longest haul for his company, which was quite natural.

Q. Certainly, but if he could not get the longest haul he would take the next best, would he not?

A. That would be entirely satisfactory to him, yes, sir.

Q. That is true, is it not?

A. Yes, sir.

Q. He would be glad to get the business via Ogden as against competitors, as against the Santa Fe, would he not?

A. Yes, sir.

Q. Now, your business to California points, as I understand it, went over all routes to a connection with the Southern Pacific at

Ogden, in connection with the Southern Pacific at El Paso and other junction points?

A. Yes, sir.

Q. That is true?

A. Yes, sir.

Q. And did representatives of all these other lines solicit your business?

A. Other than the Union Pacific and Southern Pacific?

Q. Other than the Union Pacific and Southern Pacific.

A. Yes, sir, we had all solicitors visit our place.

Q. Then, all of the business solicited by these other
3852 lines, which went via the Ogden gateway, went over the Southern Pacific to California points?

A. I don't understand the question.

Q. All of the business solicited by these other lines, which went via the Ogden gateway, went over the Southern Pacific to California?

A. Shipments that went Union Pacific moved that way, yes, sir.

Q. Suppose it was solicited by the Burlington and went via Denver and the Rio Grande to Ogden; it would go from Ogden over the Southern Pacific, would it not?

A. Yes, sir.

Q. The same would be true as to business solicited by the Wabash?

A. Yes, sir.

Q. And part of the business solicited by the Rock Island?

A. Yes, sir.

Q. And the business solicited by the Chicago & Alton?

A. Yes, sir.

Q. All of the business which went to California via the Ogden gateway would go over the Southern Pacific: that is true, is it not?

A. Yes, sir.

Q. And the business solicited by the lines running southwest, connecting with the Southern Pacific at El Paso and other southwest gateways, would also go over the Southern Pacific?

A. Yes, sir.

Q. So that in either event the Southern Pacific would get the haul on all business except that which went by the Santa Fe?

A. The Santa Fe and the Salt Lake route.

Q. Since the opening of the Salt Lake route?

A. Yes, sir.

3853 Q. That has only been opened, however, for a few years?

A. That is all.

Q. As a shipper are you interested in the division of earnings between the different connecting lines transporting the traffic between here and California?

A. Not interested in the division of the rate, no, sir.

By Mr. SEVERANCE:

Q. You are interested in the service, are you?

A. Oh, yes, sir.

Q. And have you found in your experience that competition between lines has led to improvements in service?

A. Yes, sir.

By Mr. LOOMIS:

Q. Service ordinarily would favor the short line, would it not, Mr. Gesarich?

A. Generally.

Q. Under ordinary circumstances that is generally true, is it not?

A. Generally.

By Mr. SEVERANCE:

Q. Counsel just asked you if service, as a rule, did not favor the short line. I suppose he means by that, that under the same conditions traffic moves faster over a short line than over a long line. That is all you understood him to mean by the question, isn't it? You did not think to lay that down as a hard and fast rule—that the service is always the best over the shorter line?

A. No.

Mr. LOOMIS. I do not think my question implied that.

Q. You know, don't you, that the New York Central line, of which the president of the Union Pacific is a director, is nearly a
3854 hundred miles longer from Chicago to New York than the Pennsylvania line, nearly, I say.

Mr. LOOMIS. Not "nearly:" 960 as against 913.

Mr. SEVERANCE. Well, make it 47 miles longer.

Q. Have you ever heard it suggested that that additional mileage made it impossible for the New York Central to give fair service between those cities, in comparison with the Pennsylvania?

A. How is that?

Q. You have never heard, have you, that the extra mileage which the New York Central has to go over, made it impossible for them to compete and give fair service as against the Pennsylvania line, which is shorter?

A. No.

Q. You also know, don't you, that the Erie is competing all the time with the other lines, on freight business?

A. Yes, sir.

Q. And they occasionally carry passengers, too, don't they?

A. I think so.

Q. The Grand Trunk is in that business, too, isn't it?

A. I think so.

Q. As a matter of fact, you would not be able to name any two competing lines in the United States that were of the same length, would you?

A. I don't think there are any.

Q. I don't think there are. You do know, don't you, that having to climb ranges of mountains is a disability in making time?

A. Yes, sir.

Q. The Union Pacific and Southern Pacific line by Ogden has to go over the Sierra Nevadas and the Rocky Mountains. That is something that is escaped, isn't it, by the Southern Pacific Sunset route?

A. Yes, sir.

3855 Q. That all has influence, hasn't it, in determining the relative merits of the two lines?

A. Yes, sir.

By Mr. LOOMIS:

Q. It still remains true, does it not, Mr. Gesarich, that, all things being equal, the shorter line is usually preferred and gives the better service?

A. Our business is not of a perishable nature, and we occasionally forward our stuff by a longer route.

Q. That is, you occasionally do it?

A. Yes, sir.

Q. But generally you do not do it?

A. We do not always select the shortest route.

Q. But generally you do, other things being equal?

A. That depends. The car situation governs lots of times, and has in the past.

Q. Things would not be equal under those circumstances, would they?

A. No, sir.

Q. Does it not remain true, Mr. Gesarich, that, other things being equal, the shorter line gives the better service and is the preferred route for the shipper?

A. We have never had any particular line; in other words, we give our business to all lines.

Q. I understand that. I am not speaking about the business you give, or anything of the kind; it is a very simple question, and that is, whether or not, other things being absolutely equal, the short line does not usually, under ordinary circumstances, give the better service, and is usually the preferred line of the shipper?

A. Yes.

Q. That is true, is it not?

A. That is true.

3856 By Mr. SEVERANCE:

Q. Did you ever know of a case where that situation existed: that all other things were absolutely equal—grades, equipment, arrangement of trains, management, and everything else absolutely identical—which were included in my friend's question?

A. I don't believe I ever heard of it.

Q. What is the comparative distance to Portland by the Northern Pacific, the Billings route, and by the Union Pacific via Omaha?

A. I am not familiar with the mileage.

Q. Did you ever pay any attention to it when you were routing your shipments that way?

A. Not as a general rule, because the consignees in most cases request, or express a preference.

Q. You have routed business to Los Angeles by the Ogden gateway and the Southern Pacific, haven't you?

A. Possibly so.

Q. You have also routed business by the Ogden gateway and Salt Lake route?

A. I think we have.

Q. Has it ever been brought to your attention that the Southern Pacific is about 500 miles longer from Ogden to Los Angeles than the Salt Lake route?

Mr. LOOMIS. I object to the question as leading.

Mr. SEVERANCE. All right, I will withdraw the question, and let the witness go, if objection is made. They are your own lines.

By Mr. LOOMIS:

Q. Mr. Gesarich, referring to the Los Angeles business, is not
3857 the routing of that business very largely controlled by local conditions at Los Angeles?

A. No, sir.

Q. Does the fact that the house to which the goods may be delivered is located upon a certain track of a certain railroad have anything to do with the routing of the business?

A. Frequently those requests are made upon us to ship business by a certain line and the question of cars governs. As I said before, we do not respect the routing requests that we receive; in fact, whilst we do not pay the freight on any shipment, a routing request to us is not worth the paper it is written on. We would not inconvenience our plant for the purpose of trying to oblige a customer, by shipping his business over some preferred route.

Q. Ordinarily speaking, do not the local conditions at the point of destination have a great deal to do with the routing of the freight?

A. We consider the conditions at point of origin; we are interested in that more particularly than the destination.

Q. What conditions do you consider at the point of origin, Mr. Gesarich?

A. Our business is of a nature that requires the largest sized equipment; we have to have the largest equipment that the railroads can furnish, on account of our stuff being, perhaps, more bulky than any other commodity, and frequently we are not able to get cars from all different lines.

Q. That is a condition peculiar to your business?

A. Yes, sir.

(Recess until 2 o'clock p. m.)

3858 LESLIE AGLAR,

being duly sworn as a witness on behalf of the Complainant, testified as follows:

Direct examination by Mr. SEVERANCE:

Q. Mr. Aglar, were do you live?
A. St. Louis.
Q. What is your business?
A. Broker.
Q. Have you ever been in the railroad business?
A. Yes, sir.
Q. When?
A. 1899.
Q. Up to what time?
A. I was in the business about a year and a half: I left in 1901.
Q. And what company were you with?
A. The Union Pacific.
Q. Who was the general agent of the Union Pacific?
A. J. F. Aglar.
Q. Your father?
A. Yes, sir.
Q. And he continued to be joint agent of the two companies after they were amalgamated, didn't he?
A. No, sir, he died.
Q. He died before that?
A. He died January 24, 1901.
Q. What was your position in his office, Mr. Aglar?
A. I went in to learn the rates.
Q. Did you have anything to do with soliciting business?
A. No, sir.
Q. Did you know anything about it, except as it came to your knowledge in the office?
A. No, sir.
Q. Did you learn, while you were here in the office, as to whether that agency was soliciting coast business?

3859 A. Oh, yes.
Q. By what route, chiefly?
A. The main line—Kansas City and Omaha to Ogden.
Q. Yes, I understand, of course, all by that line, but which way did you move the most of your traffic—by Omaha or by Kansas City?
A. Well, whichever way we could get it, I suppose; I simply made the rates, you know.
Q. Did you learn at that time which way most of it went?
A. No, sir.
Q. Whether you took it on your rails at Kansas City or Omaha?
A. No, sir.

Q. With what connecting lines did you work between here and Kansas City?

A. We worked with practically all of them out of here,—the Wabash and the C. & A.

Q. Did the Wabash run to Kansas City, or only to Omaha?

A. To Kansas City.

Q. Or both?

A. We used to get freight at Kansas City.

Q. The Wabash reached Kansas City as well as Omaha, from St. Louis?

A. Yes, sir.

Q. And the Alton?

A. Kansas City.

Q. But it doesn't reach Omaha, does it?

A. I think not.

Q. Was the southern route working that business in this territory at that time?

A. I couldn't say.

Q. You didn't have anything to do with the solicitation of business?

A. No, sir.

Q. Do you remember what signs were on the windows of
3860 your father's agency at that time?

A. Union Pacific.

Q. Where is the office of the joint agency now—the same place?

A. Yes, sir.

Q. What signs have they on their windows there now?

A. Well, they have changed the signs: they have "Union Pacific; Southern Pacific; Oregon Short Line; Oregon Railroad & Navigation.

Q. Have they any steamship signs?

A. I think they have.

Q. But you don't remember what they are?

A. Some Japanese lines, I think; I am not sure.

Q. When your father was the agent here of the Union Pacific, did his duties cover passenger as well as freight business?

A. Yes, sir.

Q. Was that actively worked by this office?

A. I think it was.

Q. To the coast?

A. I think so.

Q. I believe you said you knew nothing of the work of other agencies at that time?

A. No, I had no connection with them.

Q. After you left the railroad service, what company were you with?

A. After I left the railroad company?

Q. Yes.

A. I was with Drummond & Company, brokers.

Q. The tobacco people?

A. They had been in the tobacco business, yes, sir.

Q. Were you ever in the tobacco business?

A. I was with the Drummond Tobacco company.

Q. When was that?

3861 A. Prior to going with the Union Pacific.

Q. In what capacity were you with the Drummond Company?

A. I looked after some of their export shipments.

Q. How did those shipments move?

A. They moved to the coast. The part that I looked after was the government end of it, looking after getting the papers in shape, you know. You see we bought cigarette paper in bond and manufactured the cigarettes and shipped them out of the country. The business was secured by the different railroads here, and that was handled by the traffic manager of the Drummond Tobacco Company.

Q. You didn't have anything to do with that?

A. No, sir.

Q. You don't know through what ports the traffic was shipped?

A. It went by Frisco.

Q. Went by San Francisco?

A. Yes.

Q. But do you know what line it moved over from here?

A. I think it went over the Union Pacific; in fact, I know nearly all of it went that way; all that they could get, any way.

Q. All they could get, yes. Do you know of any of it that went any other route, Mr. Aglar?

A. No, I do not; not while I was looking after the business; none went any other way.

Q. As I understand you, then, your knowledge of the conditions here, as far as traffic is concerned, is confined to your father's agency? You know nothing of the activities of any other agency?

A. No, I don't know anything.

3862 Cross-examination by Mr. LOOMIS:

Q. All the business obtained as the result of the solicitation of the St. Louis office, which was turned over to the Union Pacific at Kansas City or Omaha, destined to California, was carried to California over the Southern Pacific from Ogden, was it not?

A. Yes, sir; it was rated that way.

Q. That is the way all of it went?

A. Yes, sir.

Re-direct examination by Mr. SEVERANCE:

Q. That was the only route in there, wasn't it?

A. As far as I know, that is the only way it went; I haven't any knowledge of it going any other way.

Mr. LOOMIS. That was all I was asking you about—your knowledge.

Q. That was the only route into California, by way of Ogden, wasn't it?

A. I guess it was.

Q. The Denver & Rio Grande and the Union Pacific—any of the lines that took business as far as Ogden turned it over to the Southern Pacific from there to San Francisco?

A. I imagine they did.

Q. You don't know very much about that?

A. I don't know much about that end of it, no, sir.

By Mr. LOOMIS:

Q. That was, as a matter of fact, the only route into California?

A. As far as I knew, yes, sir.

Mr. SEVERANCE. I think it will be conceded on the record
3863 that it was the all-rail route.

Mr. LOOMIS. All right; let it go into the record that way.

Mr. SEVERANCE. There is a very fine boat line down there.

Mr. LOOMIS. You want to watch yourself.

Mr. SEVERANCE. No; I say the only all-rail line.

3864 L. P. SCHOENHARD,

being duly sworn as a witness on behalf of the Complainant, testified as follows:

By Mr. SEVERANCE:

Q. Mr. Schoenhard, what is your business?

A. Traffic manager of the Charter Oak Stove & Range Company.

Q. How long have you been with that company?

A. With the present company since 1896.

Q. And what was its predecessor?

A. The Excelsior Manufacturing Company.

Q. In the same line of business?

A. The same line of business. They failed February 6, 1896, and the present corporation succeeded them.

Q. To what part of the country, or the world, does that company ship its product?

A. Well, we ship to the entire southeastern territory, southwestern, the entire west and the northwest. We have very little trade in the east. We have occasional shipments to Pennsylvania, but not beyond that.

Q. Have you shipped to California for a good many years?

A. Yes, sir.

Q. Over what routes has your business moved to California?

A. The majority of our business has moved by the northern route, via the Union Pacific, Oregon Navigation, and the Southern Pacific.

Q. You ship to Portland, too, do you?

A. Yes, sir, quite extensively.

Q. And how does your business move to Portland?

A. At present it principally goes via the Northern Pacific
3865 and the Billings route.

Q. And it has moved, you say, by the Oregon Railroad & Navigation?

A. Yes, sir.

Q. And how is your California business moved, outside of that which went over the Union Pacific?

A. In the last seven or eight years we have had a car by way of El Paso and the Iron Mountain.

Q. Have you ever shipped any over the San Pedro route from Salt Lake?

A. I have no recollection.

Q. How is your traffic usually routed—here or on the coast?

A. It is generally routed at the other end.

Q. Usually at the other end?

A. All our goods are sold f. o. b. St. Louis, and we try to respect the routing at the other end.

Q. So, to ascertain how this routing is secured, we would have to see the men at the California end?

A. Yes, sir.

Q. How does your business that goes via the Union Pacific move out of St. Louis, as a rule?

A. It goes over various routes, over the initial lines. At present the principal part of our Portland business goes over the Burlington and the Billings route. We have had shipments over the Rock Island and the Union Pacific, which they deliver at Junction City; and we have had Wabash and Union Pacific; and we have had some cars over the Illinois Central via the Union Pacific and Council Bluffs and Union Pacific.

Q. Now let me ask you about those shipments by the Illinois Central: how recently have you had shipments out of here by the Illinois Central and Union Pacific?

3866 A. Not since 1907, which was the last.

Q. But you did have then, did you?

A. We had quite a number of shipments in 1904, 1905, 1906, and up to 1907.

Q. And where were those shipments routed—here or on the coast?

A. At the coast, or Portland.

Q. Is your coast business ever solicited by the Illinois Central?

A. They only solicit in the shape of presenting us with the routing order.

Q. How was it years ago? Did they use to solicit your business then by New Orleans?

A. No, sir.

Q. They did not?

A. No, sir.

Q. Is your business solicited by the roads leading to El Paso?

A. No, sir.

Q. Do any soliciting agents call on you with regard to coast business? Is your business solicited here or is it all routed at the other end?

A. Our business is all routed at the other end.

Q. The agents here understand that?

A. They understand that. Of course we have the joint agency call on us and ask if there is anything doing. Now, I wish to state, Mr. Severance, that our representative at Portland is a large jobbing house, and they are liable to change their routing every month, and in that way they may favor the I. C. today, the Burlington tomorrow, and the Rock Island the next month.

Q. How long has that agent been there at Portland?

A. You mean our jobbing house?

Q. Your representative. You have a jobbing house there?

A. Yes, we have a jobbing house there.

3867 Q. How long has that been established?

A. I couldn't say; over ten years to my recollection, anyway.

Q. What is the name under which it does business?

A. The firm is Hexter, May & Company.

Q. At Portland, Oregon?

A. At Portland, Oregon.

Q. Is your trade larger up that way than it is in California?

A. Yes, sir.

Q. What is that concern—is it a jobbing house, or does it simply represent you?

A. No, it is a general jobbing house.

Q. You say you are called on by the representatives of the joint agency. You mean the joint agency of the Southern Pacific and the Union Pacific?

A. Yes, sir.

Q. What do they call on you for?

A. To ascertain if there is any shipment moving to Portland. Of course they are anxious to get the data on them and see if there is anything moving in that direction.

Q. Then, your business is not very heavy to California; it is chiefly to Portland?

A. It is principally to Portland.

Q. Do they, in calling on you, making inquiries about the business, make any suggestions as to routes?

A. No, sir.

Q. Have you ever shipped by water to California?

A. No, sir, except in one instance, Mr. Severance, which was, I guess, thirty years ago, we made a shipment by way of New York and around Cape Horn; that was before the Union Pacific was finished.

3868 Q. But latterly you haven't shipped anything?

A. No, sir.

Q. You have never sent anything by the American-Hawaiian Line, or any of those lines that are in operation now?

A. No, sir.

(No cross-examination.)

3869 JOHN BRODERICK,

being duly sworn as a witness on behalf of the Complainant, testified as follows:

Direct examination by Mr. SEVERANCE:

Q. Where do you live, Mr. Broderick?
A. St. Louis.
Q. What is your business?
A. Wire rope business.
Q. How long have you been in that business?
A. Since 1886.
Q. What is the name of your company?
A. Broderick & Bascomb Rope Company.
Q. Do you ship to the Pacific coast?
A. Yes, sir.
Q. How long have you been doing that?
A. I have been doing it about sixteen years, I guess.
Q. How does your traffic move to the coast?
A. It moved in several routes. It was routed via the Illinois Central and Southern Pacific, but we could not ship it that way, owing to the Illinois Central not being able to furnish the cars, because our stuff required large cars, and the Illinois Central didn't have them; the Wabash built cars for our purpose, and therefore the Wabash got the most of it.
Q. That matter of cars is what I wanted to ask you about. What kind of cars is it necessary for you to have to handle your shipments?
A. Well, you see the shipments are very heavy. The most of the stuff that we sent to the coast weighed over 80,000 pounds; some of it went up to 130,000 pounds, and in one spool.

3870 Q. Then, the matter of equipment determines your route for you?
A. Yes, sir.
Q. Where you can get the equipment?
A. Yes, sir.
Q. You say that the traffic was routed by the Illinois Central and Southern Pacific?
A. That is my recollection of it.
Q. But the Illinois Central didn't have the equipment?
A. Yes.
Q. Where was that routing done—on the coast?
A. Yes, at San Francisco.
Q. And is the bulk of your business routed at the other end?
A. We haven't been doing any business in San Francisco for some time, since the Cable Company started to buy rope out there. You know the California Wire Works sold to the American Steel & Wire Company, some years ago, and after that we couldn't sell any cable out there.

Q. Have you, since that time, shipped to any other parts of the Pacific coast?

A. Yes, to Portland; lots of stuff to Portland.

Q. How does that move, Mr. Broderick?

A. Well, the biggest part of that moved by Burlington and Northern Pacific; some of it moved Oregon Railroad & Navigation Company to Portland.

Q. Has that business been solicited by those lines?

A. Yes.

Q. Which lines?

A. The Burlington, and the Northern Pacific, and the Great Northern also solicited it.

Q. And the Union Pacific?

A. And the Union Pacific.

Q. How many years have you been shipping to Portland?

3871 A. I guess about eleven or twelve years.

Q. Have your shipments to California points entirely ceased?

A. No; we shipped a car occasionally to Los Angeles after that, and now we have opened a house in San Francisco again and we are starting to ship.

Q. Is that stuff all routed out there?

A. No, not what is going at present, isn't.

Q. How does that move?

A. Well, we endeavor to divide it up between the different roads.

Q. By what gateways—some of it north and some south?

A. Some went via Ogden and some via El Paso.

Q. Was that business solicited by the Union Pacific-Southern Pacific agency?

A. Well, the Union Pacific has called on me in regard to it.

Q. Who is their representative that called on you in regard to it?

A. Mr. Dowdell.

Q. And which way did he solicit the traffic?

A. Well, he didn't state which way he wanted it.

Q. He was impartial between the two gateways, was he?

A. He didn't say which way.

Q. Do you remember the time when the Union Pacific and Southern Pacific had separate agencies here?

A. Yes.

Q. Did they use to call on you and solicit business?

A. Yes, sir.

Q. By the different gateways?

A. Well, yes. I slightly remember—it was quite awhile ago—because there were eight or nine years that we didn't do anything to San Francisco. During that time I didn't pay much attention to the coast business.

3872 Q. At the present time, since you have opened up there, they call on you, but they don't try to send it one way or the other; they just ask for the business?

A. Yes, sir.

Q. When this business had been routed by the Illinois Central and the Southern Pacific, and could not go that way because it did not have proper equipment, you say the Wabash had some equipment made for the purpose?

A. Yes, sir.

Q. Do you know what line it moved over after it left the lines of the Wabash?

A. To the best of my recollection, it went by El Paso, because the cars were too large to go through the other way—except a couple of cars.

Q. Too large to go through by the Union Pacific and Southern Pacific?

A. Yes, sir.

Q. Why too large?

A. Those reels were very high on top of those cars.

Q. You mean on account of the tunnels or snow-sheds?

A. Yes, on account of the tunnels.

Cross-examination by Mr. LOOMIS:

Q. You say your business to California went via El Paso and Ogden—both gateways?

A. Yes, I believe it did; a couple of shipments went through the other way—small lots.

Q. Which other way?

A. Via Ogden.

Q. And some went via El Paso?

A. Yes, the largest part of it went by El Paso.

Q. Did your shipments go over various lines to Ogden and El Paso?

3873 A. No; the Wabash handled them out of St. Louis, and I think the Santa Fe got them to El Paso.

Q. The Santa Fe got them where?

A. At Kansas City, I think.

Q. And what lines took your freight to El Paso? What lines did your freight go over to El Paso?

A. I don't recall just now; anyway, they had to arrive over the Southern Pacific.

Q. Whichever way they went they went over the Southern Pacific?

A. Yes, sir.

Q. Whether they went via Ogden or El Paso?

A. Yes. They had to enter San Francisco over the Southern Pacific; that was understood by the customer.

3874 LOUIS FEICKERT,

being duly sworn as a witness on behalf of the Complainant, testified as follows:

Direct-examination by Mr. SEVERANCE:

Q. Mr. Feickert, what is your business?

A. Traffic manager for the W. J. Lemp Brewing Company.

Q. How long have you occupied that position?

A. Since its incorporation, about ten or twelve years ago, and prior to that with W. J. Lemp.

Q. Have you had shipments to the Pacific coast?

A. Yes, sir.

Q. A large amount?

A. Not a large amount, but considerable.

Q. How has that business moved from St. Louis?

A. It has moved by various lines: Iron Mountain; T. & P. and Southern Pacific; we have shipped some by the Santa Fe; some by the Rock Island, Colorado Midland, via Ogden; some by the Missouri Pacific, D. & R. G., via Ogden; some by the Missouri Pacific and Wabash in connection with the Union Pacific.

Q. How has your business moved to Portland?

A. Moved by either the Missouri Pacific, D. & R. G., or the Missouri Pacific, Wabash and Union Pacific, or C. B. & Q. and Northern Pacific, and I think some Great Northern, and some by the Canadian Pacific.

Q. How did the Canadian Pacific get that business when it went that way?

A. The "Soo" line at St. Paul.

3875 Q. What line took it up to St. Paul?

A. The Wabash, Iowa Central, M. & St. L.

Q. How recently have you shipped that route?

A. Within the past year.

Q. You regard that as a feasible route, do you?

A. Yes, sir.

Q. It is very much longer than the Union Pacific, isn't it?

A. It is longer, yes, sir.

Q. Then, you don't think that the mere length of a line puts it out of competition for business?

A. No, not in this instance, because they made good time on the shipments.

Q. You say you shipped over the Great Northern to Portland. How does that compare with the Union Pacific line out of St. Louis?

A. I think the time is about the same.

Q. And how is the distance? It is a longer line, isn't it?

A. It is a longer line, yes; I can't say how much longer.

Q. But they successfully compete for it?

A. Yes, sir, they do.

Q. How is the Northern Pacific by the Billings connection as compared with the Union Pacific? I mean as to distance.

A. I don't think there is much difference.

Q. About the same as the Union Pacific?

A. About the same I should think, yes, sir.

Q. Then, as to these four lines of varying length, the Union Pacific and Short Line would probably be shortest?

A. I should think so.

Q. And the Canadian Pacific would be much the longest?

3876 A. Much the longest, yes, sir.

Q. Competing on an equality of rates?

A. Yes, sir.

Q. And all getting business?

A. Yes, sir.

Q. Do you remember when the Union Pacific and Southern Pacific were separately represented here?

A. Yes, sir, I do.

Q. Was your coast business solicited by those separate agencies?

A. Yes, sir.

Q. Your traffic is exclusively beer, isn't it?

A. Yes, sir.

Q. Is the matter of time important to you?

A. It is.

Q. Since the agencies of the Southern Pacific and the Union Pacific have been consolidated here, what route (if either) to the coast, to California, is the preferred route of this joint agency, when they solicit business?

A. Well, I cannot say that there is any preferred route. They usually take it any way that they can get the business—the long haul, if possible.

Q. They want the long haul, if possible?

A. If possible.

Q. Do they express a preference, or do they not, as to whether the business shall go via Omaha or via El Paso? By Omaha I mean Omaha or Kansas City.

A. I understand; I can't say that they do.

Q. They simply ask for some of the business?

A. Yes, sir.

Q. Without working one route as against the other, is that right?

A. Yes, sir.

3877 Q. Do you ever get hops from the west?

A. We do.

Q. Where do they come from?

A. From California and the northwest.

Q. Do you get hops from Oregon—the Willamette Valley?

A. Yes, sir.

Q. Do you know how they move?

A. They usually move Union Pacific in connection with some line at the river; some of them have come in Missouri Pacific or Rock Island, either from Pueblo or Colorado Springs, but as a rule——

Q. From what?

A. From Colorado Springs or Pueblo by the Rock Island and Missouri Pacific.

Q. Where are those hops routed—by you or by the consignor?

A. I think by the consignor.

Q. Do you know what the initial line is out of there?

A. Well, the California hops, I presume——

Q. No, I am speaking of Oregon and the Willamette Valley.

A. Of Oregon?

Q. Yes.

A. The O. R. & N.

Q. That is out of Portland?

A. Yes.

Q. Do you have buyers out there in the Valley, buying hops?

A. No, sir.

Q. You purchase from the buyers, do you?

A. They are bought through a New York house; they are bought by sample.

Q. But shipments come direct to you?

A. From the coast, yes, sir.

Q. They don't go to New York and back again?

A. No, sir.

Q. Do you know anything about how the routing of those hops out of the Willamette Valley compares now with what it was ten years ago?

A. No, I can't say.

3878 Q. You don't know?

A. No.

Q. You say you buy them in New York?

A. Through a New York house, yes, sir.

Q. You have nothing to do with gathering up the hops?

A. No, sir; in fact they are bought here in St. Louis; a representative from the New York house comes here with his samples.

Q. Is that a large or a small traffic in St. Louis—the hop traffic from the northwest?

A. Well, that depends upon the market, as to the quality of the hops. This past season they were very few, that is, we bought all our hops in the east, for some reason, I don't know why, but I imagine it was on account of the quality of the hops, or other conditions. I cannot say just what they were.

Q. How is it in a normal season?

A. I should say that about one-half comes from the coast, and about one-half from New York State.

Q. Could you give any estimate of the number of carloads of hops that are consumed by the breweries in this town, in a year?

A. No, sir.
Q. It is a very large amount, isn't it?
A. Yes, sir.
Q. You think that some years half of them come from California and Oregon?
A. I should think about that much, yes, sir.
(No cross-examination.)

3879 R. MUEHLBERG,

being duly sworn as a witness on behalf of the Complainant, testified as follows:

Direct examination by Mr. SEVERANCE:

Q. What is your business, Mr. Muehlberg?
A. Traffic manager for the Anheuser-Busch Brewing Association.
Q. How long have you had that position?
A. Since about 1900.
Q. Previous to that, what was your business?
A. I was in the legal department of Anheuser-Busch, in the capacity of claim agent; also in the traffic.
Q. How long have you been familiar with the movement of their traffic?
A. For about twenty years or so.
Q. I suppose you would be willing to admit on the record that Anheuser-Busch is a very large brewing concern, wouldn't you?
A. Yes, sir.
Q. And to what parts of the world do you ship your product?
A. To all parts; to all parts of the United States, anyhow.
Q. Do you also ship to foreign countries?
A. Yes. Not so very extensively.
Q. Where?
A. We ship to the Philippines, Japan, China, South America, and so forth.
Q. How does your traffic to the Philippines, China, and Japan move—which route?
3880 A. Well, there isn't much moving now any more. It was during the occupation that we moved most of our beer there, but since the occupation by the United States soldiers there is hardly any movement to the Philippine Islands.
Q. When that traffic was moving, how long ago was that?
A. Well, you know when the occupation by the United States soldiers took place.
Q. When they first occupied the Philippines in 1898?
A. Yes, sir.
Q. How did that traffic move, as long as it lasted?
A. It moved via New York and the Suez Canal, and also via San Francisco.

Q. And in connection with what rail lines did it move by San Francisco?

A. At that time I didn't have charge of the traffic, but I speak from recollection. I think it moved via El Paso, if I am not mistaken.

Q. Do you recollect what steamship lines it went over from San Francisco, or did it go over different lines?

A. The same steamship line that is plying between San Francisco and the Orient now—that is, the Southern Pacific Steamship line, as I understand it.

Q. They have several lines; you don't know which one?

A. The Oriental & Occidental.

Q. Any of it over the Pacific Mail?

A. I couldn't say as to that.

Q. Was that Oriental business solicited by any agencies here?

A. I presume so.

Q. Did it come under your immediate knowledge?

A. No, not at that time.

3881 Q. How has your business moved to California points, Mr. Muehlberg?

A. That moves via the El Paso gateway as well as via the Ogden gateway.

Q. Has it all the time you have been familiar with the traffic?

A. Yes.

Q. Has it moved both ways?

A. Yes, sir.

Q. Has any of it ever moved by New Orleans?

A. Never.

Q. Only by El Paso and Ogden?

A. Yes, sir.

Q. And have you shipped to Portland?

A. Yes, sir, we have shipments to Portland.

Q. How does your traffic to Portland move?

A. We have two customers there. The shipments for the one move via the Union Pacific—that is, the Oregon Railroad & Navigation—and for the other party, via the Northern Pacific.

Q. Do they route the traffic out there?

A. Yes, sir.

Q. How is it with your California business? Is that routed out there or do you route it?

A. It is mostly routed out there; but those routings are of long years standing. The same routings have been in effect——

Q. That is, you have certain individuals who distribute your product for you?

A. No, we deal with wholesalers out there. What I mean by "wholesalers" is people who buy for their own account—not agencies.

Q. They buy from you and job?

A. Yes, sir.

Q. To what towns do you ship?

A. San Francisco, Los Angeles, Oakland.

Q. Does the route which your traffic takes—that is, the
3882 gateway through which it goes—differ as between those towns, or is it indiscriminate?

A. They are changing from time to time.

Q. Do you ship any by the Salt Lake route?

A. Yes, sir, for the southern coast points.

Q. To Los Angeles?

A. Yes, sir.

Q. How does the beer that goes by the Salt Lake route move from here to the junction with that road?

A. That moves either via the Missouri Pacific, D. & R. G. to Salt Lake, or by the Wabash-Union Pacific to Salt Lake.

Q. It goes both ways, does it?

A. It goes both ways, yes, sir.

Q. Do you buy hops coming from the Willamette Valley?

A. Yes, sir.

Q. In large quantities?

A. Pretty large quantities.

Q. How long have you been doing that?

A. Since I have been connected with the Anheuser-Busch and before.

Q. How does that hop traffic move?

A. I know how it reaches here, but I don't know, except by bills of lading, which we receive from destinations; it moves over various lines.

Q. Do you remember how it moved several years ago, before the Union Pacific and Southern Pacific were under a common control?

A. I can't say as to that; I haven't looked that up.

Q. That hop movement, is that shipped to you from Portland proper, or does it come from the point of origin of the hops, up in the valley?

A. No, the hops are consolidated from the various fields
3883 around in Oregon, and I presume are shipped to Portland and re-shipped from there to us.

(No cross-examination.)

3884 LOUIS REICKE,

being duly sworn as a witness on behalf of the complainant, testified as follows:

Direct examination by Mr. SEVERANCE:

Q. Mr. Reicke, where do you live?

A. St. Louis.

Q. What is your business?

A. Assistant secretary of the Bridge & Beach Manufacturing Company.

Q. What is their business?

A. Manufacturers of stoves and ranges.

Q. How long have you been with that company?

A. Twenty-six years.

Q. What other position have you filled with them, aside from assistant secretary?

A. In charge of the traffic department prior to 1901.

Q. Does your company ship to the Pacific coast?

A. Yes, sir.

Q. Have they for a long time?

A. Yes, sir.

Q. How old a concern is your company?

A. Established in 1837.

Q. It had been running a while, then, before you became connected with it?

A. A short while, yes, sir.

Q. Does your company manufacture a large output of stoves?

A. Yes, sir.

Q. It is one of the largest concerns in the country, isn't it?

A. Yes, sir.

Q. To what part of the Pacific coast is the bulk of your shipments—the Portland region or California?

3885 A. I suppose about half and half. Probably a little bit more to California than they do in the Portland territory. We have branch houses at Portland and also at San Francisco.

Q. Are those branch houses maintained by your company?

A. Yes, sir, we carry stock in them.

Q. And the product is distributed from there?

A. Yes, sir.

Q. How is it routed? Under present conditions how is that business routed to the coast?

A. Well, as near as I know, it is routed by the various lines, as we have always been doing; we aim to divide up the business as much as possible.

Q. What was your policy when you were traffic manager in 1901—to divide up the business?

A. It was about the same—to divide up the business, yes, sir.

Q. Do you recall that at that time the Union Pacific and Southern Pacific had separate soliciting agents here?

A. Yes, sir.

Q. And which way did the Union Pacific people solicit the traffic for California?

A. By Omaha or Kansas City.

Q. Which way did the Southern Pacific solicit the traffic?

A. Well, either El Paso or Omaha. They did solicit via New Orleans, but we never gave them any business via New Orleans.

Q. They solicited by New Orleans, but you did not give them any business there?

A. Yes, but we did not give them any business, but we did by El Paso and Ogden.

3886 Q. They ceased to solicit by New Orleans, did they, because you didn't give them any, or did they always keep that up?

A. No; they found they could not get any business that way.

Q. How did your Portland business move?

A. Over various lines; over the Union Pacific, the Northern Pacific and the Great Northern.

Q. Any of it by the Canadian Pacific?

A. We probably have had one or two cars that I can recall; it was very unsatisfactory.

Q. Is it a pretty continuous movement by the Great Northern, the Northern Pacific, and Union Pacific? I mean, do you continue to use those three lines?

A. Yes, sir; the Northern Pacific usually now.

Q. How is that?

A. We give the Northern Pacific the benefit.

Q. You give them the most of it?

A. Yes, sir.

Q. You say that the shipments are routed by your agents on the coast?

A. No, sir; the routing is controlled here.

Q. Oh, the routing is controlled here?

A. Yes, sir, except in case where there is a straight carload sale. If a straight carload moves direct to the customer, we recognize the customer's routing if it does not inconvenience the plant here.

Q. Your managers out at the other end do at times request you to ship by some particular route?

A. They do at times.

Q. And do you respect that request?

A. At times, yes, sir, providing it does not interfere with our work at this end.

3887 Q. Do you remember shipments moving to Portland over the Shasta route by request of your manager out there?

A. I remember a few shipments going that way, but I do not recall whether it was a request through the manager there or not, or how it happened; but I remember we did make a few shipments that way.

Q. You don't know whether he requested it or whether the railroad company requested it?

A. No, sir; or whether it was done here; I don't remember it now.

Q. Do you remember how that moved to Ogden?

A. No, I could not recall; very likely over the Union Pacific; of course that has been some time ago. Very likely it went over the Union Pacific, because most of our business was going over the Union Pacific for those points at that time.

Q. Did you also make shipments by the Denver & Rio Grande?

A. Yes, sir; Missouri Pacific, D. & R. G.

Q. Well, that would reach the Shasta route at Ogden just the same as the Union Pacific?

A. Yes, sir.

Q. Have you had to do with the traffic since 1901?

A. No, sir.
Q. You don't meet the solicitors now?
A. No, sir.

Cross-examination by Mr. LOOMIS:

Q. When your business was solicited by the Southern Pacific, when you were traffic manager of your company, was it solicited via both routes, via El Paso and Ogden both?

A. Yes, sir.

3888 Q. Was it generally known by the solicitors of the various railroads that you endeavored to apportion the freight as equally between them as possible?

A. I think so.

Q. And I suppose they came around with the idea of learning whether it was their turn for a shipment, as much as anything else?

A. Yes; to find out if we had any business moving, and tried to get it if they could.

Q. And if the Southern Pacific solicitors could not get the business via El Paso they were very well satisfied to get it via Ogden?

A. Yes, sir.

Q. Through whichever gateway it went, it went over the Southern Pacific to California?

A. Yes, sir. The idea was we would try to arrange our business here to get as many cars as possible at one depot for the same day—accumulate the business for the day's shipments, and suit our convenience about routing over the initial line.

Q. All of your business to California at that time went either through the Ogden or El Paso gateways?

A. No. Some of it went by the Santa Fe.

Q. Would it go to El Paso and Ogden over various lines?

A. We usually shipped over the Iron Mountain to Texarkana and T. & P. to El Paso; Wabash and Union Pacific to Ogden; and I think probably Missouri Pacific—D. & R. G. to Ogden.

Q. But whatever the lines out of St. Louis may have been, the traffic destined to California all went over the Southern Pacific via El Paso or Ogden?

3889 A. Yes, sir.

Q. That is correct, is it not?

A. Yes, sir.

Q. You spoke about a few shipments to Portland via the Shasta route: do you recall definitely about that, Mr. Reicke?

A. The only way I am reminded about that is because our manager at Portland objected about the time, and requested us not to route that way any more.

Q. Do you recall about when that was?

A. I don't know; it has been pretty nearly nine or ten years, but since I went out of that department. It was probably a few years previous to that.

Q. Did you continue shipping that way to Portland?

A. No, sir.

Q. You only made a very few shipments that way?

A. Probably two or three cars at the most.

Q. Is your recollection clear as to what route the shipments went over to Ogden?

A. These two or three cars you speak of?

Q. Yes, sir.

A. No, sir.

Q. You don't recall that?

A. I know over the Union Pacific because most of our business at that time was moving Union Pacific.

Q. But that is the only way you would be able to recollect it—because of the fact the business was going that way?

A. Yes, sir.

Q. You don't recall definitely about it?

A. No, sir.

3890 Re-direct examination by Mr. SEVERANCE:

Q. Then, as I understand this matter of solicitation, after what you said to counsel and to me, the Southern Pacific, in the first instance, solicited your business by New Orleans, but you would not give it to them?

A. Yes, sir.

Q. If you would not give them business that way, for some reason of your own, then they would try to get you to move it by Ogden?

A. I cannot say they solicited either way, El Paso or Ogden. If they could not get it one way they would take it another.

Q. That is what I understood, yes. After you refused to give it to them by New Orleans?

A. Yes, sir.

Re-cross examination by Mr. LOOMIS:

Q. I don't understand that each time they went to you they solicited by all three routes.

A. No; I didn't mean to say that.

Q. Do I understand that at one time, years ago, they solicited via New Orleans, but learned that you would not ship that way?

A. Yes, sir.

Q. Then they ceased soliciting business via New Orleans?

A. Yes, sir.

Q. Thereafter, they only solicited business by El Paso or Ogden?

A. Yes, sir.

Q. Is that correct?

A. Yes, sir; that is correct.

Mr. LOOMIS. That is the way I understood him.

Mr. SEVERANCE. That is what I understood.

3891 The further hearing herein was adjourned to the office of the United States Marshal in Salt Lake City, Utah, Tuesday, April 27, 1909, at 10.30 o'clock a. m.

O

Volume VI.

(EVIDENCE FOR COMPLAINANT.)

# TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1911.

No. ~~820~~. 446

THE UNITED STATES OF AMERICA, APPELLANT,

vs.

THE UNION PACIFIC RAILROAD COMPANY ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF UTAH.

FILED OCTOBER 9, 1911.

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(22896)

No. 993—In Equity.

IN THE

# Circuit Court of the United States

FOR THE DISTRICT OF UTAH.

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THE UNITED STATES OF AMERICA,
*Complainant,*

*v.*

THE UNION PACIFIC RAILROAD COMPANY; THE OREGON SHORT LINE RAILROAD COMPANY; THE OREGON RAILROAD & NAVIGATION COMPANY; THE SAN PEDRO, LOS ANGELES & SALT LAKE RAILROAD COMPANY; THE ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY; THE SOUTHERN PACIFIC COMPANY; NORTHERN PACIFIC RAILWAY COMPANY; GREAT NORTHERN RAILWAY COMPANY; FARMERS' LOAN & TRUST COMPANY; EDWARD H. HARRIMAN, JACOB H. SCHIFF, OTTO H. KAHN, JAMES STILLMAN, HENRY H. ROGERS, HENRY C. FRICK, and WILLIAM A. CLARK,
*Defendants.*

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## EVIDENCE AND PROCEEDINGS BEFORE THE SPECIAL EXAMINER.

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## Volume VI.—Complainant.

WITH LIST OF WITNESSES AND EXHIBITS.

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U. S. CIRCUIT COURT ROOM,
FEDERAL BLDG., SALT LAKE CITY,
*Tuesday, April 27, 1909, 10.30 a. m.*

The hearing was resumed before the Special Examiner, Hon. Sylvester G. Williams, at the above time and place.

Present: On behalf of the Complainant, Mr. C. A. Severance, Mr. Hiram E. Booth, United States District Attorney, Mr. William M. McCrae, Assistant United States District Attorney, and Mr. G. E. Husted:

On behalf of the Defendants, Mr. R. S. Lovett, Mr. W. R. Kelly, Mr. P. L. Williams, and Mr. Loomis.

## WILLIAM S. McCARTHY,

being duly sworn as a witness on behalf of the Complainant, testified as follows:

Direct examination by Mr. SEVERANCE:

Q. Where do you live, Mr. McCarthy?

A. Salt Lake City.

Q. What is your business?

A. Traffic manager for the Salt Lake Hardware Company.

Q. What kind of business does that company transact—wholesale or retail?

A. Both wholesale and retail, general hardware business; deal in mining machinery and supplies.

Q. Into what territory do you sell?

A. Utah, portions of Idaho, Wyoming, Nevada.

Q. From what points do you receive the most of the goods that you handle?

A. From producing points on the Atlantic seaboard and the interior—central states territory.

Q. Chiefly east of the Mississippi River?

A. Yes, sir.

Q. How long have you been traffic manager of the Hardware Company?

A. Six years.

Q. Previous to that what was your business?

3893 A. I was in the railroad business.

Q. With what company?

A. The Oregon Short Line Railroad, the Union Pacific, and various other lines.

Q. Will you state the length of time that you were in the railroad service and the positions you occupied, giving the dates as nearly as you can?

A. I entered the railroad service in 1881, with the Grand Trunk Railway, as a messenger; subsequent to that I was with the Michigan Central Railroad at Grand Trunk Junction, just outside of Detroit;

afterwards with the Wabash Railroad in Detroit; from there I went to the Union Pacific Railroad, in 1887, and came to Salt Lake with the Union Pacific in 1897.

Q. What was your position here in Salt Lake with the Union Pacific?

A. Contracting freight agent.

Q. What were your duties as contracting freight agent?

A. The solicitation and securing of business for the Union Pacific Railroad.

Q. To and from what parts of the country chiefly?

A. From all points in the east from which business moves to this territory.

Q. Did you have much to do with the solicitation of business moving east, or mostly of business moving west?

A. Why, yes, had all to do with business moving east, but our business principally covered west-bound movement for the reason that there is so much more of it.

Q. What is the class of freight that moves to the east from this locality?

A. Bullion, hides, wool, farm products.

Q. Cattle and sheep?

A. Cattle and sheep—things of that kind, yes, sir.

3894 Mr. LOVETT. You say that business moved to the east?

WITNESS. To the east, yes.

Q. Moving to the west from the Atlantic seaboard and central states territory, I suppose you had all classes of merchandise, had you not?

A. We had; yes, sir.

Q. How long did you remain with the Union Pacific as contracting freight agent?

A. From 1897 until the time of the consolidation of the Short Line and the Union Pacific, which occurred in 1901.

Q. From 1901 what company did you represent here?

A. The Oregon Short Line.

Q. In 1897 did the Short Line have an agency of its own here?

A. They had their general headquarters here, and they had a traveling freight agent who looked after business in the territory and solicited business in the city.

Q. And what commercial organization did the Union Pacific have here?

A. It had what they term a general agency; had a general agent in charge of their freight business, and a general agent in charge of passenger business, with the necessary force to handle it.

Q. Which branch of the traffic were you interested in—freight or passenger?

A. Freight.

Q. And who was the general agent of the Union Pacific in 1897, and following that time to 1901, representing the Union Pacific?

A. Mr. F. B. Choate.

Q. Is that the same Mr. Choate who now represents the Union Pacific and the Southern Pacific in Detroit, Michigan?

A. Yes, sir.

Q. And he was your superior officer?

A. Yes, sir.

3895 Q. Who, if any one, represented the Southern Pacific here at that time?

A. Mr. D. R. Gray.

Q. Where is Mr. Gray now?

A. He is general agent for what is known as the Harriman Lines.

Q. What lines do you include under that name?

A. The Union Pacific, Southern Pacific, Oregon Short Line, O. R. & N.

Q. Since what time has Mr. Gray been the agent of these combined lines?

A. I do not recall the date exactly, but I should say it was since early in 1903, or in 1902 possibly.

Q. Did Mr. Choate remain here until 1903?

A. No; he did not.

Q. Who was your superior officer when you were transferred nominally from the Union Pacific to the Oregon Short Line?

A. Mr. Coman was Mr. Choate's successor; he was my superior officer.

Q. And where is Mr. Coman now?

A. I understand he is first assistant general freight agent of the Oregon Railroad & Navigation Company, at Portland.

Q. He came from Portland here, didn't he?

A. Yes, sir.

Q. And went back again after Mr. Gray took charge?

A. Yes, sir.

Q. Mr. Gray was the first person, then, as I understand it, who represented the Southern Pacific, the Union Pacific, and the Short Line?

A. Yes, sir.

Q. Did he also represent the O. R. & N.?

A. I understand so.

Q. When you were at work for the Union Pacific, previous to the time that the control of the Southern Pacific was ac-

3896 quired by the Union Pacific, in 1901, over what routes did you work traffic, so far as you could, from the Atlantic seaboard territory to Salt Lake?

A. In all-rail movement that was a matter which was left to the choice of the consignee; in ocean and rail movement, the favorite line was the Kanawha Despatch.

Q. Where does the Kanawha Despatch start and where does it end, so far as the Union Pacific is concerned?

A. The business originates at New York and moves by steamer to Newport News; west, the route that we used was C. & O. and Big Four into Chicago, and there delivered to connections of the Union Pacific.

Q. The connection of the Union Pacific, and delivered to the Union Pacific at Omaha?

A. Yes, sir.

Q. Did any of that traffic move by way of St. Louis and Kansas City?

A. Very little—if any.

Q. At that time was the Southern Pacific engaged in soliciting shipments to Utah from Atlantic Coast points?

A. Yes, sir; very actively.

Q. By what route?

A. By their Morgan Line by way of Galveston.

Q. And before the Galveston line was established, through what port?

A. I could not say, not being familiar with the conditions prior to that time.

Q. Don't you remember of the traffic moving through New Orleans——

A. No, sir.

Q. And then to Fort Worth?

A. No, sir; I haven't any knowledge of that.

Q. You didn't know of that?

A. No.

Q. But they were soliciting by the Gulf Steamship Line, were they—the Morgan Line?

A. Yes, sir.

3897 Q. How did the traffic that the Southern Pacific was able to secure by the Morgan Line reach Salt Lake?

A. It moved north through Fort Worth, Colorado common points, up over the Colorado & Southern principally, I think, through Colorado common points, Rio Grande to Utah.

Q. Did the traffic that was secured that way, by the Morgan Line, the Gulf Route, move over the Union Pacific?

A. No, sir.

Q. What was the state of affairs as between the Union Pacific agency and the Southern Pacific agency in those days as to competition for this traffic?

A. Oh, there was most intense rivalry for it.

Paper marked Complainant's Exhibit 151 (McCarthy).

Q. I show you Complainant's Exhibit 151. What is that little paper?

A. It is what we termed a rate-card, showing rates from all points east to Utah by the all-rail lines, also by the ocean-and-rail lines.

Q. Was that rate-card gotten out by the Union Pacific?

A. Yes, sir.

Q. When? What is the date?

A. In effect October 1, 1900.

Q. What was done with those little pamphlets or rate-cards?

A. They were distributed among shippers for their information.

Q. And was that rate-card distributed among shippers?

A. Yes, sir.

Q. That was when you were contracting freight agent of the Union Pacific?

A. Yes, sir.

Mr. SEVERANCE. I offer Complainant's Exhibit 151 in evidence.

Complainant's Exhibit 151 is as follows:

3898 COMPLAINANT'S EXHIBIT 151. (McCarthy.)

Shield bearing the
following words:

UNION PACIFIC

The
Overland
Route
World's
Pictorial
Line

CLASS RATES

from

EASTERN POINTS

to

UTAH COMMON POINTS

---

In Effect Oct. 1st, 1900.

In Connection with

Chicago & Northwestern Ry.
Chicago, Milwaukee & St. Paul Ry.
Chicago, Burlington & Quincy R. R.
Chicago, Rock Island & Pacific Ry.
Chicago, St. Paul, Minneapolis & Omaha Ry.
Chicago Great Western Ry.
Chicago & Alton R. R.
Illinois Central R. R.
Missouri Pacific Ry.
Wabash R. R.
Missouri, Kansas & Texas Ry.
St. Joseph & Grand Island Ry.
Omaha, Kansas City & Eastern Ry.

The information contained in this memorandum of rates is solely for the information of shippers and is compiled from individual tariff issues of various lines.

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Tribune Job Printing Co., Salt Lake.

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3899

Shield bearing the following words:

UNION PACIFIC

UNION PACIFIC R. R. — The Overland Route World's Pictorial Line. — FAST FREIGHT LINE.

To..... Ogden, Salt Lake City, Spanish Fork, and intermediate points on Oregon Short Line.
Governed by western classification. Subject to change without notice.

In cents per 100 pounds.

| From..... | 1. | 2. | 3. | 4. | 5. | A. | B. | C. | D. | E. | Cotton piece goods as described in tariffs. |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Chicago, Ill., and common points..... | 310 | 265 | 215 | 175 | 145 | 140 | 120 | 107 | 89 | 78 | 250 |
| St. Paul or Minneapolis, Minn. | 290 | 250 | 205 | 170 | 138 | 132 | 113 | 102 | 85½ | 74 | 250 |
| St. Louis, Mo., and common points..... | 290 | 245 | 205 | 170 | 140 | 132½ | 112½ | 102 | 84 | 73 | 235 |
| Missouri River common points | 230 | 200 | 170 | 143 | 118 | 108 | 93 | 85 | 70½ | 62 | 200 |
| Denver, Pueblo, or Colo. Springs..... | 185 | 160 | 136 | 115 | 96 | 88 | 74 | 68 | 56 | 50 | 125 |

Through water line route either via Cumberland Gap Despatch, Norfolk & Western Despatch, or Kanawha Despatch, care of Union Pacific R. R. at Missouri River.

| | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| New York, Boston, Philadelphia, Baltimore, and common points..... | 338 | 285 | 237 | 195 | 161 | 154½ | 130½ | 120 | 102 | 91 | 260 |

3900

| To | Mississippi River points. by official classification. change without notice. | | | | | Governed Subject to |
|---|---|---|---|---|---|---|
| From | 1. | 2. | 3. | 4. | 5. | 6. |
| New York and Boston | 87 | 75 | 58 | 41 | 35 | 29 |
| Philadelphia, Pa | 81 | 69 | 56 | 39 | 33 | 27 |
| Baltimore, Md | 79 | 67 | 55 | 38 | 32 | 26 |
| Albany, Troy, Schenectady, Utica, Binghamton, Elmira, and Ithaca, N. Y | 72 | 62 | 48 | 34 | 29 | 24 |
| Johnstown, Pa | 65½ | 56½ | 43 | 31 | 26 | 21½ |
| Syracuse, Oswego, Auburn, Rochester, Lockport, and Geneva, N. Y | 61 | 53 | 41 | 29 | 25 | 20 |
| Buffalo and Dunkirk, N. Y.; Erie, Pittsburg, Allegheny, Oil City, and McKeesport, Pa.; Wheeling, W. Va.; Bridgeport and East Liverpool, Ohio | 55½ | 48½ | 37 | 26 | 22½ | 18½ |
| Salem and Youngstown, Ohio | 53½ | 46½ | 35 | 24 | 20½ | 16½ |
| Cleveland, Akron, Canton, and Zanesville, Ohio | 51½ | 44½ | 33 | 23 | 19½ | 15½ |
| Bay City, Mich | 51 | 44 | 34 | 24 | 20½ | 17 |
| Cincinnati and Hamilton, Ohio; New Albany, Ind.; Louisville and Newport, Ky | 40 | 34 | 25 | 17 | 15 | 12 |
| Toledo and Columbus, Ohio; Detroit, Ann Arbor, Battle Creek, and Grand Rapids, Mich | 45 | 39 | 30 | 21 | 18 | 14 |
| Flint, Mich | 45 | 39 | 30 | 21 | 18 | 15 |
| Dayton, Piqua, Springfield, and Middletown, Ohio | 42 | 36 | 27 | 18½ | 15½ | 13 |
| South Bend and Fort Wayne, Ind | 42 | 36 | 27 | 18½ | 15½ | 12½ |
| Muncie and Marion, Ind | 38½ | 33 | 24½ | 16½ | 14 | 11 |
| Indianapolis, Ind | 37 | 32 | 23½ | 16 | 13½ | 10½ |
| Evansville, Ind | 40 | 34 | 25 | 17 | 15 | 12 |

To obtain all rail rates from eastern points to Utah add official classification rates shown above to rates from the Mississippi River.

3901 Note Fast Freight Schedule from Missouri River and East on Car Load Lots. Less than Car Load Lots Twenty-four Hours Later.

Time—Westbound train 19 and connections.

| LEAVE CO. BLUFFS. | LEAVE CHEYENNE. | ARRIVE OGDEN. |
|---|---|---|
| | | 3.30 a. m. |
| | | Salt Lake. |
| 10.30 p. m. | 11.30 p. m. | 7.00 a. m. |
| Monday. | Tuesday. | Thursday. |
| Tuesday. | Wednesday. | Friday. |
| Wednesday. | Thursday. | Saturday. |
| Thursday. | Friday. | Sunday. |
| Friday. | Saturday. | Monday. |
| Saturday. | Sunday. | Tuesday. |
| Sunday. | Monday. | Wednesday. |

2361

| LEAVE KANSAS CY. | LEAVE DENVER. | ARRIVE OGDEN. |
|---|---|---|
| | 7.00 a. m. | 3.30 a. m. |
| | CHEYENNE. | SALT LAKE. |
| 8.00 p. m. | 7.00 p. m. | 7.00 a. m. |
| Sunday. | Tuesday. | Thursday. |
| Monday. | Wednesday. | Friday. |
| Tuesday. | Thursday. | Saturday. |
| Wednesday. | Friday. | Sunday. |
| Thursday. | Saturday. | Monday. |
| Friday. | Sunday. | Tuesday. |
| Saturday. | Monday. | Wednesday. |

Leaves Chicago and St. Louis via all lines about 7.00 p. m. Time to Missouri River 24 hours.

Consignees promptly notified by telephone of cars passing above points.

F. B. CHOATE,
Gen'l Agent.

W. S. McCARTHY,
Contracting Freight Agent,
Salt Lake City, Utah.
201 Main street.

Telephone 665.

3902 Q. On this card I see a reference reading as follows:

"Through Water Line
Route either via Cumberland Gap Despatch,
Norfolk & Western Despatch, or Kanawha Despatch, care of
Union Pacific R. R. at Missouri River;"

then follow the rates from New York, Boston, Philadelphia, Baltimore, and common points. Was that the route which you mentioned—the Kanawha Despatch route?

A. Yes, sir.

Q. In soliciting business for the Union Pacific at that time from the seaboard, did you endeavor at any time (I mean previous to the consolidation) to work business by the Gulf Route?

A. No, sir.

Q. That route, you say, was in strenuous rivalry with you?

A. Yes, sir.

Q. I notice on the back of this little rate-sheet or card the time of certain freight trains. It reads as follows:

"Note Fast Freight Schedule from Missouri River and East on Car Load Lots.—Less than Car Load Lots Twenty-four Hours Later.

Time—Westbound Train 19 and Connections."

Then follows a list of the times when the train left Council Bluffs and Cheyenne and arrived at Ogden and Salt Lake City. What was the

time? Can you figure it up there, for convenience in the record? What was the time of the train from Council Bluffs to Ogden?

A. As I remember it, it was 52 hours.

Q. Is it 52 or 54?

A. 54, that was the figure; 52 is my recollection of it.

Q. 54 hours is right, is it?

A. 54; yes.

Q. What is the time, if you know, of the corresponding train of the Union Pacific at the present time from Ogden?

A. The last information I had concerning it, I think it
3903 showed 100 hours and 45 minutes—the fastest freight train they have between Council Bluffs and Ogden.

Q. That is the extent to which the service of the Fast Freight has been improved, is it?

A. Yes.

Q. This also gives the time from Kansas City to Ogden. Can you tell what that is, readily, for convenience of the record?

A. It was approximately 84 hours.

Q. What is the time of the corresponding train from Kansas City now?

A. I haven't noticed that for some time, I haven't had occasion to; I have moved no cars that way.

Q. The Fast Freight from Kansas City is ordinarily 24 hours longer than from Omaha, isn't it?

A. We always so considered it, yes.

Q. A little over 24 hours longer?

A. Yes.

Q. How did the length of the Union Pacific compare then with what it is now from Omaha to Ogden?

A. It was approximately 30 miles longer.

Q. How were the grades then as compared with the present time?

A. All I can say concerning that is what I have heard and from newspaper reports—that it has been materially reduced.

Q. You don't know about that of your own knowledge?

A. No.

Q. Then you need not answer.

Paper marked Complainant's Exhibit 152 (McCarthy).

Q. I show you Complainant's Exhibit 152. What is that?

A. Rate card showing rates from the east via the all-rail and ocean-and-rail lines to Utah.

Q. In effect when?

A. July 1, 1908.

3904 Q. By whom is that issued?

A. I should say by the Harriman Lines, since the names of all the lines appear on the face of it.

Q. Just read the names that appear there as showing that.

A. The Union Pacific, Oregon Short Line Railroad Company, Oregon Railroad & Navigation Company, Southern Pacific Company.

Q. Is that a paper which is commonly distributed among shippers?
A. Yes, sir.

Mr. SEVERANCE. I offer Complainant's Exhibit 152 (McCarthy) in evidence.

Complainant's Exhibit 152 is as follows:

COMPLAINANT'S EXHIBIT 152. (McCarthy.)

Shield bearing the
following words:

UNION PACIFIC,

The
Overland
Route.

OREGON SHORT LINE RAILROAD COMPANY,
UNION PACIFIC RAILROAD COMPANY,
THE OREGON RAILROAD & NAVIGATION COMPANY,
SOUTHERN PACIFIC COMPANY.

CLASS RATES

to

UTAH COMMON POINTS.

In effect July 1st, 1908.

Subject to Change Without Notice.

In Connection with

ALL LINES AT MISSOURI RIVER,

Also with

MORGAN STEAMSHIP LINE, CARE UNION PACIFIC RAILROAD AT DENVER, OR ATLANTIC SEABOARD LINES, CARE OF UNION PACIFIC AT MISSOURI RIVER, ON BUSINESS FROM ATLANTIC SEABOARD.

The information contained in this memorandum of rates is solely for the information of shippers, and is compiled from individual tariff issues of various lines.

1—2—12 09——1M

3905 Shield bearing the following words:

UNION PACIFIC

UNEQUALLED FAST — The Overland Route — FREIGHT SERVICE

To.....{Ogden, Salt Lake City, Payson and Intermediate Points on Oregon Short Line and S. P., L. A. and S. L. R. R. Governed by western classification.

Class rates in cents per 100 lbs.

| From | 1. | 2. | 3. | 4. | 5. | A. | B. | C. | D. | E. |
|---|---|---|---|---|---|---|---|---|---|---|
| Chicago, Ill., and common points | 285 | 240 | 198 | 160 | 133 | 138 | 110 | 97 | 69 | 58 |
| Peoria, Ill. | 275 | 230 | 193 | 157½ | 130½ | 134½ | 106¼ | 94½ | 66½ | 55½ |
| St. Paul or Minneapolis, Minn. | 265 | 225 | 188 | 155 | 126 | 130 | 103 | 92 | 65½ | 54 |
| St. Louis, Mo., and common points | 265 | 220 | 188 | 155 | 128 | 130½ | 102½ | 92 | 64 | 53 |
| Missouri River common points | 205 | 175 | 153 | 128 | 106 | 106 | 83 | 75 | 50½ | 42 |
| Denver, Pueblo, or Colorado Springs | 154 | 131 | 115 | 96 | 79½ | 79½ | 62 | 56 | 38 | 31½ |
| San Franc., Portland, and com. points | 154 | 131 | 115 | 96 | 79½ | 79½ | 62 | 56 | 38 | 31½ |

Through water line.

Route via Morgan Line, care Union Pacific R. R., Denver, or via Atlantic Seaboard Lines, care U. P. R. R. at Missouri River.

| | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| New York, Boston, Philadelphia, Baltimore, and common points | 314 | 266 | 221 | 179 | 149 | 154½ | 120½ | 110 | 82 | 71 |

3906 To.....{Mississippi River points. Governed by official classification. Subject to change without notice.

| From | 1. | 2. | Rule 25. | 3. | Rule 26. | 4. | 5. | 6. |
|---|---|---|---|---|---|---|---|---|
| New York and Boston | 88 | 76 | 65 | 59 | 47 | 41 | 35 | 29 |
| Philadelphia, Pa. | 82 | 70 | 59½ | 57 | 46 | 39 | 33 | 27 |
| Baltimore, Md. | 80 | 68 | 58 | 56 | 45 | 38 | 32 | 26 |
| Albany Troy, Schenectady, and Utica, N. Y. | 73 | 63 | 53½ | 49 | 39 | 34 | 29 | 24 |
| Syracuse, Oswego, and Rochester, N. Y. | 62 | 53 | 45 | 41 | 33 | 29 | 25 | 20 |
| Buffalo and Dunkirk, N. Y., Erie, Pittsburg, Allegheny, Oil City, and McKeesport, Pa., Wheeling, W. Va., and Bridgeport, Ohio | 56½ | 49 | 42 | 37½ | 30 | 26½ | 22½ | 18½ |
| E. Liverpool, Ohio | 55½ | 48½ | 41½ | 37 | 30 | 26 | 22½ | 18½ |
| Salem, Youngstown, and Geneva, O. | 54½ | 47 | 40 | 35½ | 28½ | 24½ | 20½ | 16½ |
| Cleveland, Akron, Canton, and Zanesville, O. | 52½ | 45 | 38 | 33½ | 26½ | 23½ | 19½ | 15½ |
| Cincinnati and Hamilton, Ohio, Louisville and Newport, Ky. | 41 | 34½ | 29½ | 25½ | 20½ | 17½ | 15 | 12 |
| Toledo and Columbus, Ohio, Detroit, Battle Creek and Grand Rapids, Mich. | 46 | 39½ | 33½ | 30½ | 24½ | 21½ | 18 | 14 |
| Dayton, Springfield, and Middletown, Ohio | 43 | 36½ | 31 | 27½ | 22 | 19 | 15½ | 13 |
| South Bend, Ind. | 43 | 37 | 31 | 28 | 22 | 19½ | 16 | 13 |
| Muncie, Marion, and Elmwood, Ind. | 39½ | 33½ | 28½ | 25 | 20 | 17 | 14 | 11 |
| Indianapolis, Ind. | 38 | 32½ | 27½ | 24 | 19 | 16½ | 13½ | 10½ |
| Piqua, Ohio | 42 | 36 | 31 | 27 | 22 | 18½ | 15½ | 13 |

**To obtain all Rail Rates from Eastern Points to Utah, add official classification rates shown above to rates from St. Louis and Common Points.**

3907 Shield bearing the following words:

UNION PACIFIC

The
Overland
Route
World's Pictorial Line

OREGON SHORT LINE RAILROAD COMPANY
UNION PACIFIC RAILROAD COMPANY
THE OREGON RAILROAD AND NAVIGATION CO.
SOUTHERN PACIFIC COMPANY

---

Telegraphic reports of all cars passing junction points promptly communicated by telephone to consignees.

---

D. R. GRAY,
Dist. Frt. & Pass. Agt.

H. E. GODWIN,
Contr'ng Frt. Agt.

Telephones 665 201 Main Street
Salt Lake City, Utah

P. H. COOK,
Traveling Frt. Agt.
Ogden, Utah

Telephones 103

J. A. REEVES,
Gen'l Frt. Agt.

F. H. PLAISTED,
Asst. Gen'l Frt. Agt.

C. IRA TUTTLE,
Asst. Gen'l Frt. Agt.

3908 Q. I notice on this time-card after the heading "Unequaled Fast Freight Service," among other things—

"Through Water Line
Route via Morgan Line, care Union Pacific
R. R., Denver, or via Atlantic Seaboard
Lines, care U. P. R. R. at Missouri River."

That "Morgan Line, care Union Pacific R. R., Denver," how is that route made up?

A. Morgan Steamship Company from New York to Galveston, Southern Pacific Lines to Fort Worth, Fort Worth & Denver City, and Colorado & Southern.

Q. Then Union Pacific from Denver here?

A. Yes, sir.

Q. From your knowledge of movement of freight, what percentage of the business into Salt Lake from Atlantic seaboard territory would you say moved by water and rail lines combined, previous to the amalgamation of the Southern Pacific and Union Pacific?

A. I should say a conservative estimate would be 70 percent. Pardon me. Did I understand you to say "and the Union Pacific"? Did you say that?

Q. I asked what percentage of the business moved by the broken rail-and-water lines, either by the Union Pacific line or by the Gulf route; I mean as opposed to the all-rail route from the seaboard.

A. I answered with that understanding—70 percent.

Q. You would say that at least 70 percent moved by the water-and-rail lines as against 30 percent moving all-rail?

A. Yes, sir.

Mr. LOVETT. He means by that, that 70 percent leaves the east by water?

Mr. SEVERANCE. Yes, leaves New York and common points by water.

3909 Q. You understood my question?

A. Yes, sir.

Q. I call your attention, on these rate cards, to the words "Through Water Line," as they are denominated here, from the east.

A. Yes, sir.

Q. And I am asking you what percentage of the business moved by one or the other of these through water lines as against the movement all-rail, and you understood the question that way?

A. Yes, sir, I understood it.

Q. When the Southern Pacific and the Union Pacific were competing in this way for this business, could you give an estimate as to the division of the business, in percentages, as between the Union Pacific line with the Kanawha Despatch, or whatever line they worked with there, on the one hand, and the Southern Pacific Gulf Route and its connections, on the other?

A. I could not give you an intelligent estimate of that, there were too many water lines competing for the business.

Mr. SEVERANCE. It is agreed that according to the time-card of the Union Pacific of December, 1900, the Overland Limited left Council Bluffs at 7.45 a. m. and reached Ogden at 2.00 p. m. the following day and Salt Lake City at 3.30 p. m.; that at the present time the Overland Limited leaves Council Bluffs at 8.08 in the morning and arrives at Ogden at 4.50 the following day and Salt Lake City at 6.15. That in 1897, according to Volume 1 of the Pathfinder, of date February 20, 1897, the time of the Overland Limited from Council Bluffs

to Ogden was as follows: leaving Council Bluffs at 7.55 a. m., reaching Ogden at 1.40 p. m. the following day and Salt Lake
3910 City at 3.10 p. m. The Fast Mail train of the Union Pacific left Council Bluffs at 3.15 p. m., and arrived at Ogden the second morning at 2.00 a. m. and at Salt Lake at 3.30 a. m. At the present time the Fast Mail leaves Council Bluffs at 3.00 p. m. and reaches Ogden at 5.45 a. m. of the second morning, and Salt Lake City at 8.15 a. m.

Q. Mr. McCarthy, since you have been the traffic manager of the Salt Lake Hardware Company, has your business from the east been solicited by representatives of different railway lines?

A. Yes, sir.

Q. And is your business solicited by the agency conducted under the auspices of Mr. Gray?

A. Yes, sir.

Q. By what route, if any, as between the different Harriman lines as you have named them, does that agency solicit your business?

A. From the Atlantic seaboard, by the Morgan line; from interior territory, by either gateway—Kansas City or Omaha.

Q. But from interior points by the Missouri River?

A. Yes.

Q. And from the seaboard by the Morgan line?

A. Yes, sir.

Q. And when that business is obtained by this agency for the Morgan line, how does it move to Salt Lake?

A. Morgan Steamship Line to Galveston, Southern Pacific lines to Fort Worth, Fort Worth and Denver City, and Colorado & Southern and Union Pacific.

Q. Is your business any longer solicited by this agency over the Kanawha Despatch in connection with the Union Pacific?

3911 A. No, sir.

Q. Do you remember the time when the Oregon Short Line was in the hands of receivers?

A. No, sir; I was not here at that time.

Q. Do you remember when it came out of the hands of the receivers?

A. I remember about the time, but I was not in Utah at that time.

Q. Do you know about the time there was a separation between the Union Pacific and the Short Line, when they were working business to Portland by the Shasta Route?

A. Yes, sir.

Q. When was that, do you remember?

A. As I recall, it was the latter part of 1897 or during the summer months; I don't remember exactly.

Q. At that time the Short Line and the Union Pacific were separate, were they not?

A. Yes, sir.

Q. And how was business into Portland worked by the Short Line? In connection with what line out of Salt Lake?

A. They handled it over their own line out of Salt Lake.

Q. No, I mean from the east. With whom did they work—the Denver & Rio Grande or the Union Pacific.

A. At that time they worked both ways. There was a time when divisions were cancelled, and if they moved business east out of Salt Lake on the through rate it had to go Rio Grande.

Q. That is, the divisions were cancelled at one time between the Union Pacific and the Short Line?

A. Yes, sir.

Mr. LOVETT. Hasn't this witness said he was not here during the receivership?

Mr. SEVERANCE. No; this was in 1897, and he says he was
3912 here in 1897.

Q. And at that time the competing lines into Portland were the Union Pacific and the Shasta Route, on the one hand, and the Short Line and the Rio Grande, on the other?

A. Yes, sir.

Mr. LOVETT. I object to that as a leading question.

Mr. SEVERANCE. I think it is leading. I think that is a reasonable objection. But it is merely to summarize what he has already said.

Q. How were the efforts of these separate lines then, in getting that Portland business—active or otherwise?

A. As to that I could not say, my only knowledge of that being gained through the movement of this train which handled Portland business. If we wanted anything in a hurry, to expedite it we tried to get it on the Portland train.

Q. What time did that train make from Omaha to Ogden, do you remember?

A. About 32 hours, as I remember: 30 to 32 hours.

Q. Is it an advantage to the jobbers of Salt Lake to have fast freight trains to bring in their goods from the east?

A. It certainly is; yes, sir.

Q. And is it a disadvantage to have the slow trains?

A. Yes, sir.

Q. How long was that 32-hour train on, if you know?

A. My recollection is that it was about 60 days.

Q. Who is the contracting freight agent here under Mr. Gray at the present time?

A. Mr. H. E. Godwin.

Q. Mr. McCarthy, did you have anything to do with the
3913 movement of wool to the east?

A. Very little.

Q. Who represented the Union Pacific in your day in connection with the movement of wool to the east?

A. At the time Mr. Choate was general agent, the traveling freight agents handled that business, and the same since the consolidation—the traveling freight agents connected with the office.

Q. Were you familiar at that time with the efforts that were made to secure wool shipments to the east?

A. Yes, sir.

Q. In what part of this region does the wool originate that moves to the east, chiefly?

A. Why, at all wool-producing points along the Oregon Short Line Railroad, on the Union Pacific east of Ogden, on the San Pedro, and on the Rio Grande south and east of Salt Lake.

Q. All around Salt Lake?

A. Yes, sir.

Q. There is some territory, is there not, lying between the Southern Pacific route west of Ogden and the Oregon Short Line, in California, Utah, eastern Nevada, and southern Idaho, that produces a good deal of wool?

A. Yes, sir.

Q. At the time the Union Pacific and Southern Pacific were competing with each other for business was there any competition for the wool traffic out of that region?

A. Very little. The Southern Pacific wouldn't allow anybody in there very much.

Q. Did the Short Line work that territory?

A. They did; but, as I recall it, the efforts were made more toward drawing the sheep away to the Oregon Short Line Railroad.

3914 Q. More the sheep than the wool?

A. So that they might be sheared along their line.

Q. That is what I mean. That was a way of getting the shipment of the wool, wasn't it?

A. Yes, sir.

Q. The sheep were on a ranch or in between those two lines there?

A. Yes, sir.

Q. What I want to know is whether the Southern Pacific was competing for that business—the wool or the sheep—and the Short Line also?

A. Yes, sir.

Q. When the Southern Pacific secured that wool traffic, how did it move to the Atlantic seaboard?

A. I understood that it moved via the Gulf, via Galveston. It went west over the Southern Pacific and east over the Sunset line to Galveston.

Q. And when the Short Line secured it how did it move to the east?

A. Moved directly east by the Union Pacific.

Q. Do you know where Corinne, Utah, is located?

A. Yes, sir.

Q. Where is it?

A. A little distance west of Ogden, 20 or 25 miles—something like that.

Q. On the Southern Pacific?

A. Yes, sir.

Q. By "west" of Ogden you mean general west; it is really north of Ogden, isn't it?

A. Yes.

Q. But it is west in railroad parlance?
A. Yes.
Q. Do you know whether wool moved by the Southern Pacific as far east as that?
A. I couldn't say as to that.
Q. You don't know about that?
A. I don't know positively.

3915 Cross-examination by Mr. LOVETT:

Q. Was I correct in understanding you to say that you did not know very much about the movement of wool?
A. I did not have very much to do with it, directly.
Q. You said you understood that the wool secured by the Southern Pacific from the territory northwest of Utah moved to the Atlantic by the Sunset Route. Have you information on that subject, or is that a matter of opinion and belief?
A. Well, I never saw any billing, I never billed any out myself, but on the information that came to me as an attaché of the office.
Q. What office—the Short Line?
A. The Union Pacific-Short Line.
Q. And when was that?
A. Well, from 1897, '8, and '9 down during the time I was connected with them.
Q. You don't know whether that moved eastwardly over the Denver & Rio Grande or the Union Pacific?
A. No; I don't know of any moving that way.
Q. Do you know that any didn't move that way?
Mr. SEVERANCE. What was the question? I couldn't hear.
Mr. LOVETT. I was asking about the wool that originated in this northwestern portion of Utah and Nevada, which he said moved by way of the Sunset. I asked him if he knew whether any of it moved east by the Union Pacific or Denver & Rio Grande.
A. No, sir; I didn't know that.
Q. You don't know whether it moved that way or not?
A. No, sir.

3916 Mr. SEVERANCE. I don't understand that answer. If I understand your question correctly, that is not in accordance with what he stated a minute ago.
Mr. LOVETT. What was that?
Mr. SEVERANCE. This last answer. I was talking to Mr. Husted when you asked the question. I am not sure that I understood.
Mr. LOVETT. The question was if he knew whether or not any of it moved east by the Denver & Rio Grande and the Union Pacific, and he said he didn't know.
Mr. SEVERANCE. I think he testified a minute ago that he did, when the Short Line got it to go by the Union Pacific.
Mr. LOVETT. I was asking him about the wool that the Southern Pacific got.

Mr. SEVERANCE. Oh, that the Southern Pacific got. I see.

Q. With reference to the Portland business which you testified about on your direct examination. How did that move and what business was it?

A. I understood business moving from the east to Portland. It moved by the Union Pacific from Omaha to Ogden, thence Central Pacific via the Shasta Route into Portland.

Q. When was that?

A. That was in the latter part or probably the middle of 1897. I think it was nearer the latter part of it.

Q. How long did that condition continue?

A. As I recall it, it was about 60 days.

Q. That was by the Union Pacific and Southern Pacific?

A. Yes, sir.

Q. By way of Ogden and Sacramento to Portland?

3917 A. Yes, sir.

Q. And they were competing with whom?

A. They were competing with the Rio Grande and the Oregon Short Line, and the northern lines into Portland also.

Q. That continued only for about 60 days?

A. That is as I remember it.

Q. And that, you say, was in the middle of 1897?

A. I think so; yes, sir.

Q. And it was during that time that they ran a freight train in 32 hours from Omaha to Ogden?

A. Yes, sir.

Q. How long did that train operate?

A. During the same period—about 60 days.

Q. What happened then, do you know?

A. I understood that the divisions between the Oregon Short Line and the Union Pacific were reestablished.

Q. Had they been cancelled?

A. That was my understanding of it; yes, sir.

Q. Was that during the receivership or after the receivership?—A. After the receivership, I think. It was after the receivership of the Oregon Short Line. It must have been during the receivership of the Union Pacific.

Q. Then, the divisions, as you understand, between the Oregon Short Line and the Union Pacific were reestablished, and shipments by way of Union Pacific and Sacramento to Portland were then discontinued, were they?

A. I don't know whether they were discontinued altogether, but I know that train was taken off and the business was handled as formerly, generally. The general run of the business was handled by the Union Pacific and the Oregon Short Line.

3918 Q. And that was the way it formerly moved, was it?

A. Yes, sir.

Q. And that continued and has continued all along except during this period of about 60 days?

A. So far as I know.

Q. Do you know what brought that about, Mr. McCarthy, of your own knowledge? I am not asking as to any rumor, etc.

A. I could not answer the question in any other way, no, sir, having nothing whatever to do with the making of divisions or the interchange of business.

Q. For whom were you working then—the Oregon Short Line?

A. The Union Pacific.

Q. The Union Pacific?

A. Yes.

Q. Did you have anything to do with that business—the Portland business?

A. No, sir.

Q. Was that the only Portland business about which you testified in your direct examination.

A. I think it was.

Q. With reference to the business that moved from the Atlantic seaboard by way of what Mr. Severance designated as part rail and part water lines: please describe those lines, the various lines over which that traffic moved from the seaboard to Salt Lake City.

A. Which lines do you wish a description of?

Q. I want a description of all of the lines, part rail and part water, which engaged in that business during the time you testified to the movement of traffic that way.

A. The Kanawha Despatch business moved via steamer to Newport News.

Q. Thence by rail where?

3919 A. To Chicago. We solicited most of the business in connection with friendly connections at Chicago, thence to Council Bluffs, and Union Pacific from there.

Q. Did any of it go by way of Kansas City?

A. Very little, if any.

Q. Were other lines east of the Missouri River soliciting that business in connection with the Kanawha Despatch?

A. Yes, sir.

Q. What lines?

A. The connections of the Union Pacific—the Northwestern, the St. Paul, the Burlington I believe also used the Kanawha Despatch as a water line.

Q. They all sought to get that business carried by the Kanawha Despatch to Newport News?

A. Yes, sir.

Q. For Salt Lake City?

A. Yes.

Q. Did the Denver & Rio Grande try to get any of it?

A. Yes, sir.

Q. Did it get any?

A. Yes, sir.

Q. Didn't its connections, the Burlington, the Rock Island, and the Missouri Pacific, also work actively for that business in connection with the Kanawha Despatch?

A. What their choice of lines might have been I don't know. I know they did move some business in connection with the Kanawha Despatch. They may have used other water lines.

Q. The Union Pacific was not the only one of these western lines that had connection with the Kanawha Despatch or for handling business that way, was it?

A. No, sir.

Q. All of the rail lines lying between the Missouri River and Newport News worked for that business and took it when they could get it, didn't they?

A. I couldn't say as to that.

3920 Q. Didn't they so far as you know?

A. Most of them did, yes.

Q. Didn't the Denver & Rio Grande work as actively for it as the Union Pacific?

A. I presume they did. Every railroad man was out for all he could get.

Q. It still works for it, doesn't it?

A. Some of their connections do.

Q. Doesn't the Denver & Rio Grande itself work for it?

A. Not to my knowledge, actively.

Q. They never solicited business that way?

A. I couldn't say as to other business. As to my own I can say they don't.

Q. Does any of your business move that way now?

A. Very little.

Q. How does your business move now?

A. It moves Rio Grande.

Q. From where? I am speaking of business from the seaboard.

A. It moves Mallory Line from the seaboard in connection with the International & Great Northern, Colorado & Southern, Rio Grande lines.

Q. Most of your business moves that way now?

A. Yes, sir.

Q. Very little of it moves by the way of Newport News and the Kanawha Despatch?

A. Very little; I might say none, it is so small.

Q. What other part water and part rail lines between Salt Lake City and the Atlantic seaboard were operating during the time you testified about, when you were soliciting?

A. Norfolk & Western Despatch, the Cumberland Gap

3921 Despatch, the Morgan Line, the Mallory Line.

Q. All of those lines were working that business from New York and other Atlantic ports?

A. More or less actively; yes, sir.

Q. Haven't they always done so?

A. Yes.

Q. There has been no change in that situation, so far as you know, from the time that you solicited up to the present time, has there?

A. Yes, sir; there have been two other water lines established.

Q. What are they?

A. What are known as the Central Savannah Line and the Seaboard Air Line.

Q. None of the other lines has retired from that business, but two others have come in; is that correct?

A. Yes.

Q. They all solicit business still, do they not?

A. Yes, sir.

Q. Now, you don't mean to be understood as testifying, do you, Mr. McCarthy, that during the time when you testified that this traffic was moving by the way of Newport News and when you were using this card, introduced here as Exhibit 151, that the Union Pacific got none of that business by way of the Morgan Line?

A. I never knew of a car moving via the Morgan Line in connection with the Union Pacific, during my experience.

Q. Never knew of it?

A. No, sir.

Q. Do you know why it didn't try to move it that way?

A. I think the Union Pacific naturally would want its long haul from the Missouri River, in preference to taking the short haul from Denver.

3922 Q. That you would understand to be the reason why the Union Pacific would not work with the Morgan Line?

A. I should think so.

Q. Don't lines sometimes take a shorter haul when they can't get the long one?

A. They have done it since the consolidation.

Q. Had they never done so before?

A. Not to my knowledge.

Q. When was it that traffic was moving, the Southern Pacific competing so actively with the Union Pacific, the Southern Pacific using the Morgan Line, as I understand you to say, by way of Galveston? When was that?

A. It was during all my experience in Utah up to the time of the consolidation of the lines—the Union Pacific and Southern Pacific and the Short Line.

Q. 1901?

A. Yes, sir.

Q. And you say the Southern Pacific was competing actively for that business at that time by way of Galveston?

A. Yes, sir.

Q. Don't you know that the Southern Pacific did not have any line to Galveston until after 1901?

A. No. It did.

Q. A steamer line to Galveston prior to 1901?

A. I know they handled business that way.

Q. You know they handled business that way?

A. Yes, sir.

Q. But don't you know that the Morgan Line didn't operate to Galveston until after 1901?

A. No, sir, I don't.

3923 Q. And you don't know that the Southern Pacific never operated a steamer to Galveston until after 1901?

A. No, sir.

Q. But the business that you speak of, the competition between the Southern Pacific and the Union Pacific, was the business that came by way of Galveston?

A. I don't know that I made that statement exactly via Galveston. In a general way we speak of these ports and gateways; probably I should have used the term Gulf ports.

Q. What do you mean by that?

A. Galveston and New Orleans are Gulf ports as distinguished from the Atlantic ports.

Q. The Morgan Line, you know, has been operating for a great many years to New Orleans, between New York and New Orleans, don't you?

A. I had no knowledge of that prior to my coming to Utah in 1897.

Q. You know it has been operating since 1897 by way of New Orleans, don't you?

A. I know they handled business in here, but just through which port they handled it at that time I could not say; I don't know. I wasn't interested in their business—I was trying to get it away from them.

Q. Well, aren't you interested, as a soliciting man, in the railroads you are trying to take business away from?

A. Only in so far as I could secure it from them.

Q. So, you really didn't know which way that business was being handled by the Southern Pacific?

A. I simply knew it was moving from the Gulf ports. As to when the port of Galveston was opened I could not say; that was something which was of no interest to me.

Q. Don't you know that at that time a good deal of business was handled by the Morgan Line for this territory, moving to

3924 New Orleans and thence over the Illinois Central?

A. No; I don't know that.

Q. You never knew any to move that way, or over the Texas & Pacific from New Orleans?

A. No.

Q. Over the Gould lines—you didn't know that?

A. No.

Q. How does the business from the Atlantic seaboard to this territory move, that comes by the Morgan Line now?

A. It moves via Galveston, Southern Pacific lines to Fort Worth, Fort Worth & Denver City and Colorado & Southern. That which I have moved has moved that way, and in connection with the Union Pacific principally.

Q. It has been moving that way right along, hasn't it, since 1901?

A. I think so.

Q. Does any of it move from New Orleans?

A. Not to my knowledge.

Q. And then that which the Union Pacific handled from the Atlantic seaboard by way of Newport News was carried to the Union Pacific at the Missouri River by its rail connections east?

A. Yes, sir.

Q. And it got the haul on it from the Missouri River to Salt Lake?

A. Yes, sir.

Q. And that which it gets now from the same territory comes to it by way of Denver and it gets the haul from Denver to Salt Lake?

A. Moving via Gulf ports; yes, sir.

Q. And it also handles a good deal of business from the east which comes to it all rail from the Missouri River still, doesn't it?

A. I think so; yes, sir.

3925 Q. Doesn't business move from the east through this territory by way of Savannah?

A. I understand it does; yes, sir.

Q. You haven't moved any that way?

A. No, sir; none worth mentioning.

Q. The business from the Atlantic seaboard, then, that moves partly by rail and partly by water is still competed for by about how many water lines out of New York?

A. Oh, I think the active competition is about five.

Q. And they are what lines?

A. The Morgan, the Mallory, the Kanawha Despatch, the Central Savannah, and the Seaboard Air Line.

Q. Are there any others?

A. There are the Cumberland Despatch, the Norfolk & Western Despatch, and the Asheville Line—that was occasionally heard from, soliciting a little business, but not actively soliciting.

Q. The Union Pacific has rates in by all of those lines, hasn't it?

A. I couldn't say as to that.

Q. Hasn't it as far as you know?

A. I would think they would have.

Q. Haven't you known business to move over it by all of those lines?

A. No. There are some of them that I couldn't testify to at all.

Q. At the time you were soliciting you weren't tied down to the Kanawha Despatch line, were you? You solicited by any of those lines?

A. The Kanawha Despatch was the preferred connection.

Q. Why?

A. I don't know that I was ever given any reason for that.

Q. But you had rates in by the other lines?

3926 A. That is my understanding.

Q. Didn't you at the same time have rates in by the Mallory Line to Galveston—the Gould lines?

A. Of my own knowledge I couldn't say as to that. My impression is that we had no rates with the Mallory Line.

Q. Do you know of any reason why you should not have had, in connection with the Gould lines?

A. I don't know the reason for it; no, sir.

Q. It would have been a very natural line, wouldn't it, to Galveston, and then up the Gould lines to a connection with the Union Pacific?

A. Yes, sir.

Q. And do you know that the Union Pacific at that time had rates in that way in connection with the Morgan Line by way of New Orleans?

A. No; I don't know as to that.

Q. You don't know whether they had or not?

A. No.

Q. There was always a differential rate by way of the Gulf, wasn't there, from the east?

A. Yes, sir.

Q. That is so still?

A. Yes, sir.

Q. That is to say, the rates via the water and rail lines to Newport News and the lower Atlantic ports and Gulf ports are lower than the all-rail lines to this territory?

A. They are.

Q. About what was the difference?

A. 39 cents on first-class and grading down from that.

Q. The difference has always continued about the same?

A. Yes, sir.

Q. You testified, I believe, that by the joint agency of the Union Pacific and the Southern Pacific and the Oregon Short
3927 Line your business from the Atlantic seaboard is now solicited by the Morgan Line but not by the Kanawha Despatch.

A. Yes, sir.

Q. Is that correct?

A. That is correct.

Q. Is it solicited any other way?

A. It has been via the Central Savannah lines.

Q. It is solicited by the all-rail line too, isn't it?

A. Yes, sir.

Q. Isn't it a fact that they try to get your business any way that you will give it to them, and always have, preferring the long haul if they can get it?

A. Certainly; the long haul is always preferred and they work for it.

Q. That is what you always did as a solicitor, wasn't it?

A. Yes, sir.

Q. Well, isn't that still the policy—that they try to get your business any way they can, but preferring the long haul?

A. I judge so; yes, sir.

Q. I am not asking you to "judge so," but isn't that a fact, Mr. McCarthy?

A. Speaking as to the through line, that is a fact.

Q. What do you mean by the through line?

A. I mean this: that a representative of the Harriman lines here soliciting business from New York City will move it via the Morgan Line if he can. If he were a Union Pacific man soliciting for the long haul, he would want it through the Missouri River gateway.

Q. Doesn't he want it through the Missouri River gateways
3928 anyway.

A. They don't solicit it very actively.

Q. If he could get it all-rail, wouldn't he prefer to have it through the Missouri River gateway?

A. I presume he would.

Q. It is only the business that you are going to send by way of the Morgan Line anyway that he is willing to take the short haul on?

A. Yes.

Q. He would prefer to have it all-rail if you would send it to the Missouri River gateways?

A. Indeed, he would.

Q. In soliciting that way, so far as the solicitor is concerned, it is always a question of getting the most revenue out of it for his line, isn't it?

A. Yes, sir.

Q. You, as a shipper, are not interested in the division of the through rate between the different carriers that participate in the haul, are you?

A. No, sir.

Q. You have never known them to show any indisposition to take it by the Kanawha Despatch Line, have you?

A. No, sir.

Q. From such knowledge as you have of the situation, don't you think he would be very glad to get it that way?

A. Rather than not get it at all: yes, sir.

Q. You testified, I believe, that in your opinion 70 per cent of the traffic from the seaboard to Salt Lake moved by the part rail and part water line. Did I understand you correctly there?

A. Yes, sir.

Q. That is traffic from the Atlantic seaboard?

A. From the Atlantic seaboard territory: yes, sir.

Q. You mean by that, the territory east of Pittsburg and
3929 Buffalo?

A. It is bounded practically by a line drawn north and south through Buffalo and east of Pittsburg.

Q. And it is 70 per cent of that traffic, the traffic lying east of that line, coming to Salt Lake, that in your opinion moved by the part rail and part water line?

A. Yes, sir.

Q. I understood you to testify that the fastest freight train operated over the Union Pacific lines at this time, according to your information, consumes 100 hours and 45 minutes between Ogden and Omaha?

A. Yes, sir.

Q. How did you get that information, Mr. McCarthy?

A. I saw it in their time-card some time ago.

Q. That was their fastest freight train?

A. That was the fastest one I could find.

Q. How long has that condition existed, do you know?

A. Well, I haven't done any business with the Union Pacific for some little time, and I am hardly in a position to answer that question, but I should say that it was six weeks ago I saw that in their card, and I know the service has been slow for a long time.

Q. How is it by other lines? Take the Rio Grande and its connections: does that make better time from the Missouri River than the Union Pacific?

A. Well, I can't say that it does: no.

Q. What is its time, do you know?

A. Oh, they make six or seven days from the Missouri River.

Q. Six or seven days?

A. Yes, sir; sometimes less time than that, but that is a fair average.

Now, is that by all of its connections—the Burlington, 3930 the Missouri Pacific, and the Rock Island?

A. I couldn't say. I don't use them all.

Q. Which do you use?

A. I have been using the Missouri Pacific.

Q. I believe you testified that you had for some time been using the Denver & Rio Grande and the Gould line and the Mallory Line for your seaboard shipments.

A. Yes, sir.

Q. But your business from the Middle West, that is, the Chicago territory and points in Illinois, Ohio, and Indiana, which way does that traffic move?

A. Wabash and Missouri Pacific.

Q. Wabash and Missouri Pacific and Denver & Rio Grande?

A. Yes, sir.

Q. And what time does that make?

A. Carloads from Chicago run from eight to ten days: it varies.

Q. About the same time as on the Union Pacific?

A. The last I knew of it.

Q. Then, has the service of all the railroads retrograded, according to your understanding, in recent years?

A. I couldn't say: as to all of those I have used.

Q. In your opinion, then, the service of all the railroads that you have used, so far as time is concerned, is not as good as it was in 1897? Was that the time the comparison was made?

A. Yes, sir. I think it is not as good.

Q. You think it is not as good. Do you know why?

A. No: I couldn't say why exactly. I have my opinion. On the Union Pacific I should say that the time was lengthened out in an

3931 effort to increase the net revenue, increase their train haul.

The time of the Gould lines, I think, is due to the deterioration of their property and inability to make better time.

Q. That is your opinion as to the conditions which exist?

A. That is my opinion; yes, sir.

Q. How long since you shipped over the Union Pacific from the east, Mr. McCarthy?

A. It is a year or more since I moved any volume of business that way.

Q. You don't know, then, from experience what the service is at this time?

A. Only from the movement of an occasional car that way.

Q. You do have an occasional car move that way?

A. Yes, sir.

Q. From what territory, usually?

A. Central States territory.

Q. Do you remember the number of the train that occupied 100 hours and 45 minutes from the Missouri River to Ogden?

A. I think it was No. 53.

Q. It was a regular scheduled train, was it?

A. Yes, sir.

Q. You don't know whether that was a train to do local work or was a through freight?

A. It was a through freight train—so marked on the time-table.

Redirect examination by Mr. SEVERANCE:

Q. Mr. McCarthy, what is your experience with the Union Pacific as to their making even this long schedule? Do they get their
3932 freight in on time or not, since they lengthened their time?

A. Well, I don't think they have been, quite.

Mr. LOVETT. I object to that question because the witness does not do business with them any more, and he doesn't know.

Mr. SEVERANCE. He says he gets an occasional car that way when he is compelled to patronize a poor road.

WITNESS. Merchandise, package freight, moving less than carload, varies from seven to twelve days in delivery from the time it passes Council Bluffs until it is delivered in Salt Lake City.

Q. In the old days, at the time this faster freight schedule was in force, did they make the time?

A. Very closely.

Q. So it is your experience that they have not only lengthened their time, nearly doubled it, but they do not even make the slower time?

A. That is it.

Q. Is it any part of your duty as traffic manager of your company to keep informed as to the movement of freight trains?

A. Yes, sir.

Q. And do you do that?

A. Yes, sir.

Q. And how do you do it?

A. Keep a record of every car; as the invoice, with the bill-of-lading, comes to us, it is recorded and the movement of the car watched, if there is any reason for watching it. If there is any hurry for it, its movement passing junction points, as the information is given us by the railroads, is entered in this book.

Q. And is it by reason of your knowledge obtained in this way that you give this testimony?

A. Yes, sir.

3933 Q. Judge Lovett asked you if it was not a fact that this joint agency would be glad to take business by the Kanawha Despatch if they could not get it the other way, and you said you assumed they would. Did you mean by that answer to modify your testimony given on direct examination to the effect that that business from the Atlantic seaboard is solicited exclusively by the Gulf route—the Morgan Line?

A. Almost exclusively.

Mr. LOVETT. He didn't say that, Mr. Severance.

Mr. SEVERANCE. I understood that he did.

Mr. LOVETT. Well, you can ask him.

Mr. SEVERANCE. I will ask the question. That is what I understood him to say.

Q. What did you intend to testify, Mr. McCarthy, as to the solicitation of business from the Atlantic seaboard territory by Mr. Gray's agency?

A. The Morgan Line is the preferred route.

Q. That is the way they ask for the business?

A. Yes, sir.

Q. Is the differential by the Gulf and the Newport News route the same?

A. Yes, sir.

Q. Have those differentials always been the same?

A. So far as my knowledge goes they have been, yes, sir.

Q. All the broken water and rail lines have maintained the same rates from the seaboard?

A. The ocean and rail.

Q. I mean by the broken water and rail lines, the ocean and rail lines.

A. The ocean and rail lines, yes, sir.

3934 Q. Is there a movement of cattle and sheep out of this territory, up here between the Short Line and the Southern Pacific, as well as of wool?

A. That is something that I personally have very little knowledge of.

Q. You have nothing to do with that. I notice in the rates shown on Complainant's Exhibit 152, that the rate into Salt Lake from New York common points has been reduced by this water line somewhat from what it was at the time Complainant's Exhibit 151 was gotten out, in 1900. When did that reduction take place?

A. On the 24th of November, I think it was, 1906.

Q. Do you know the reason for that change?

A. I don't know the reason for it. They simply applied the schedule of rates that then were carried to Montana through Utah—they simply applied it to Utah common points.

Q. Had the new rates that went into effect in 1906 been in effect previous to that time to Montana points?

A. Practically so, yes, sir.

Q. And previous to that time had traffic moved through Salt Lake City to those Montana points or through Ogden?

A. Yes, sir, through Salt Lake City.

Q. Through Salt Lake City and through Granger?

A. Yes, sir. That is, you ask me to testify that it had moved. I would like to modify that by saying it could move; the tariffs were in effect so that it might move.

Q. That is what I mean. And the change that was made was applying those rates to Salt Lake?

A. Yes, sir.

Q. Are there other lines of road reaching these Montana points aside from the Union Pacific system?

A. Yes, sir.

Q. What lines?

A. The Great Northern and Northern Pacific.

3935 Q. And did that application of Montana rates operate both as to the water lines and the all-rail lines?

A. To my knowledge there were no water rates applying to Montana.

Q. No water rates applying to Montana. I see that the rates by the water lines are also reduced. Do you know when that took place?

A. Those rates are made on a regularly established basis.

Q. A regular differential?

A. A regular differential, yes, sir.

Q. And when you testified before I think I made a mistake in putting my question. You intended to testify that the all-rail line rates to Montana applied to Salt Lake, did you?

A. Yes, sir.

Q. I think perhaps my question was improperly put. The water rates follow the rail rates?

A. Yes, sir.

Mr. SEVERANCE. I have here, Judge Lovett (there is no use putting in the whole tariff), a tariff, Supplement No. 1 to Joint Freight Tariff No. 426, naming commodity rates from points in Arizona, California, Nevada, New Mexico, and Utah, to points in the east, as shown. (This is Atlantic seaboard territory.) Without putting it into the record, I would like to have you admit that this tariff, which was issued February 5, effective March 17, 1909, issued by the Southern Pacific Company, puts in a rate on wool in grease from Corrinne, Utah, to New York and Boston common points, of 207½ cents per

hundred by the Southern Pacific to California, and thence Sunset and Gulf Steamship lines.

3936 Mr. LOVETT. You didn't propose to put it all in?

Mr. SEVERANCE. No. I suggest that you agree with me, and it will save putting it all in.

Mr. LOVETT. You put in what you want, and we will come to an understanding. I will have it checked up and if it is not correct I will correct it.

Mr. SEVERANCE. All right. I will put it in the form of a stipulation, subject to correction, if you find I am not correct.

It is stipulated that by Southern Pacific Company tariff, Supplement No. 1 to Joint Freight Tariff No. 426, the Southern Pacific, by tariff issued February 5, 1909, effective March 17, 1909, provided for a commodity rate on wool in grease, carloads, minimum carload weight 20,000 pounds, from Corinne, Utah; Marmol, Nevada; and points shown in Group 3, pages 6 and 7, to New York, N. Y.; Boston, Mass.; and to points shown on pages 8 and 12, inclusive, as taking Group 4 rates, the rate being 207½ cents per 100 pounds, and the routing via Route 1, page 17 of this tariff. Route 1, page 17, is as follows: "Via the Southern Pacific Company, via Rio Grande, New Mexico, and Galveston, Harrisburg & San Antonio Ry. Co., Texas & New Orleans R. R. Co., Louisiana Western R. R. Co., Morgan's Louisiana & Texas R. R. & S. S. Co., via New Orleans, La., Southern Pacific Co.'s Atlantic Steamship lines (Morgan Line), and New York Pier, or Galveston, Harrisburg & San Antonio Ry. Co., via Galveston, Tex., Southern Pacific Co.'s Atlantic Steamship Lines (Morgan Line), and New York Pier." The points shown in

3937 Group 3, pages 6 and 7, in which these rates apply—well, there are a large number of these points in Nevada.

Mr. WILLIAMS. All stations west of Corrinne, is it not?

Mr. SEVERANCE. Yes, I think that is right. All stations beginning at Corinne, Utah, on the east and thence west.

Mr. WILLIAMS. I assume those are all named in that tariff.

Mr. SEVERANCE. Oh, yes; there is a whole stack of them here, in Nevada and Utah.

Mr. WILLIAMS. All points on the Southern Pacific west of Corinne?

Mr. SEVERANCE. Yes, all points on the Southern Pacific west of Corinne. And the points in the east are what are known as Atlantic seaboard territory, or what is commonly known as New York and common points. That is what it is. That is right, isn't it? Those rates apply to New York and common points. That would be a general designation, wouldn't it?

Mr. PLAISTED. Boston.

Mr. SEVERANCE. Well, Boston is a New York common point, isn't it? They are New York and Boston common points. There is also a note to this tariff reading as follows: "The privilege of stopping at Reno, Nev., wool originating at Tecoma, Nev., and points intermediate to Reno, Nev., in transit to destination is extended to shippers for the purpose of preparing packages for through shipment; in

such cases, in addition to the freight charges from original point of shipment to final destination, there will be assessed for handling to and from the warehouse at Reno, Nev., 30 cents per 100 lbs., which will accrue to So. Pac. Co. (Pac. Sys.)"

3938 By Mr. LOVETT:

Q. Do any of the lines east of the Missouri River solicit freight in Salt Lake City?

A. Yes, sir.

Q. Which lines?

A. They are almost all represented—the Northwestern, the St. Paul, the Illinois Central, the Rock Island, the Burlington, the Santa Fe, the Missouri Pacific, the Wabash.

Q. Any of the lines east of Chicago?

A. The Pennsylvania, the New York Central lines, and the Erie,

Q. They all solicit here freight to and having origin or destination points east of the Missouri River and including the Atlantic seaboard?

A. Yes, sir.

Q. They are all actively soliciting freight?

A. Yes, sir.

Q. Of course that freight can be delivered here either by the Denver & Rio Grande or the Union Pacific?

A. Yes, sir.

Q. And it is delivered by both?

A. Yes, sir.

3939 STEPHEN H. BABCOCK,

being duly sworn as a witness on behalf of the Complainant, testified as follows:

Direct examination by Mr. SEVERANCE:

Q. Where do you live, Mr. Babcock?

A. I am living in Salt Lake City, although my family is still in Denver.

Q. How recently have you returned to Salt Lake City?

A. I returned here on the 15th of January last.

Q. What is your business?

A. Commissioner of Traffic of the Commercial Club Traffic Bureau of this city.

Q. And have you occupied that position since January?

A. Yes, sir; since January 15.

Q. You have been for some years in the railroad business, haven't you, Mr. Babcock?

A. Yes, sir.

Q. Will you state the various capacities in which you served railroad companies and what companies you have been associated with?

A. I commenced railroad service in October, 1865, with the Michigan Central Railroad Company, and remained with that company about ten years. Since then I have been with the Northern Pacific, the Denver & Rio Grande, and the Rio Grande Western, chiefly, with short terms of service with one or two other companies.

Q. What was your position with the Northern Pacific?

A. I was sent to Fargo, largely as representative of the general manager, who left the Michigan Central to go there. I was
3940 agent at Fargo, in charge of the train service and train division and superintendent of sleeping cars.

Q. General utility man for North Dakota?

A. General utility man; yes.

Q. How long did you stay in Fargo?

A. Nearly three years.

Q. And then where did you go?

A. To Denver. Well, I was in St. Paul for a short time.

Q. With the Northern Pacific?

A. No; with the Chicago, St. Paul, Minneapolis & Omaha road.

Q. In what capacity?

A. Local freight agent?

Q. And from St. Paul where did you go?

A. To Denver.

Q. And what was your business after you went to Denver?

A. I entered the service of the Denver & Rio Grande Company, in the general superintendent's office.

Q. How long did you remain there?

A. I was shortly afterwards appointed claim agent of the Denver & Rio Grande system, and continued in that position something over two years, as I recall. Later I came to Utah, in the autumn of 1885.

Q. In what capacity?

A. Contracting freight agent.

Q. For what road?

A. The Rio Grande Western. It was then the Denver & Rio Grande Western Railroad.

Q. Go ahead. What was your further service with that company or the Rio Grande?

A. After being contracting agent I was retired in their service, but soon after returned as right-of-way agent with the Rio Grande Western Construction Company. They were building a line down into southern Utah, and I acted as right-of-way agent for that
3941 line. Later, the first of January, 1892, I was appointed general freight agent of the Rio Grande Western Railway Company, and on the 1st of March, 1895, traffic manager of that company. I continued in that service until the first of April, 1897, when I resigned; but the vice-president desired me to return, and I came back on the 1st of August, and continued with that company in that capacity until the property was sold to the Denver & Rio Grande and turned over to that company on the first day of July, 1901, when I was appointed assistant general traffic manager of the Denver &

Rio Grande system, with headquarters in this city, and remained in that capacity until the first of July, 1903, when my office was abolished and I retired from the service.

Q. And have you been out of the railroad service since then?

A. As a general thing; yes, sir.

Q. Where did the Rio Grande Western have its eastern terminus?

A. Grand Junction, Colorado.

Q. And it ran in connection with what line?

A. It connected there with the Denver & Rio Grande and the Colorado Midland Railway.

Q. What classes of traffic did your line handle when you were on the Rio Grande Western? All classes?

A. All classes of traffic, freight and passenger.

Q. In both directions?

A. In both directions.

Q. Did you participate in California and Portland traffic?

A. Yes, sir.

Q. Moving east and west, both?

A. Yes, sir.

Q. Were you, previous to the consolidation of the management of the Union Pacific and Southern Pacific here in Utah, familiar
3942 with the situation as to the solicitation of business by those lines?

A. Generally; yes, sir.

Q. How was it as to the movement of Atlantic seaboard traffic? How was that business worked by the Union Pacific on the one hand and the Southern Pacific on the other, through their respective agencies, so far as they could handle it?

A. The Union Pacific, so far as I knew, worked via the North Atlantic ports, and the Rio Grande worked in connection with the Morgan Line through New Orleans and with the Mallory Line through Galveston.

Q. How was the competition for that business—active or otherwise?

A. Very active.

Q. What would you say, Mr. Babcock, as to the percentage of traffic reaching Salt Lake City from the Atlantic seaboard territory, that is, New York and common points territory, between the all-rail lines and the water-and-rail lines?

A. I never had exact figures upon it—I don't know that anybody ever did, but it was generally understood to be anywhere from 70 to 85 per cent.

Q. By water and rail?

A. Yes, sir; that is, from the Atlantic seaboard territory.

Q. That is what I am speaking of. How did business move coming from the east or from the central part of the country, passing through Ogden and Salt Lake City to Portland and Oregon points, and coming east from Portland and Oregon points?

A. In connection with the Rio Grande line?

Q. Yes.

A. For a long time via Ogden and Sacramento or the Shasta Route, to Oregon; Southern Pacific took California.

3943 Mr. LOVETT. What business is that—from the east?

Mr. SEVERANCE. Yes, moving both ways—to the east and from the east.

WITNESS. Both ways, through trains.

Mr. SEVERANCE. Over the Rio Grande.

Q. And how did the business of the Union Pacific coming from the east or moving to the east from Oregon territory ordinarily move from Ogden or from connection with the Union Pacific?

A. Going through to Oregon?

Q. Yes.

A. So far as I knew, by their own route, through Granger and Pocatello.

Q. Short Line?

A. Yes.

Q. Now, Mr. Babcock, how was it as to traffic moving between Salt Lake City and Portland previous to the consolidation of this management? Did that move both ways or only one way?

A. So far as the Rio Grande traffic was concerned?

Q. Traffic moving from Salt Lake or terminating here in Salt Lake, if you knew about it; the business interchanged between Portland and Salt Lake.

A. In connection with the Rio Grande Western it moved, such traffic as they had, entirely by the Shasta Route. Later, when the Oregon Short Line was in the hands of a receiver, we worked with that line—both lines.

Q. And you would handle it only so far as Ogden and then turn it over to the Southern Pacific?

A. That is it.

Q. That is, the Rio Grande Western. You only ran to Ogden?

A. That is all, to Ogden.

3944 Q. Now, what happened when the Oregon Short Line was in the hands of receivers?

A. The Ogden gateway, so called, was opened to the Rio Grande line. Then we were enabled to work Portland business by that route, which was the Short Line, although we did not desert the Southern Pacific route. They desired us to work with that route so far as we could; in fact, desired us to work altogether with it; but we worked with both lines.

Q. You were familiar with traffic conditions all through the West here, weren't you?

A. Why, in a general way; yes, sir.

Q. And in California and in Oregon?

A. Somewhat of a knowledge of it; yes, sir.

Q. You made frequent trips to those places?

A. Frequent trips to California.

Q. And occasional trips to Oregon?

A. Occasional trips to Oregon.

Q. How were the hops originating in the Willamette Valley moved in those days?

A. The hops in Oregon from the Willamette Valley went usually to the Atlantic seaboard, and they took the Sunset Route; we were never able to secure much of them.

Q. Did you have agencies there endeavoring to secure that?

A. We had no agency in Portland until 1897, after the occurrence of the Oregon Short Line receivership; then we established an agency up there. We got some of the hops after that time.

Q. How did those hops reach your line at Ogden? Which way did they come?

A. They went up to Portland.

3945 Q. And came by the Short Line?

A. All that we could get, of course, came by the Oregon Short Line. The Southern Pacific were supposed to send them by their long route.

Q. And at that time, during this receivership, you say you worked with the Short Line?

A. Yes, sir.

Q. And also with the Southern Pacific?

A. And also with the Southern Pacific.

Q. Now, what change, if any, took place in the movement of hops from the Willamette Valley after the consolidation of the management of the Southern Pacific and Union Pacific?

A. I don't know that I could state. We were never able to get many hops up there, for the reason, I think, that I have given—that it was Atlantic seaboard or Sunset Route territory freight, and it was a very difficult matter for us to secure any participation in it.

Q. Did you make efforts to get that traffic?

A. We made effort to get any traffic there was up there.

Q. Are you familiar with the fact that the Oregon Railroad and Navigation Company had a boat line to San Francisco from Portland?

A. Yes, sir.

Q. Running in connection with their rail lines?

A. Yes, sir; as a part of their system.

Q. Will you state your opinion, from your knowledge of the traffic, as to the value, if any, of that boat line, in connection with the Union Pacific in any controversy which might arise between the Union Pacific and Southern Pacific as to divisions on California business.

3946 Mr. LOVETT. That is objected to because it is not shown that he is qualified to express any opinion on that subject.

Q. Go ahead and answer.

A. It must have had a very commanding effect.

Q. For what reason?

A. Because it gave them a line of their own directly into San Francisco, water and rail. It enabled them to make such rates as they might see fit.

Q. Assuming that they took advantage of the dominant position which they possessed by reason of having this boat line, as you have

stated, and reduced rates by that route, what would have been the effect upon rates generally in trans-Missouri territory?

A. Why, all rates would have had to work to whatever basis they established. If they lowered the rates it would have had the effect of requiring a lowering of rates generally.

Q. At the time the Short Line was in the hands of receivers, did the Rio Grande work business into Montana points in connection with the Short Line?

A. Yes, sir.

Q. And what companies' competition did you meet up there?

A. The competition with the Union Pacific and with the Great Northern and the Northern Pacific.

Q. Were those divisions between the Rio Grande and the Short Line at any time taken out so that you were unable to work business into Montana points?

A. Not during my time of service.

Q. You know as a fact that they have been taken out, don't you?

A. Yes, sir.

Q. Do you know when that was done?

A. I do not know. It was after I left Utah.

3947 Q. Do you know now whether there are any divisions in existence between the Oregon Short Line and the Denver & Rio Grande so as to enable the Rio Grande to compete for that business into Montana?

A. My understanding from the agents here is that the gateway (so called) is closed to them in respect to general merchandise traffic; that there is some interchange of certain commodities, such as coal and coke perhaps, but that is all.

Mr. LOVETT. I would like to know what agency he refers to. The agency of the Denver & Rio Grande, I suppose.

WITNESS. Yes, sir; and also the Burlington and Rock Island agency here.

Mr. SEVERANCE. I don't suppose there is any question about that.

Mr. LOVETT. It ought to be that way.

Mr. SEVERANCE. It ought to be closed.

Mr. LOVETT. As against the Denver & Rio Grande.

Q. How is the wool traffic from this region—a large or small traffic?

A. It is a very important traffic.

Q. And in what parts of the territory surrounding Salt Lake does it originate largely or chiefly?

A. In Utah it originates very largely south of Salt Lake City—south and east of it; some west, some north; that is, north of Ogden—north and west of Ogden.

Q. What about Nevada and southern Idaho?

A. In Nevada, southern Idaho and in Montana there is a very large clip of wool every year—in each of those places.

Q. At the time the Union Pacific system was separate in management from the Southern Pacific system, what was the fact as to

3948 whether there was any competition for wool shipments out of any of this territory between those systems?

A. The competition in wool commenced very early in the season—before it was taken off the sheep's back.

Q. Explain that whole situation.

A. The Oregon Short Line people endeavored to attract the sheep away from the line of the Southern Pacific west of Ogden; on the part of the Union Pacific, they tried to attract it away from us to Ogden by trailing the live sheep along into western Wyoming, and in southern Utah we did our part towards trying to attract sheep over on to our line, away from the Oregon Short Line, and letting them be sheared on our line.

Q. When the Southern Pacific were successful in this effort to attract sheep—and therefore wool—which way did they move the wool to the Atlantic seaboard?

A. Usually, so far as my knowledge went, it moved via Sacramento and the Sunset Route, so far as they could control it. Occasionally they had rates in from some points in Nevada, eastbound, through Ogden, and some buyers perhaps insisted on it taking that route, and from some of the near-by points an occasional shipment would be made through Ogden.

Q. But you say that the bulk of it, when they could, they worked by the Sunset Route?

A. The bulk of it, as I understand, went to California and thence by the Sunset Route to the Atlantic seaboard.

Q. When the Union Pacific was able to attract the sheep, which way did they move the wool?

A. Over the Union Pacific system direct.

3949 Q. And which way did you move it when you got it?

A. Sometimes all-rail, but quite largely by rail and ocean.

Q. Where would you deliver it to the ocean carrier?

A. At Galveston, largely.

Q. What do you know about a tax levied by the State of Wyoming that used to be at times assumed in an endeavor to get traffic of this kind?

A. I always understood there was a tax per head on sheep brought into Wyoming from Utah or Idaho, and the Union Pacific people in their desire to attract the sheep over there, I understood, paid that tax, to get the sheep away from us.

Q. And also to get the sheep away from the Southern Pacific?

A. Yes.

Q. To what part of the country did most of that wool move, Mr. Babcock?

A. Boston, New England.

Q. Boston is the great wool market of the country, isn't it?

A. Yes, sir.

Q. When you came to Salt Lake did the Southern Pacific and the Union Pacific have separate agencies here?

A. Yes, sir.

Q. Did you know the agents?

A. When I came here originally Mr. Mark S. Severance was the agent for the Southern Pacific here.

Q. My cousin.

A. Well, he was a very nice gentleman. Later Mr. W. E. Halm succeeded Mr. Severance, and he was succeeded, I think, by Mr. D. R. Gray.

Q. Mr. Gray is still here?

A. Yes, sir.

Q. And who was the agent of the Union Pacific when you
3950 came here?

A. The Union Pacific for a time maintained an official here that they called assistant general traffic manager. That was Mr. P. P. Shelby, and he had a staff of subordinates working with him. I think he was succeeded by Mr. S. W. Eccles, and he by Mr. Francis Cope. Mr. Cope either preceded or succeeded a Mr. Parker. I don't recall who Mr. Parker's immediate successor was. It might have been Mr. Choate.

Q. You remember Mr. Choate, don't you?

A. Yes, sir.

Q. And Mr. Choate continued until Mr. Gray took over the joint agency?

A. That was established after I left here.

Mr. LOVETT. I understand that Parker and Cope preceded Eccles.

WITNESS. Well, I have got the men, but I may not have them just right in the order of succession.

(A recess was here taken until 2 o'clock p. m., at which time the witness was recalled and his direct examination resumed.)

The last portion of the testimony was read.

WITNESS. I don't know in just what order those men came. I simply recall the names as I remember the men. I may have left out some. They have been changing quite often.

Q. Mr. Babcock, what effect, if any, did the consolidation of the management of the Union Pacific and the Southern Pacific have upon the business that the Rio Grande was able to get eastbound?

A. From Oregon Short Line territory or from the west?

3951 Q. From California territory and from Oregon Short Line territory, both?

A. The disposition on the part of the Southern Pacific Company was to more strongly favor the Union Pacific road as against the Rio Grande road.

Q. What effect did that have in the growth of your traffic from the west or the maintenance of the previous percentage of traffic that you were carrying?

A. I have not the figures and I would be unable to state with any degree of certainty; but excepting for the fact that the traffic generally began largely to increase there would have been a falling off. I think as a matter of percentages there was a falling off, but the

general movement of traffic increased very rapidly from about that time on.

Q. But did your traffic (by "your," I mean the Rio Grande interests), that you received from California points over the Southern Pacific, from Oregon points over the Short Line, continue to increase in the same proportion that the general business of the country increased?

A. I don't think that it did. I think we about held our own as against the smaller volume of traffic before.

Q. How was it as to traffic turned over to the Southern Pacific and the Short Line by the Rio Grande at Ogden?

A. We gave them all the traffic we had; it was our only outlet.

Q. Did your traffic increase westbound?

A. There was a general increase throughout the west in freight traffic. I might qualify that by saying that meanwhile the
3952 Chicago, Rock Island & Pacific road, which had for a long time worked steadily with the Rio Grande route, formed a new route via El Paso, which had the effect of diverting some traffic formerly taking the Ogden route to that line.

Q. Do you remember, Mr. Babcock, the trouble between the Short Line and the Union Pacific in 1897, when they were operated separately?

A. In a general way.

Q. I think you stated this morning that at that time you worked with the Short Line?

A. Yes, sir.

Q. Do you know the divisions of the through water rate from New York common points to Utah common points by way of the Morgan Line through New Orleans, thence the Sunset to Fort Worth, Fort Worth to Pueblo, and Pueblo to Salt Lake, as they existed in the old days, previous to the amalgamation of the Southern Pacific and Union Pacific?

A. Yes, sir. That is, I know at once the division of the Rio Grande—I know their proportion, and I have a memorandum of the through divisions in my pocket, if I may refer to it.

Q. Is that a memorandum made by you at the time, so that you——

A. Well, it is taken from my own personal memorandum book of divisions in effect at that time.

Mr. SEVERANCE. Is there any objection to his using that memorandum, Judge?

Mr. LOVETT. No, if he knows it is correct. When was this?

Mr. SEVERANCE. I am asking about the time that Mr. McCarthy says this competition existed between the water lines.

Mr. LOVETT. I would like him to fix about the date.

Q. When were these divisions in force?

A. They were in force during all of the nineties, up to the
3953 time that I left the service here.

Q. All right. You may refresh your recollection with that memorandum and tell us what the divisions of that Morgan Line

route rate were. I use the expression "Morgan Line;" I mean the Gulf route by New Orleans.

A. There was first deducted from the through rate 5 per cent for marine insurance and any interior arbitraries that arose by reason of taking the freight from some interior point in Atlantic seaboard territory; that is, the rate from such interior point to New York was deducted, and the remainder divided; East of Fort Worth 37.92 per cent, Fort Worth to Pueblo 26.67 per cent, Rio Grande system 35.41 per cent.

Q. What were the divisions of this water rate when the traffic moved via the Atlantic ports, such as by Newport News and Kanawha Despatch, and those lines?

A. The ocean and rail lines up to the Mississippi River were given 20.4 per cent of the rate, after having considered any interior arbitraries in the manner I have just explained; then from the Mississippi River to the Missouri River by the Rio Grande route 17 per cent, and the balance was subdivided west of the Missouri River 62½ per cent to the Rio Grande lines and 37½ per cent Missouri River to Colorado junction points.

Q. Now, you say by the Rio Grande route the lines between the Mississippi and the Missouri got 17 per cent of the balance of the rate after deducting the 20.4 per cent that went to the lines east of the Mississippi River. In the case of the Union Pacific what was the percentage that was allotted to the lines between the Mississippi and the Missouri?

3954 A. I always understood it was 16 per cent.

Mr. LOVETT. That is on business moving which way?

Mr. SEVERANCE. By the Kanawha Despatch, that is what I asked—by Newport News.

WITNESS. North Atlantic ports, chiefly Newport News or Savannah.

Q. Mr. Babcock, if that business moved that way by the Union Pacific, then, as I understand you, after deducting the 20.4 per cent for the lines up to the river, of the balance 16 per cent was allotted to the lines east of the river, and the Union Pacific got the balance?

A. Yes.

Q. At the time you were working business with the Morgan and Mallory lines (Gulf Route) did you ever have any conferences with the Union Pacific officials with reference to getting a larger division of the rate allotted to the rail lines such as the Union Pacific or the Rio Grande, as against the boat lines such as the Morgan Line?

A. Why, Mr. J. A. Monroe was freight traffic manager of the Union Pacific Railroad, and he at various times suggested to me that while our lines were performing the same all-rail service, whether the traffic moved all rail from New York or whether it moved through the Atlantic or the Gulf ports, that we should have all-rail revenue out of the traffic moving by the Gulf or Atlantic ports, and at these various times expressed the desire that I should join with him and the other lines in demanding that basis of divisions.

Q. If Mr. Monroe and yourselves had joined in that demand and persisted in it, was there any other way to get the traffic into Utah outside of your lines?

3955 A. Well, that would have the effect of reducing the earnings of the Morgan and the Mallory steamship lines or the other lines doing business through the coast ports, and if that would have reduced their revenue to a point where they thought it unprofitable to continue in it, why they would simply have had to retire from it and force the business to the all-rail lines.

Q. Mr. Babcock, you didn't catch my question, I think. Was there any other way for traffic to reach Utah points other than coming around by the Sunset Route and thence east from California, except over the Rio Grande or the Union Pacific?

A. No other way.

Q. With no divisions in between the northern lines and the Short Line?

A. Yes; none that I ever knew of.

Q. What?

A. None that I was ever aware of.

Q. What attitude did your road take upon that proposition of Mr. Monroe?

A. Well, we never considered it favorably; we felt that it would have been an unfriendly act towards the Morgan Line and the Mallory Line, who had given us a very satisfactory amount of traffic, and we never took any action to that end.

Q. In connection with your duties in your present office have you made any inquiries to ascertain whether the San Pedro route—by that I mean the San Pedro, Los Angeles & Salt Lake Railroad Company—has any rates in from Salt Lake City to San Francisco in connection with any other line?

A. Yes, sir.

Q. What steps did you take to find out about that?

A. I took up the matter with the general agent of the freight

3956 department—I don't know whether that is his title or not, but the man here who has charge of their freight business—and asked him if he had such a route or tariffs applying that way, and he replied to me that they had not and never had any.

Q. Did he reply in writing or orally?

A. In writing.

Q. Have you got the letter with you?

A. I think so; yes, sir.

Q. Have you copies of your communication to him and his replies?

A. Yes, sir; they are attached there.

Q. The copies of your letters have no signatures. Were they signed by you?

A. I signed the letters myself; yes, sir.

Mr. SEVERANCE. By consent, instead of marking these letters as exhibits, I will read them into the record. They are as follows:

"MARCH 9, 09.

Mr. J. H. MANDERFIELD,
*District Freight Agent,*
*San Pedro, Los Angeles & Salt Lake Railroad,*
*Salt Lake City.*

MY DEAR SIR:

Will you have the kindness to send me copies of your freight tariffs naming class and commodity rates between this city and San Francisco, California?

If you may not have copies of the tariffs to spare, will you be kind enough to name the class rates applying in each direction between the two points, very much obliging,

Yours, very truly, S. H. BABCOCK,"

3957 "SAN PEDRO, LOS ANGELES AND SALT LAKE RAILROAD COMPANY. TRAFFIC DEPARTMENT.

Salt Lake Route.

J. H. MANDERFIELD,
*District Freight Agent.*

169 SOUTH MAIN STREET,
*Salt Lake City, Utah, Mch. 10, 1909.*

In Reply Refer to File No. F-20-B.

Requests for freight rates.

Mr. S. H. BABCOCK,
*Commissioner of Traffic,*
*Commercial Club Traffic Bureau,*
*Salt Lake City, Utah.*

DEAR SIR:

Wish to acknowledge receipt of your letter of the 9th, asking for copy of this company's tariffs on class & commodity rates between Salt Lake City and San Francisco. Wish to advise that this company does not publish any tariffs naming rates as above; however, they are published by the Southern Pacific Company, who will no doubt furnish you copy on application.

Yours, very truly, J. H. MANDERFIELD.
E."

The following stamp appears upon this letter:

| Commercial Club |
| --- |
| Mar. 11 1909 |
| Traffic Bureau |

3958 "MARCH 11, 09.

Mr. J. H. MANDERFIELD,
*District Freight Agent,*
*San Pedro, Los Angeles & Salt Lake Railroad,*
*Salt Lake City.*

DEAR SIR:

I have your letter of the 10th instant replying to mine of the 9th, your file F–20–B, and from which I notice that your company does not publish any tariffs naming freight rates between Salt Lake City and San Francisco, but that they are published by the Southern Pacific Company. We have the tariffs issued by the latter applying between San Francisco and Salt Lake City via Ogden and Southern Pacific line, but we have been unable to find a record of any tariffs between the points applying over the San Pedro, Los Angeles & Salt Lake Railroad either via the Atchison or Southern Pacific connection to or from San Francisco.

What I would like to know is whether any such tariffs are in existence published by your own or the Atchison or Southern Pacific Companies, to the end that we may know definitely whether such a route is in operation and practical use or if there ever has been and for what period and at what time it may have been discontinued if at all.

Very truly yours,

S. H. BABCOCK."

3959 "SAN PEDRO, LOS ANGELES AND SALT LAKE RAILROAD COMPANY.

TRAFFIC DEPARTMENT.

Salt Lake route.

J. H. MANDERFIELD,
*District Freight Agent.*

169 SOUTH MAIN STREET,
*Salt Lake City, Utah, March 15, 1909.*

In reply refer to file No. F–20–A.

Request for freight rates.

Mr. S. H. BABCOCK,
*Commissioner of Traffic,*
*Commercial Club Traffic Bureau,*
*Salt Lake City, Utah.*

DEAR SIR:

Acknowledging your letter of the 11th inst.

This company has never published any tariffs on freight business applying between Salt Lake City and San Francisco, nor were we at

any time a party to such application in tariffs of either the Santa Fe or the Southern Pacific.

Yours truly, J. H. MANDERFIELD."

The following stamp appears upon this letter:

| Commercial Club<br>Mar 16 1909<br>Traffic Bureau |
|---|

3960 Q. Mr. Babcock, where could the San Pedro make connection with the Santa Fe for San Francisco? Where do they meet them?

A. At Daggett.

Q. California.

A. Yes, sir.

Q. Will you state whether or not in your opinion a line from here to San Francisco by the San Pedro road to Daggett and thence into San Francisco by the Santa Fe would be a feasible route for the transportation of passengers and property?

A. Entirely so.

Q. You are familiar in a general way, are you not, Mr. Babcock, and have been for many years, with the Santa Fe line in California?

A. Yes, sir.

Q. How many years have you known that road?

A. The Santa Fe?

Q. Yes; in California.

A. Well, under its different forms—that is, it was known as the Southern California Railroad—I had been familiar with their lines down there for twenty years.

Q. Are you familiar with the San Pedro route?

A. Not very; only the northern portions of it; I have never been over that line.

Q. But you know where it runs?

A. Oh, yes.

Q. And you know it is doing business as a railroad?

A. Surely.

Q. It is sufficiently well built and equipped for that. That is a well known fact, isn't it?

A. As far as I know. I have never been over the line.

Q. You know in a general way about the distance to San
3961 Francisco by the route, say, from here to Daggett and thence up to San Francisco?

A. It is 1,083 miles, I think.

Q. And what is the mileage by the Southern Pacific?

A. It is 786 from Ogden, 823 miles from here.

Q. Has it been your duty, since you have occupied your present position, to become familiar with the tariffs and the rates charged for

the transportation of persons and property between here and San Francisco?

A. Yes, sir.

Q. Will you state whether or not, in your opinion, the rates now in force over the Southern Pacific to San Francisco would be a remunerative rate for a line composed of the San Pedro to Daggett and thence into San Francisco over the Santa Fe?

Mr. LOVETT: The defendants object to that upon the ground that he has not shown he is competent to express any opinion on the subject.

Q. Go ahead and answer.

A. Freight or passenger, or both?

Q. Both.

A. I think they would be highly remunerative.

Q. Are you familiar with the passenger rates over the San Pedro road to Los Angeles on the one hand and the passenger rates over the Southern Pacific to San Francisco on the other hand? Are you familiar with those passenger rates?

A. In a general way, yes, sir.

Q. What is the first-class passenger rate from Salt Lake to San Francisco by the Southern Pacific?

A. $31.10.

Q. How much is it by the San Pedro and its connections?

A. I think it is $39.55.

Q. What is the rate to Los Angeles by the San Pedro?

A. I have a memorandum of it in my pocket, but I don't——

3962 Q. Look at it; that is all right.

A. $30 by the San Pedro line to Los Angeles. That was the question, was it not?

Q. Yes. Now what is the rate to San Francisco by the San Pedro in combination with any other road?

A. $39.55.

Q. What is the rate to Los Angeles via the Southern Pacific?

A. I thought I had that rate here, but I haven't.

Mr. LOVETT. We will give it to you in a minute.

Mr. KELLY. $39.50.

Mr. SEVERANCE. Just the same—within 5 cents?

Mr. KELLY. Yes.

Q. Now, you say the distance by the San Pedro route to San Francisco via Daggett would be 1,083 miles?

A. I am quite sure that is the distance; yes. (After referring to memorandum.) 1,083 miles; yes, sir.

Q. Then, a $30 rate, the same as they make to Los Angeles, would be a little less than 3 cents a mile?

A. That would be 2.87 cents.

Q. What is the distance to Los Angeles by the Southern Pacific?

A. 1,181 miles.

Q. Now, looking at it from your experience as a traffic man, what is the effect of adjusting these rates as they are; that is, making this

difference in the rates by the two lines—lower by the Southern Pacific to San Francisco, lower by the San Pedro to Los Angeles? What is its probable effect upon the movement of traffic to those respective places?

3963 Mr. LOVETT. If that question calls for the witness' opinion, I object to it upon the ground that it is not shown he is competent to express an opinion on the subject.

A. It would have the effect of forcing traffic to the direct lines.

Q. That is, the San Francisco business over the Southern Pacific——

A. Over the Southern Pacific, and the Los Angeles business by the other line.

Q. Previous to the construction of the San Pedro route, what was the passenger and freight route between Salt Lake City and Los Angeles?

A. Via Sacramento and the Southern Pacific system.

Q. Did I ask you this morning, Mr. Babcock, whether there are any rates into Salt Lake over the Oregon Short Line from Butte in connection with the Northern Pacific and Great Northern?

A. From Butte?

Q. Yes, sir. I mean by way of Butte over the Short Line in connection with the Northern Pacific and Great Northern, rates from the east.

A. Through rates?

Q. Yes.

A. I was never aware that there were any. Understand, I mean through to St. Paul, Mr. Severance.

Q. Yes, that is right.

A. From certain local territory they had rates.

Mr. SEVERANCE. I am speaking about eastern business.

Cross-examination by Mr. LOVETT:

Q. Do you know the time, according to the best passenger train schedules, from Salt Lake City to San Francisco by the Southern Pacific?

A. Now?

3964 Q. Yes.

A. No, sir.

Q. Do you know the time, according to the present schedules of the best passenger trains, from Salt Lake to Los Angeles?

A. I do not. I have paid no attention to it.

Q. Do you know the time, by the best passenger trains under existing schedules, from Salt Lake City to San Francisco by way of Daggett and Santa Fe?

A. I do not.

Q. In your investigation of this matter you considered only the rates?

A. Only the rates.

Q. Time is not an object in the passenger business?

A. It may be at some times.

Q. It is generally a very important factor, isn't it?

A. Yes; but there are other factors that make a route popular also.

Q. What are they?

A. Well, for instance, if a passenger rate from here to San Francisco were the same via Los Angeles, it would have the effect of attracting a good deal of business that way, probably, regardless of the increased length of time.

Q. You think time wouldn't affect that any?

A. I think the attraction of visiting Los Angeles would attract traffic that way.

Q. How far this side of Los Angeles is Daggett?

A. I don't know. I think the rate from Salt Lake to San Francisco by the San Pedro route is the same via either junction point, either via Daggett or Los Angeles.

Q. To where—to San Francisco?

A. To San Francisco.

Q. So you think that if the passenger rate from Salt Lake City to San Francisco was the same by way of Los Angeles as
3965 by way of the Central Pacific that business would be attracted that way?

A. I think that it would, to a greater or less extent.

Q. What would be the difference in distance in that case by way of Los Angeles?

A. I don't think that I could say, Mr. Lovett. While I have observed it in my investigation, I don't recall just what the difference is.

Q. And you don't recall the distance from Daggett to Los Angeles?

A. No, sir.

Q. But you didn't look up the schedules at all as to time?

A. Only in that general way; not as to time; no, sir; I did not.

Q. The only through rates, then, between Salt Lake City and San Francisco are by way of Ogden and the Southern Pacific?

A. The only through rate?

Q. Yes.

A. Well, there is a through rate the other way, built on the sums of the locals, but it is higher than the direct rate from here by the Southern Pacific.

Q. I am speaking of freight now.

A. Of freight?

Q. Yes.

A. Please repeat your question, won't you?

Q. I said that the only through rates, if I understand your testimony—the only through rates in effect on freight between San Francisco and Salt Lake City are by way of Ogden and the Southern Pacific.

A. That is my understanding.

Mr. SEVERANCE. That is what the letters state.

Mr. LOVETT. Yes; that is my understanding.

Q. And that has always been so, according to your understanding?

3966 A. Well, up to the time of my entering the railway service here the other line was not constructed, so that there was but one possible route—that is, a direct route—excepting, I might add, a possible route would have been by Portland and the boat line down.

Q. But you never knew of that route being used, did you?

A. No, that was never a route used that I am aware of.

Q. How long have you known that route?

A. Which route?

Q. The route by way of Portland and the boat line.

A. Ever since I first came to the country here, if there was such a route in existence.

Q. And you never knew it to be used on business for California, did you?

A. No, not from Salt Lake City. I can't recall in my experience that it was ever used.

Q. Isn't it a fact, Mr. Babcock, that you never knew the Union Pacific to use that route for California business?

A. I don't know what the Union Pacific did.

Q. Well, they never used it? You were pretty well posted about traffic conditions in this territory, weren't you?

A. I knew they might have used it, and I think the fact they might have used it was an influential factor in having the Southern Pacific favor them with traffic via Ogden.

Q. That does not answer my question. I asked if you ever knew them to use it.

A. I don't pretend to know all that the Union Pacific did, Mr. Lovett; they might have done it and I didn't know it.

Q. Didn't you try to keep up with what they did on California business when you were with the Denver & Rio Grande?

3967 A. I tried to keep track of what was necessary for me to get a reasonable share of the traffic against them, but they had various ways of carrying on their own competition that they didn't seem to care to disclose to me.

Q. Just as you had ways, I suppose, that you didn't care to disclose to them?

A. As far as I could. But I felt somewhat limited in that direction.

Q. Still, that didn't prevent you from trying to find out what they were doing, whether they disclosed it or not, did it? (No answer.)

Q. Now, Mr. Babcock, I hadn't intended at this time to ask you about that Portland boat line, but as we have got up to it I will take up that branch of the question now. The Union Pacific lines extend from Omaha and Kansas City to Ogden, do they not?

A. Yes, sir.

Q. And at Ogden they connect with the Central Pacific, controlled by the Southern Pacific?

A. Yes.

Q. How far is it from Ogden to San Francisco by way of the Central Pacific, do you know?

A. 786 miles.

Q. 786 miles?

A. That is the present distance.

Q. How far is it to Portland by way of the Oregon Short Line?

A. I don't recall exactly; my impression is it is in the neighborhood of 900 miles.

Q. And how far is it from Portland to San Francisco, either by sea or by rail—that is, down the Columbia River?

A. The exact distance I do not know. It is between 750 and 800 miles all rail.

Q. And by sea, down the Columbia River?

3968 A. I don't know what they call the ocean mileage.

Q. It is probably greater than that, isn't it?

A. I don't know.

Q. The Union Pacific interchanges most of its business, practically all of its business for California, with the Southern Pacific at Ogden, doesn't it?

A. I don't know.

Q. Hasn't it always done so?

A. It has interchanged a large proportion of it, but what proportion I never knew.

Q. Well, that would be its natural outlet, wouldn't it, for business from the east to California?

A. It would be the most direct outlet.

Q. If it were to attempt to move business by way of Portland and the boat-line, it would have it farther from San Francisco when it got to Portland than at Ogden, wouldn't it?

A. Still, it would be a very practicable route.

Q. It would be very practicable?

A. Yes, sir.

Q. Why?

A. Well, there is scarcely between any two competing points—it is rarely ever the case that the different lines competing for the traffic are lines of equal distance. For example, the distance of the Rio Grande and Burlington route from Ogden to Omaha is more than 300 miles greater than the distance via the Union Pacific from Omaha to Ogden, and yet the Rio Grande route has always done a very satisfactory share of the business. But there is an indirect benefit to the Union Pacific interests in that route via Portland, in the influence it exerts over the friendly attitude on the part of the Southern Pacific toward the Union Pacific route—I speak of the old conditions—and I believe that it was so used, for the traffic manager of the

3969 Southern Pacific Company essentially admitted that to me.

Q. When?

A. Shortly after the lines went into the hands of receivers, in 1893.

Q. Who—what traffic manager?

A. Mr. Charles F. Smurr, freight traffic manager.

Q. Unfortunately he is dead, isn't he?

A. Yes, very unfortunately. He was the one that I dealt with entirely at that time.

Q. Did any living traffic man of the Southern Pacific ever admit it to you?

A. I don't know that I ever had occasion to discuss the question with any living man.

Q. So, the only man—the only Southern Pacific man—that ever admitted to you that that had any influence was Mr. Smurr?

A. I have talked on the same matter to Mr. Richard Gray. Unfortunately he is not now living, but if I may make an explanation: I had felt for a long time that the Southern Pacific Company in California was unduly (as we thought) aiding the Union Pacific in its through traffic originating in California and going east, as against the Rio Grande route, and had complained of that to Mr. Smurr, who was then the freight traffic manager and the man with whom I dealt almost wholly; but they either evaded or would never admit it. And I charged them with using this Oregon line—that the closing of it had the effect of bringing about their friendly influence towards feeding the Union Pacific as against us. After the Union Pacific line was broken up by the receivership and the Oregon Short Line was operated independently of the Union Pacific and the Navigation Company, being over in California, Mr. Smurr asked me in a
3970 bantering way what I was there for. I said, "I am over here as usual to visit you fellows—I know you." He said, "Well, I don't care what you do as long as you don't hurt us. Of course," he says, "there was a time when the Union Pacific had that water line via Ogden and we had to look out for ourselves."

Mr. SEVERANCE. Via Ogden or via Portland?

WITNESS. Via Portland. That was the conversation; and in that way I hold that he admitted to me that they did use that line to influence the routing of California freight by the Union Pacific as against the Rio Grande.

Q. What position did you hold at the time of this conversation?

A. General freight agent.

Q. Where?

A. Here. General freight agent of the Rio Grande Western road at Salt Lake City.

Q. And Mr. Smurr held what position?

A. He was either general freight agent or freight traffic manager. I don't recall just the time he was made freight traffic manager.

Q. And when was this?

A. This conversation?

Q. Yes.

A. Oh, it was within six months after those properties went into the hands of a receiver.

Q. When was that?

A. In the autumn of 1893, according to the best of my recollection.

Q. So at that time you charged Mr. Smurr, you say, with using the Portland route?

A. Previously to that I had repeatedly brought it up. Our agents in California had complained to me that the agents of the Southern Pacific were under instructions, on such traffic as could prop-
3971 erly move via Ogden, to favor the Union Pacific route as against the Rio Grande. I heard that every time I went over

there, and I would repeat it, essentially, to Mr. Smurr; but, as I have said, he usually evaded a direct reply.

Q. And is that what you meant when you spoke of the Portland route just now—that you charged Mr. Smurr with closing the Portland route?

A. With trading with the Union Pacific; that, in view of their closing the Portland route, they would lend the benefit of their influence in routing California traffic eastward as against the Rio Grande.

Q. Did they close the Portland route?

A. The Portland route was not in operation.

Q. I mean the boat line.

A. The boat line, as a through-freight line. My understanding was that the Union Pacific ceased to operate it.

Q. Ceased to operate it?

A. Ceased to operate it with through traffic.

Q. Did they ever operate it with through traffic? that is the point. Did the Union Pacific ever operate it with through traffic to California?

A. I think it is a matter of common knowledge that they did.

Q. From points east of Ogden?

A. Yes.

Q. That they used that line for California business?

A. That was the general understanding during the administration of Mr. T. J. Potter, as in charge of the Union Pacific road particularly.

Q. What was that last answer? I didn't catch that.

A. The use of that boat line occurred, as I have always understood, through the administration of Mr. T. J. Potter,
3972 as general manager, or in general charge of the Union Pacific system.

Q. When was that?

A. I don't remember the date.

Mr. KELLY. He died in 1889.

WITNESS. He died when?

Mr. KELLY. In 1889 or the summer of 1888.

Q. This occurred, as you understand, during Mr. Potter's administration?

A. It arose during that time. That was always my understanding of it.

Q. And how long did it continue?

A. I don't know.

Q. Now, that is your understanding. How did you get that understanding?

A. Just by my experience in soliciting the business, seeking to get a representation in that traffic in California for the Rio Grande route.

Q. On what do you base it?

A. First, by reports of our agents, and by agents of the connecting lines—the Burlington and Rock Island—working with us.

Q. Are you talking about the boat-line?

A. I am talking about that trade that there was in existence.

Q. I am asking you about the time the Union Pacific used the boat-line for business to and from California.

A. I am unable to give you any dates as to that, Judge.

Q. And you don't know of your own knowledge that they ever used that, do you?

A. Nothing more than by common information.

Q. What do you mean by common information?

A. Generally reported so and understood so among the railroad people.

Q. That was your understanding, was it?

A. Yes, sir.

3973 Q. And would you attach any significance in that connection to the fact that every soliciting agent of the Union Pacific east of the Missouri River who has been examined by the Government in this suit—and every one of them, I believe, has been examined—testified that they never solicited and never moved a pound of freight that way, with the exception of Mr. Fowler at Pittsburg, who testified that during a short time in 1886 he sent some that way?

A. I have practically no knowledge whatever of this investigation as carried on elsewhere, Judge.

Q. But even in the face of that testimony you would still want to be understood as saying that it was commonly understood among freight men——

A. I understood it here, by general information among the railroad people, that the Union Pacific had that route and did use it for a greater or less length of time. When it began or when it ended I do not know.

Q. And you can not even approximate the time?

A. I could not.

Q. When did that understanding prevail in this community?

A. It prevailed particularly at the time when I was undertaking to get business for the Rio Grande route, and that its existence had been terminated through this arrangement between the Union Pacific and the Southern Pacific Company by which the route was to be discontinued in consideration that the Southern Pacific should use its friendly influence in routing business via Ogden in connection with the Union Pacific rather than in connection with the Rio Grande.

3974 Q. What did you have to base what you have to say about that arrangement between the Union Pacific and the Southern Pacific, upon? How do you know that there was any such arrangement?

A. As I have explained, by being told so by our agents in California and by our representatives over there and the representatives of other lines or so-called "friendly connections," such as the Burlington and Rock Island; that they encountered this in their travels throughout California in soliciting business. They felt and believed that the agents of the Southern Pacific were instructed to favor the

Union Pacific route via Ogden as against the Rio Grande, and that was the main consideration.

Q. And from that they inferred that there had been such an arrangement?

A. They believed that was the basis of it.

Q. Did anybody ever tell you as a matter of fact that there had been such an arrangement, or is it merely a matter of opinion?

A. Of course I never knew anything absolutely about it. Many things occur in competitive affairs to which we have simply to apply our usual judgment in determining what is necessary to do to meet it or whether it exists or not.

Q. Now, to the question again: Did anybody ever tell you that there was such an arrangement between the Union Pacific and the Southern Pacific by which that boat-line should be discontinued?

A. In the way that I have related: that Mr. Smurr said to me on the occasion of this visit that I have spoken of—he asked me what I was over there for. He said he didn't care what I did as long as I didn't hurt them. "Of course," he said, "when the Union Pacific had that Portland route we had to look out for ourselves."

Q. What did you do when Mr. Smurr told you that? Did
3975 you make any report of it?

A. Make any report of it to whom?

Q. Well, didn't you have any superior officer?

A. Not only except our vice-president, and I had often talked with him about the same subject.

Q. Were you the head of the traffic department of the Denver & Rio Grande?

A. Yes, sir: I was the head of the freight department at that time.

Q. You were head of the freight department, with the title of general freight agent?

A. Yes, sir.

Mr. SEVERANCE. Of the Rio Grande Western.

Q. Of the Rio Grande Western.

A. Of the Rio Grande Western: up to the time of my employment as traffic manager in charge of both freight and passenger business.

Q. So, Mr. Smurr told you he didn't care what you did as long as you didn't hurt him, but they had to favor the Union Pacific?

A. He didn't say they would have to favor the Union Pacific. He said, "Of course, when the Union Pacific had that route they had to protect themselves"—which I construed simply as admitting that during the existence of that route under the control of the Union Pacific they had to help them with Ogden business, to keep that route closed. That was my inference.

Q. You didn't know that the Union Pacific had that route at the time you were talking to Mr. Smurr, did you?

A. That they had the route open?

Q. That they had the boat-line operating there.

A. They didn't have the boat-line operating at that time.

Q. They didn't?

A. As far as I know.

Q. They had taken off the boats?

3976 A. I don't know whether they had taken off the boats or not. My understanding is that they were not operating it as a through line actively, in the handling of traffic.

Q. Now, at the time that the Denver & Rio Grande were working with the Oregon Short Line on Portland business, I think you said that was during the receivership.

A. Yes, sir.

Q. Did you attempt to work any business to California that way?

A. To California via Portland?

Q. Yes.

A. We had no occasion to attempt it.

Q. Why not?

A. Because the Southern Pacific line was open to us and it was the most direct and the best line.

Q. Wasn't that same situation true of the Union Pacific?

A. I don't know but what it was, but they controlled the line as a part of their system. Naturally they would undertake to get the business to feed that system with. We had no interest in it.

Q. The Union Pacific has always interchanged business with the Southern Pacific at Ogden, hasn't it, so far as you know?

A. So far as I know.

Q. Now, suppose the Union Pacific attempted to use that Portland line, the boat line, for California business against the Southern Pacific, what could the Southern Pacific have done to retaliate against the Union Pacific? I am speaking now of former conditions.

A. I don't know. They are the most resourceful people in the country and they probably would have found a way to protect themselves.

Q. I think so myself. But don't you think the most effective way would have been to divert business to your line, the Denver & Rio Grande, at Ogden.

3977 A. They went in there and did anything that was calculated to increase their revenues, without regard to their connections.

Q. Now, if you will allow me to ask the question, please. Don't you think that the most effective thing the Southern Pacific could have done, and the only sensible thing for it to have done under those conditions, would have been to divert to the Denver & Rio Grande all of its trans-continental business that it could control, as against the Union Pacific, in retaliation of the effort of the Union Pacific to use the Portland boat line?

A. The Southern Pacific had very large interests not only via Ogden but in other parts of the country, and I am not competent to say what measure they would have taken or might have taken.

Q. If you had been in charge of the Southern Pacific's traffic and that condition had arisen, wouldn't you as a traffic man, to force the

Union Pacific back into line, have diverted this traffic to the Denver & Rio Grande?

A. It would depend on what other factors I had to consider.

Q. Well, considering all of the factors that you know of.

A. I should have done just what they probably would—the best I could to meet that particular situation.

Q. That is dodging a little, Mr. Babcock. Now, I asked you a very simple question and it ought not to be difficult to answer. That question is this: If you had been the head of the traffic department of the Southern Pacific, and the Union Pacific had attempted to use the route by way of Portland and the boat line on California business, whether you for the Southern Pacific would not have retaliated and sought to force the Union Pacific to abandon that line by
3978 diverting your business to the Denver & Rio Grande at Ogden? Now, wouldn't you, as a traffic man, have done that?

A. I would have done whatever seemed best under the general situation to induce the Union Pacific to resume a friendly attitude toward us.

Q. Can you imagine anything that would have been more effective than that?

A. I don't know. I was never in that position. If I had been sitting in California, as Mr. Stubbs was, in control of all of the Southern Pacific influences and affairs, then I might have been in a position to determine what was best to do.

Q. So you can't say now what you would have done at that time?

A. No, sir; it would have depended entirely upon circumstances.

Q. You are able to say very readily what the Union Pacific would do about the Portland route, how it could use that line against the Southern Pacific, and the vast influence that it might have had, although you were not on the Union Pacific, but you can't imagine what the Southern Pacific would have done to meet that situation?

A. I don't think anybody could ever foresee what Mr. Stubbs would do under any circumstances.

Q. But it is an easy matter to foresee what the Union Pacific would do?

A. And that comes because it is pretty well known they did do it.

Q. I would like to know some man; I have asked a good many and haven't found one yet that did.

A. Well, I say "known;" it was my impression that they did do it. That was my impression.

Q. Your impression?

A. Yes.

3979 Q. But you don't know anybody else who knows about the thing?

A. I have never questioned other people to know whether they did know it or not.

Q. So you leave your answer in this way, do you: that you are able to state how effective the Union Pacific could make the Portland boat line against the Southern Pacific, but are unable to say what the

Southern Pacific might do by way of retaliation or to coerce the Union Pacific back into line by using its power to divert to the Denver & Rio Grande its trans-continental traffic?

A. I would not know, because I would not know what other factors I would have to consider, but as to the other—our people at one time were planning to build a line to southern California. I was exceedingly anxious that they should continue that plan and build the line, believing that if we ever got to the seacoast in the vicinity of Los Angeles we might have some influence in the routing of California traffic also, by the use of that line.

Q. But they did not take your view of that?

A. Unfortunately, they sold the property.

Q. To whom did they sell it?

A. The Denver & Rio Grande people, what is known as the Gould interests.

Q. Now, I do not want to get away from this Portland situation. Do you mean to say that you do know the various circumstances and conditions affecting the Union Pacific situation so as to be able to say to what extent it could use the Portland line? Is that your answer?

A. My answer would be that it seemed to me, and I believe, it gave them a very strong leverage with reference to influencing routing of California traffic eastward over the Southern Pacific and the Union Pacific via Ogden. It was a leverage, of course, that they would avail themselves of—anybody would; and in my opinion (certainly) and belief, from the operation of things, they made it very effectual.

3980

Q. And you are not able at the same time to say that the existence of the Denver & Rio Grande here, and its connections, hungry for the business of the Southern Pacific, would not have been a powerful club in the hands of the Southern Pacific to use against the Union Pacific?

A. I think they did use it that way at one time, when the Rio Grande was first built into here, to coerce the Union Pacific into their view of things.

Q. Did they succeed?

A. Well, I think it placed them in a comparatively independent position to what they had been in before the Rio Grande road got here.

Q. How long did that continue?

A. The Rio Grande line was connected through to Utah in May, 1883. That released the Southern Pacific road at least from the domination of the Union Pacific in the fact that it gave them another outlet at Ogden.

Q. The Union Pacific had dominated the Southern Pacific up to 1883?

A. They were in a position of equal power. Everything had to be neutral between them. Neither could dispose of the other.

Q. So the Southern Pacific was dependent at that time on the Union Pacific?

A. On each other.

Q. After that the Southern Pacific had the option to use either the Rio Grande or the Union Pacific, hadn't it?

A. Yes, sir.

3981 Q. What option did the Union Pacific and the Rio Grande have?

A. We had no option whatever. The Rio Grande had none. The Union Pacific, after the construction of the Short Line and their obtaining control of that route, had that route.

Q. Which they never used, so far as you know?

A. But that did not exist at the time the Rio Grande reached Utah.

Q. Does a great deal of traffic originate on the Southern Pacific lines in California?

A. Yes, sir.

Q. A great deal of trans-continental traffic?

A. Yes, sir.

Q. It reaches all important points in California, doesn't it?

A. It reaches very many of them; yes, sir.

Q. You say that after the purchase of the Southern Pacific stock or the closer relations that were established between the Union Pacific and the Southern Pacific, in 1901, the Denver & Rio Grande began to suffer from the discrimination of the Southern Pacific in favor of the Union Pacific?

A. I think that the Southern Pacific was more strongly inclined to favor the Union Pacific route than they had been before.

Q. The Southern Pacific, since 1901, has been throwing to the Union Pacific all the trans-continental traffic it could control, hasn't it, so far as you know?

A. So far as I know.

Q. And the Rio Grande has suffered from that, hasn't it?

A. As I said, up to the time of my leaving here the general volume of business had begun to increase and did increase very largely, so that perhaps in dollars the Rio Grande did not

3982 experience much of a falling off, but I think they did fall off in the percentage proportion of the whole.

Q. They fell off very materially, didn't they, in the percentage of the whole?

A. So far as I can recall; yes, sir.

Q. So much so that the Denver & Rio Grande is building the Western Pacific to the Pacific Ocean, isn't it?

A. I don't know who is building it.

Q. You don't know who is building it?

A. No, sir; except by newspaper talk.

Q. You are not posted in that regard?

A. I suppose the so-called Gould interests are building it. I don't know who owns it.

Q. That is another matter of common understanding in this community, isn't it?

A. Yes; pretty general. Things are beginning to creep out.

Q. Well, there hasn't been very much secrecy about that. Haven't the Denver & Rio Grande people been using that pretty extensively?

A. I think so; yes, sir.

Q. So the case seems to be this, then, doesn't it: that the Southern Pacific could so use its trans-continental traffic that it favored the Union Pacific to such an extent and prejudiced the Denver & Rio Grande to such an extent that the Denver & Rio Grande people themselves had to build a line to the Pacific Ocean since the Southern Pacific and Union Pacific relations became closer?

A. I don't understand the motive under which Mr. Gould and his friends undertook the building of the Western Pacific.

Q. Isn't that the position they have been taking in the published reports of the Denver & Rio Grande?

A. Generally.

3983 Q. I thought you kept posted about these things.

A. I haven't very much doubt but that is what they intended to do, but I know nothing about Mr. Gould's plans or arrangements or the extent of his ownership in the Western Pacific.

Q. And yet the Southern Pacific was so helpless prior to 1901 in the trans-continental rate situation that the Union Pacific could haul freight from Ogden up to Portland and then send it by boat line down to San Francisco and coerce the Southern Pacific, while the Southern Pacific, with all the traffic it controlled, could not divert that traffic to the Denver & Rio Grande so as to bring the Union Pacific up short to its terms?

A. I never knew the Southern Pacific was in any way helpless, but by the closing of that water route via Portland it was expected, and they probably hoped, it would add something to their revenues.

Q. But if you were the head of the traffic department of the Southern Pacific at San Francisco, with the vast traffic that originates on your line moving across the continent, you would feel pretty helpless, wouldn't you, if the Union Pacific, by hauling freight practically in the opposite direction from San Francisco and using the boat line up there, could bring you to terms?

A. The Southern Pacific was not at all helpless.

Q. I don't think so either; that is what I want to show; but I thought from the way you spoke about it, with the situation that you left it in, it was helpless.

A. They were never helpless, but that was a measure simply to increase their revenue or to strengthen their hold upon the

3984 business.

Q. Let us look upon it from the standpoint of the Union Pacific again. You seem to be most familiar with that. Don't you think as a business proposition that the Union Pacific, with this short, direct line from the Missouri River to Ogden, and there connecting with the Southern Pacific, that it would be to its interest to work with the Southern Pacific rather than work by Portland on trans-continental business? Don't you think that it would lose its Cali-

fornia business attempting to work it by way of Portland against the all-rail line made up by the Southern Pacific and the Denver & Rio Grande? Don't you think it would have been bad business from their standpoint for the Union Pacific to attempt to do that?

A. I don't think there is any danger of their ever attempting to work all the business that way. I don't think they ever attempted to.

Q. How would they work the rest?

A. By the Southern Pacific west. I have never known that gateway as having been closed to them.

Q. With the Southern Pacific working against them——

A. Working against them?

Q. Yes.

A. I never knew them to work against them.

Q. And you never knew them to work by way of Portland either, did you?

A. Which—the Union Pacific?

Q. Yes.

A. Only in the matter of general impression and report.

Q. General impression. Then, except for that general impression and report, this club in the hands of the Union Pacific has
3985 existed all these years and it has never attempted to use it against the Southern Pacific, so far as you know?

A. I don't know to what extent they ever attempted to use it, but I am quite certain that the Southern Pacific wanted to shelter themselves against their using it.

Q. That is based upon what Mr. Smurr told you?

A. And the fact that I have said that our agents in California and the agents of our connecting lines were continually reporting to me that the agents of the Southern Pacific in their interior territory, where this large volume of California traffic originates, were favoring the Union Pacific against the Rio Grande route.

Q. What agents were those?

A. The agents of the Burlington and the Rock Island road.

Q. What were the names of the Denver & Rio Grande agents in that territory? Do you remember them?

A. Our agent, that is, the agent of the Rio Grande Western road over there, was Mr. W. H. Snedaker.

Q. Where was he?

A. At San Francisco.

Q. What other agent did you have over there?

A. We had Mr. J. M. Crawly, who succeeded Mr. Snedaker as our freight agent there; and after the consolidation of the Rio Grande Western with the Denver & Rio Grande, Mr. W. J. Shotwell was the agent over there and is still the agent of the Rio Grande there.

Q. Where is he located?

A. San Francisco.

Q. What agents did you have at Portland?

A. Our agency in Portland was established in 1897, after the receivership of the Oregon Short Line. Our first agent there was Mr. W. H. Paul.

3986 Q. And who succeeded him?

A. His name has escaped me just for the moment, but he is the commercial agent of the Rio Grande road in San Francisco now.

He was up there a short time when I brought him to San Francisco and sent a man by the name of McBride there, who is now there. J. D. Mansfield was the successor of Paul.

Q. Now, I understood you to testify on your direct examination that the Denver & Rio Grande formerly worked with the Southern Pacific by way of Ogden and Sacramento for Portland business?

A. Yes.

Q. During what time was that?

A. It was all the time up to the segregation of—well, up to the receivership of the Short Line and the Navigation Company and the Union Pacific.

Q. And when was that?

A. In the autumn of 1893, as I remember.

Q. What business was that? Where was it from?

A. The business was not very important in volume, not of sufficient importance for us to establish an agency in Portland, for our haul, of course, was very short from Ogden to Salt Lake, and the divisions were so great against us west of Ogden and the traffic so meagre that we never established an agency up there.

Q. That was the business simply between Portland and Salt Lake?

A. Portland and Salt Lake. Well, Portland and that part of the country eastward. The volume was not very important. The most valuable traffic there, as far as I ever knew, was the hops; they were very valuable, but that traffic usually moved by the Sunset Route through to the east. We occasionally had shipments for St.
3987 Louis or for Chicago, but our agent at San Francisco looked after that territory in our interests until after the Short Line and the Navigation receivership, when we established an agency up there.

Q. Now, the business from Salt Lake and Portland and the vicinity of Portland, was that the only business which the Denver & Rio Grande moved that way in connection with the Southern Pacific?

A. No; through business.

Q. Through business?

A. With Colorado and beyond.

Q. From the Atlantic seaboard?

A. We got no Atlantic seaboard business. It was taken by the Sunset Route. If we got any it was a small quantity that was gathered up by our connecting lines.

Q. This business from the East—what territory do you mean?

A. Chicago and Middle West.

Q. That used to come through Denver and thence over the Denver & Rio Grande to Ogden and thence over the Shasta Route?

A. Yes, sir.

Q. To Portland?

A. Yes.

Q. After the receivership did you handle any of that business with the Short Line?

A. Some; not very much.

Q. I understood you to testify that when the receivership occurred you worked with the Oregon Short Line.

A. We established an agency out there and secured what business we could.

Mr. SEVERANCE. Your question, Judge, was after the receivership. Perhaps he misunderstood you. You meant during the receivership?

Mr. LOVETT. I meant during the receivership.

WITNESS. During the receivership; yes, sir.

3988 Q. During the receivership you worked the business from and through Salt Lake to Portland by way of the Short Line?

A. Yes, sir; largely.

Q. I believe you said you did not desert the Southern Pacific altogether?

A. We did not; we worked with the Short Line or either way.

Q. What is the relative distance of the two routes from Ogden to Portland, that is, by way of the Oregon Short Line and by way of the Southern Pacific and Sacramento?

A. Oh, there is a difference of several hundred miles, Judge. I don't recall just what. Probably 400 miles.

Q. Probably 400 miles difference?

A. I should say about that. I don't recall just what the distance is.

Q. It is over 1,300 miles by way of Sacramento, isn't it?

A. There would be about that relative difference, it being about 900 miles via Huntington, via the Short Line, and 400 miles longer via Sacramento, making about 1,300 miles.

Q. What is the difference in the matter of mountain ranges, grades, etc.?

A. It is the hard route.

Q. Which is?

A. The Sacramento—the Shasta Route.

Q. Two mountain ranges to go over, aren't there?

A. Yes, sir.

Q. The Short Line—I mean in name as well as in distance—has a very great advantage in both grades and distance, hasn't it?

A. It is a line, if you put it that way, of very much less resistance than the other route.

Q. Makes very much better time, doesn't it?

A. It should make it.

Q. Isn't that why you changed to the Short Line as against
3989 the Southern Pacific when the Short Line was opened to you?

A. Well, at the time of the break between the Union Pacific and the Short Line, in the spring of 1897, the Short Line turned practically all of their business to the Rio Grande road. We inherited the revenue east of Ogden that the Union Pacific had received east of Granger, and that threw a very important volume of traffic our way from all of that Short Line and Navigation territory, until the differences between them and the Union Pacific were patched up, I think in the following autumn.

Q. You could give very much better service to your patrons by way of the Short Line, too, couldn't you?

A. We never had any complaint of the service.

Q. Did you ever have any complaint of the other way?

A. No, sir; not that I recall.

Q. Always satisfactory?

A. On such traffic as moved.

Q. Shippers did not complain in those days?

A. Our volume of traffic up there, as I have explained, was not very important until after the so-called opening to us of the Ogden gateway, and I don't recall that anybody ever lodged any complaint with me as to time by the Shasta Route on such traffic as we handled.

Q. As a matter of fact, from Ogden or Salt Lake to Portland, the Short Line was a very much better route from every practical standpoint?

A. A shorter route and it is a better route.

Q. How long did the trouble between the Oregon Short Line and the Union Pacific, in 1897, to which you referred, last?

3990 A. My recollection is that they adjusted their differences in the autumn of 1897. There was a readjustment, I think, of divisions between the two systems and a resumption of their former friendly relations.

Q. How long did the disturbance last? Adjusted in the autumn, when did it commence?

A. In May. I think from May to October or November.

Q. What did the Short Line do at that time with its line from McCammon down to Granger?

A. They had very important coal traffic over there, but aside from that and the merchants' modest merchandise traffic I don't suppose they did much of anything.

Q. Where was that coal traffic from?

A. From Kemmerer; there were a number of coal mines along there in that district.

Q. There is no connection for that line, for the Oregon Short Line, except the Union Pacific at Granger?

A. The traffic moved around up to Hampton and down on that line. So whatever traffic there was, was formerly handled by the Rio Grande, as it formerly had gone in by Granger and under the same basis of rates.

Q. I am asking now about the line owned by the Oregon Short Line from Granger up to McCammon. I say there is no other outlet for that line eastwardly except the Union Pacific, is there?

A. Bring it right around to the Rio Grande, handled all the traffic by the Rio Grande; it was all diverted this way.

Q. That originated on this line?

A. Yes.

Q. What originated over there?

3991 A. Wool and live stock and coal and merchandise.

Q. And that could be brought by the Oregon Short Line up to McCammon and thence down to Ogden and turned over to the Denver & Rio Grande?

A. Yes, sir.

Q. Was it moved that way?

A. Why, practically all of the traffic moved that way during the time of this acute disturbance between the Union Pacific and the Short Line.

Q. You testified from some memoranda of the divisions allowed to the Denver & Rio Grande and the Union Pacific on the traffic originating in seaboard territory. I understood you to say that there was first deducted what you call the arbitrary paid in the East. I suppose you mean by that the local rate or the amount paid from point of origin.

A. From the interior to the seaboard at New York.

Q. That was first deducted?

A. Yes, sir.

Q. And then you gave the division of the balance of the revenue.

A. 5 per cent for marine insurance, and the rest was divided on the percentages I gave here.

Q. You said in speaking of the Union Pacific, that the Union Pacific got 16 per cent.

Mr. SEVERANCE. No.

A. About 16 per cent.

Q. The lines east of the Missouri got 16 per cent?

Mr. SEVERANCE. No, between the Mississippi and the Missouri.

Mr. LOVETT. That is the point I didn't understand.

WITNESS. 24 per cent and a fraction east of the Mississippi—24.16.

Mr. SEVERANCE. 16 per cent between the two rivers; the

3992 Union Pacific got the rest.

Q. The Union Pacific got the rest?

A. As to that 16 per cent, judge, Mr. Monroe had spoken to me a number of times of our allowing the lines between the Missouri River and the Mississippi River 17 per cent and between the Missouri River and Chicago 21 per cent, while his line allowed those districts respectively only 16 and 20.

Q. Why was that, do you know?

A. Well, I don't know why; I think the Union Pacific was based on a contract they had with the Chicago & Northwestern, and which was, of course, accorded to the other lines, but our division of the Rio Grande rate was an entirely separate matter.

Q. And your company was opposed to exacting a larger share of the through rate from the other lines, suggested by Mr. Monroe?

A. We did not think it advisable to antagonize the ocean lines, the Morgan Line, and the Mallory Line, which such a proceeding would have resulted in; and then our volume of traffic was satisfactory to us.

Q. Those routes were differential routes at that time, weren't they?

A. Yes, sir.

Q. That is, by the Gulf?

A. Yes, sir.

Q. You testified that at one time the Denver & Rio Grande was admitted into Montana over the Oregon Short Line.

A. Was what?

Q. Was admitted into Montana over the Oregon Short Line.

A. Yes, sir.

Q. And that you were competing then with the Northern Pacific and Great Northern and Union Pacific for this Montana business.

A. Yes, sir.

3993 Q. How did the Union Pacific compete for that?

A. With their line, via Granger and McCammon.

Q. And the Oregon Short Line?

A. And the Oregon Short Line.

Q. In other words, both your line and the Union Pacific got in there only over the Oregon Short Line?

A. Yes, sir.

Q. Both of you were connecting lines?

A. Yes, sir.

Q. For the Oregon Short Line?

A. One at Granger—the Union Pacific—and the other, the Rio Grande, at Ogden.

Q. During the time that you were connected with the Denver & Rio Grande, all the California business that the Denver & Rio Grande secured was interchanged with the Southern Pacific at Ogden, was it not?

A. Practically all of it. We had another route to California for a short time.

Q. What was that?

A. From Southern California, via La Junta and Grand Junction, with the Atchison, Topeka & Santa Fe, on citrus fruits.

Q. How is that? What is that route?

A. There was a time, Judge, when the Atchison, Topeka & Santa Fe owned the Colorado Midland, and that formed a route from Southern California, in connection with the Atchison company, to La Junta, and from La Junta to Grand Junction, and from Grand Junction to Utah common-points territory. For a time we had that route in.

Q. How much of a haul did you get?

A. How much haul?

Q. How much haul would you get out of that?

3994 A. The Rio Grande Western road from Grand Junction to Salt Lake City 292 miles.

Q. And the Denver & Rio Grande?

A. The Denver & Rio Grande had none at all. The Colorado Midland, belonging to the Atchison, delivered it to us at Grand Junction.

Q. And what business was that?

A. Chiefly the citrus fruits—oranges.

Q. Destined where?

A. To Utah common points.

Q. But you did not participate in any of the east-bound business from California?

A. Essentially all of our California business was handled in connection with the Southern Pacific road via Ogden.

Q. Wasn't all of your business having either origin or destination east of Pueblo and Denver and the Pacific coast interchanged with the Southern Pacific at Ogden?

A. Essentially all of it, yes, sir.

Q. Well, what other way did you have? You say essentially all. Does that mean all or nearly all?

A. For business originating in the east?

Q. Yes.

A. All of it.

Q. And business originating in the west, going east of Denver?

A. Practically all, with the single exception that I spoke of.

Q. Well, that was not going east of Denver or Pueblo?

A. No; all of it going east of Colorado.

Q. All of it was interchanged with the Southern Pacific?

A. Yes.

Q. Now, your company solicited that transcontinental business, didn't it?

A. Yes, sir.

3995 Q. In California?

A. Yes, sir.

Q. And in points east?

A. Yes, sir.

Q. All of your eastern connections actively solicited that business, didn't they?

A. They all had agencies and gave us a large share of their business; some of the connections probably gave us all of their business that came through Colorado; others a portion of it.

Q. And the Union Pacific was soliciting that business?

A. Yes, sir.

Q. And its connections east of the Missouri River were soliciting it?

A. Yes, sir.

Q. And your various lines working in connection with you east of the Missouri River were soliciting it?

A. Yes, sir.

Q. But all that you got, all that passed over your line and all that passed over the Union Pacific, had to go over the Southern Pacific west of Ogden, hadn't it?

A. All of ours went over the Southern Pacific west of Ogden.

Q. And all of the Union Pacific, as far as you know?

A. As far as I know, excepting in the way that I have related before.

Q. By which you mean the boat line?

A. The Portland water line.

Q. And there was pretty active competition between the Denver & Rio Grande and the Union Pacific for that business, wasn't there?

A. Yes, sir.

Q. And always has been?

A. Always has been.

Q. You could not make any rates for California on that business without the concurrence of the Southern Pacific, could you, Mr. Babcock?

3996

A. Not tariff rates, no, sir.

Q. That is what I mean—open rates, lawful rates.

A. No, sir.

Q. Always had to have a joint tariff established?

A. Always.

Q. I believe you stated in your direct examination that the traffic in hops was a considerable item and that you never could get any of that to any considerable extent from the Southern Pacific by way of the Sacramento route, the Southern Pacific carrying it east by the Sunset Route: is that correct?

A. When it was destined for Atlantic seaboard territory.

Q. Most of it moved to Atlantic seaboard territory?

Mr. SEVERANCE. I did not hear the question and answer. Won't you please tell me?

Mr. LOVETT. I asked him whether he had not testified on direct examination that he had never been able to get for the Denver & Rio Grande much of the traffic in hops from that country. He said it moved by the Sunset.

Q. The Southern Pacific preferred to carry that where it could get the long haul, I suppose?

A. Yes, sir.

Q. By the Sunset Route?

A. Yes, sir.

Q. If it brought it over this way to you it would only have gotten the haul from point of origin to Ogden?

A. To Ogden: yes.

By Mr. SEVERANCE:

Q. Judge Lovett seemed somewhat concerned about the distance from here to San Francisco by way of Portland as against the direct route. As a matter of fact, is that distance prohibitory?

3997

A. Prohibitory?

Q. Yes.

A. I don't consider it so.

Q. This morning we introduced in evidence a tariff put in by the Southern Pacific Company on wool to New York and Boston from Corinne, Utah, by way of the Sunset Route—presumably to carry wool in opposition to the direct rail lines to the east. What is the distance from Corinne, Utah, in a general way, to the junction point in California where the traffic is moved to the east—Sacramento?

A. Fully 700 miles, isn't it?

Q. Yes.

A. Not quite. Sacramento is 90 miles this side of San Francisco. Corinne is about 20 miles west of Ogden.

Mr. WILLIAMS. 26 miles.

WITNESS. It must be in the neighborhood of 675 miles from Corinne to Sacramento.

Q. How much?

A. About 675 miles: I should think about that.

Q. Now, the evidence shows that it is about 2,300 miles from New Orleans up to San Francisco or Sacramento, and it is 1,800 miles by boat from New Orleans to New York. I suppose the distance via Galveston would not be much different, except there would be more water haul and less rail haul. That would make an aggregate of 4,775 miles from Corinne, Utah, to New York by that route. Now, what is the distance from Corinne, Utah, to Omaha?

A. About 1,020 miles. It is 1,000 miles from Ogden to Omaha.

Q. Well, say 1,027 miles. It is 500 miles, in round figures, from Omaha to Chicago.

A. 490 miles by the Northwestern road.

Q. Well, 490. About 950 from there to New York?

A. 912, the short line.

Q. That makes 2,429 miles by the Union Pacific and its con-
3998 nections, as against 4,775 miles by the Southern Pacific. Does it occur to you that the Southern Pacific would be foolish to put in a rate by a line that is twice as long as the other line?

A. Not on that traffic.

Q. Do you think traffic can move that way?

A. I think the freight rate is sufficiently high to justify them in doing it.

Q. Well, you don't think there is any reason why traffic can not move double the distance in opposition to the all-rail line, do you?

A. Not at all, under fair rates or unfair rates.

Q. Presumably that tariff was filed for the purpose of moving something on it, wasn't it?

A. Yes, sir.

Q. And you have already testified that wool has moved from that locality to New York and Boston by way of the Sunset Route?

A. My understanding is it has moved from all along there.

Q. So the matter of distance is not controlling, is it?

A. Not by any means.

Q. Counsel asked you at considerable length about the respective harm that the Union Pacific and the Southern Pacific could do each other in the course of a quarrel: the Union Pacific in using the boat line from Portland and the Southern Pacific diverting traffic, etc. Do you happen to know what percentage of the business out of New York territory is carried to California points by the Sunset Route?

A. I only know by statements I have seen of it, and they vary.

Mr. LOVETT. I object to that testimony: he does not know.

3999 Mr. SEVERANCE. Mr. Hawley testified that over 50 per cent of the traffic from New York common points, and at times I think as high as 80 per cent of the traffic from New York City proper had moved by the Gulf routes—the Morgan line.

Mr. LOVETT. I don't think he did.

Mr. SEVERANCE. Didn't he get as high as that?

Mr. LOVETT. I think he testified only as to New York proper—not the New York common points.

Mr. SEVERANCE. Another witness did, then.

Q. Well, take it New York proper. Suppose the Union Pacific in a quarrel with the Southern Pacific, they being independent, should use that boat line by Portland, which counsel has examined you about, in connection with its rail line, cutting rates that way, that is, reducing rates that way, what would be the effect on the rates over the Sunset Route and the Gulf lines to California points?

A. Break them down.

Q. So that the Southern Pacific had a good deal at stake, had they not, in maintaining rates?

A. More than any other line.

Q. And isn't that the reason why you say that the possession of the route to tidewater with the boat line gave the Union Pacific such commanding influence?

A. That is the main reason.

Q. Counsel asked you as to whether it was possible for the Rio Grande or the Union Pacific to make any rates through without the assent of the Southern Pacific. During the time that you were a general officer of the Rio Grande or the Rio Grande Western did you attend traffic meetings of the transcontinental lines?

A. Yes, sir.

Q. At which rates were made?

A. Yes, sir.

4000 Q. How are all rates made from the Missouri River to California?

A. They are made by agreement between the lines concerned, as a general proposition.

Q. That is, between all the lines?

A. Between all the lines concerned.

Q. What are all the lines concerned—the members of the Transcontinental Freight Association?

A. Yes, sir.

Q. What I wanted to get at was, if there is anything extraordinary in the fact that the Southern Pacific should have to assent to that rate?

A. Of course as they had the only line from here to San Francisco they could prevent us from making the rate; but the other lines, for instance the Atchison route, could make the rate independently of the Southern Pacific as far as we were concerned. We could establish no tariff rate except by consent of the Southern Pacific.

Q. What considerations ordinarily govern in these Transcontinental meetings in the making of rates? Is it to get rates that traffic will move on and secure an adequate revenue and all that?

A. I don't know whether it would be proper for me—meetings were generally held perhaps secretly, and I would not care to disclose any knowledge that would come into my possession by virtue of being an authorized member present at those meetings.

Q. Oh, well, I don't care anything about it.

Mr. LOVETT. No objection so far as we are concerned.

Q. I don't care particularly about it. The main thing I wanted to show is that all rates were made in meetings in which all were represented and all assented.

A. Yes, sir; discussed there and the reasons given for wanting to establish a rate either to reduce it or increase it, explanations given, and vote taken as to whether any change shall be made or not. 4001

Q. Could any line belonging to the association initiate the movement for a change in the rate?

A. As a general thing in these association agreements there is a provision permitting any line to establish a rate independently but under a certain defined notice in advance that they will do that.

Q. That is not what I am speaking about. I am speaking of rates in which different lines have to join, in which the connecting lines have to join in the through rate. Could any one of those lines initiate the movement to change the rate?

A. They could not establish the rate excepting by agreement, but any one line could bring the proposition up.

Q. That is what I mean. And then it is discussed?

A. And then it is discussed.

Q. All the lines being separately represented?

A. Usually; and the line that presented the proposition was supposed to be ready to advocate it and give the reason for its establishment or change.

Q. What effect upon the service performed by railroads does competition have?

A. Competition?

Q. Yes; what effect does it have on service?

A. It expedites it.

Q. Is that practically a universal rule?

A. Yes, sir.

By Mr. LOVETT:

Q. With reference to the power of the Union Pacific by virtue of its ownership of this boat line and the influence you say the Union Pacific might exert on the Southern Pacific through its control of that boat line, in what case and for what purpose do you suppose the Union Pacific would use that boat line against the Southern Pacific? What would it want to accomplish? 4002

A. It depended upon what conditions there might be existing between the Union Pacific and the Southern Pacific interests.

Q. What could that difference be—divisions?

A. Well, by divisions or by feeling they were not getting a reasonable share of the traffic. Or it might be financial reasons—that sometimes governs. Sometimes you never know why these large lines make breaks in rates or start off on some kind of a new plan.

Q. The Union Pacific and the Southern Pacific, however, are the natural line from the Missouri River to San Francisco?

A. They two constitute or form a direct line.

Q. Now, can you as a practical matter—I don't mean going off into the field of imagination, but looking at it from the standpoint of a practical railroad man, supposing you were in charge of the operations of the Union Pacific, what occasion, do you suppose, might arise for you to use that boat line to coerce the Southern Pacific?

A. Well, just when they felt they were not getting an equitable division of either the rate or the traffic or some question of difference in the policies of the lines.

Q. The only reason, so far as you can see, with the lights before us, that the Union Pacific might want to use that line against the Southern Pacific, would be in the matter of the division of the
4003 through rate, that is, the revenue on the joint rates and the matter of the routing of the traffic as against the Denver & Rio Grande?

A. Largely. I recall that the Union Pacific people at one time became a little jealous of the Rio Grande and charged me with cutting rates, and Mr. Stubbs would haul me up and tell me I must desist, so that the business could move by the Union Pacific. That was really the motive in it.

Q. He didn't want you to cut rates, eh? I am glad to have that testimony in regard to Mr. Stubbs.

A. Well, Mr. Stubbs isn't any saint on the rate proposition.

Q. Do you think that is the reason for his position? I won't press that question. Now, you say that the Union Pacific would charge you—your line—with cutting rates, and then Mr. Stubbs would call your line up for it?

A. Generally call up General Dodge, the vice-president, to whom I reported.

Q. So you think the Union Pacific might use the boat line to coerce the Southern Pacific to stop it; is that it?

A. Well, the Union Pacific expected to get a good share of that business through the closing of that line, at tariff rates. Certainly they were not particular, when they thought I was getting more traffic than I ought to have by using such means that I found it necessary to employ against that alliance.

Q. That is one purpose, then, for which the Union Pacific might use it—to maintain rates; that is, to coerce you and the Southern Pacific into maintaining the rates?

A. To increase their traffic.

Q. To increase their traffic. Now, what other purposes?

4004 What I want to get at, Mr. Babcock, is this. You testified here about what a power that gave the Union Pacific, and I want to know now how it could use that power, if it was actuated by motives which govern the action of other people, ordinary people—how it could use that power, in what particulars. Now, you must know instances in which you as an expert railroad man would use that power in the interests of the Union Pacific—that power to which you attach so much importance. I would like you to specify the instances and the means for which the Union Pacific could or might naturally use that power.

A. They simply had that route at their disposal, and, if occasion arose, through any cause, if they found it necessary to use it, it was there to be used.

Q. Against the Southern Pacific?

A. Yes, sir; against the Southern Pacific, or, if you please, against the other competitors—the Atchison or the Northern Pacific or any other route competing for California business. It gave them a through line under their own control, and thereby gave them a bulwark of defense for their traffic—their proportion of the traffic—against their competitors.

Q. That is still very general. You can't be more explicit than that?

A. It would have to depend upon circumstances.

Q. Did they ever use it against the Denver & Rio Grande while you were connected with it, except in the particular you mentioned—charging them with cutting rates?

A. The Union Pacific exercised all the influence they could bring to bear upon the Southern Pacific to favor their route as against the Rio Grande. In one respect the Union Pacific had a shorter

4005 line, as I have stated, between Ogden and Omaha: it could make much quicker time if it desired. On our part, we were seeking to get a fair representation in the traffic and against any alliance the Union Pacific might have with the Southern Pacific or the Portland route or their faster time on freight in transit; we had to employ such means as were at our command.

Q. Well, you had a very much better line; you and the Southern Pacific would have a very much letter line from the Missouri River than the Union Pacific would have with the Portland boat line.

A. That was an effective line: it was not the best line, but it was a very effective line in controlling rates.

Q. That does not answer my question.

A. Well, I should naturally think, Judge, that an all-rail line, even if a little longer, would be better than a broken line of rail and water.

Q. Yes, but I want you to say what it is rather than what you think about it. You see it does not do any good to think unless you get it on the record. I thought so, too. So your testimony would be, then, that the Southern Pacific and the Denver & Rio Grande would

be a better line than the Union Pacific by way of Portland and the boat?

A. Yes, sir.

Q. Did the Union Pacific ever attempt to use that boat line, so far as you know, against the Denver & Rio Grande, to coerce you in any way?

A. Never to coerce us; no, sir.

Q. Or to coerce the Atchison?

A. I never knew of it.

Q. The only instance in which you have reason to suspect they were using it was when they complained of your line cutting the rates?

4006 A. They had that power, to use it any time they saw fit, and all the other lines recognized that, and it was a very effective force in creating and maintaining respect for the Union Pacific system on the part of all the other lines.

Q. In what way did they use it? How did they recognize it?

A. Because they knew they had a line of their own. They were in a position to make any rates they saw fit if they cared to exercise that right arbitrarily, and their making the rate would fix the rate for all the other lines.

Q. Well, you make those general statements. I am trying to get you to give some specific instance now where any of the other lines recognized it, ever did any affirmative act to recognize this power of which you speak.

A. They knew that it existed; probably they never had any occasion to test it.

Q. Don't you know, Mr. Babcock, that nothing could delight the Denver & Rio Grande management more than the Union Pacific to attempt to use that line against the Southern Pacific? Don't you know that, Mr. Babcock?

A. No, sir; I do not know it.

Q. Then they must be peculiar people. You don't know that the effort of the Union Pacific to use that line in any way the Southern Pacific did not want it used would have played right into the hands of the Denver & Rio Grande? You don't know that?

A. We never had occasion to deal with the proposition, Judge.

Q. That is what I supposed. You had this here all those years and you never had occasion to deal with it; no question has ever been raised about it?

4007 A. Excepting in the fact of the position I have stated here—that that line was used to influence the routing of Southern Pacific traffic over the Union Pacific against the Rio Grande.

Q. That is, you were told so by your agents?

A. I knew it from practical experience.

Q. What practical experience?

A. The fact that the business was attempted to be sent that way as against us.

Q. And that, you think, is the reason why it was preferred?

A. I believe that was the reason why we did not secure a larger proportion of the traffic.

Q. Notwithstanding that the Union Pacific is a natural connection for the Southern Pacific at Ogden?

A. Yes, sir.

Q. With reference to this wool traffic. You were present to-day when Mr. McCarthy was on the stand, weren't you?

A. Yes, sir.

Q. You heard his testimony?

A. Not all of it. I couldn't hear back there very well.

Q. You heard a portion of the tariff of the Southern Pacific Company on wool, from Corinne and points west of Corinne, read into the record, did you not?

A. Yes, sir.

Q. Aren't there also tariffs from those same points by way of Ogden over the Union Pacific to the East?

A. I don't know whether there are now or not.

Q. Well, weren't there up to your last connection with the subject?

A. It has been some years, Judge, since I have had anything directly to do with it, until I came here just recently, and with the mass of tariffs that have been filed in this office since I have been here I haven't had a chance to examine very closely. I don't know whether such tariffs exist or not.

4008 Q. You don't know that most of the wool from the points in Nevada on the Southern Pacific moves eastwardly by way of Ogden and the Union Pacific, do you?

A. I do not.

Q. You have no information on that subject?

A. No, sir.

Q. You don't know that that tariff was put in by the Southern Pacific and the joint tariff by the Union Pacific and Southern Pacific so as to keep those lines open for the shippers to take either route they preferred?

A. I have no practical knowledge at present of what their wool tariffs are beyond that one I happened to see.

By Mr. SEVERANCE:

Q. You don't understand it was put in by the Southern Pacific as a competitive measure against the Union Pacific, do you?

A. No.

Q. Counsel brought out that the Union Pacific complained of you to Mr. Stubbs, claimed you were cutting rates. Did you ever have to complain of them to Mr. Stubbs?

A. Did I ever what?

Q. Have to complain of the Union Pacific to Mr. Stubbs.

A. I had plenty of ground for it, but I never complained. I generally found a way to take care of ourselves.

Q. You were a "sport," were you, and didn't do anything?

A. Yes.

Q. Did you ever complain to the Union Pacific that the Morgan route was cutting rates?

A. I never made any complaints of that character to anyone. I simply looked after our interests in our own way.

4009 By Mr. LOVETT:

Q. You never complained to the Southern Pacific of the Union Pacific cutting rates at all?

A. I didn't waste any time making complaints.

Q. Well, what was it you made to Mr. Smurr?

A. What was it?

Q. What was that you made to Mr. Smurr, about which you testified?

A. Oh, at that time. I often taxed him with doing that, and I proceeded in my own way to protect our own interests.

Q. Well, didn't you tell him at that time what the Union Pacific were doing?

A. I didn't pay any attention to what the Union Pacific was doing.

4010 DAVID ECCLES,

being duly sworn as a witness on behalf of the Complainant, testified as follows:

Direct examination by Mr. SEVERANCE:

Q. Mr. Eccles, where do you live?

A. Ogden.

Q. What is your business?

A. Well, a variety of businesses. In the lumber business mostly.

Q. Are you connected with the Utah Construction Company?

A. Yes, sir.

Q. What is the business of that company?

A. Building, railroads, grading, and construction.

Q. How long have you been connected with that company?

A. About eight or ten years.

Q. What is your present position with the company?

A. President of the company.

Q. Has that company built a good deal of mileage out here in this country?

A. Yes, sir.

Q. You are building the Western Pacific now, aren't you?

A. Yes, sir.

Q. Where do you carry on your lumber operations? You say you are in the lumber business.

A. In Oregon.

Q. What places?

A. Baker City, Hood River.

Q. Where is Hood River with reference to Portland?

A. It is about 65 miles east of Portland.

Q. Where do you ship the product of your mill on Hood River—to what markets?

A. Mostly to Utah and Idaho; some into Nevada.

4011 Q. How does that traffic move from Hood River to Nevada points?

A. It moves now by way of Portland, over the Shasta route; it did move, until within about a year, I think (somewhere about that time), by the way of Ogden.

Q. Why do you move it now over the Shasta route instead of by way of Ogden?

A. There is no rate now by way of Ogden, at least not that I am aware of.

Q. Which is the better route so far as the physical characteristics of the route are concerned—the one by Ogden or by the Shasta route?

A. Well——

Q. Which way do you have to do the most mountain climbing?

A. By the Shasta route.

Mr. LOVETT. What is the destination of that lumber?

Mr. SEVERANCE. Nevada points.

Mr. LOVETT. And originates where?

Mr. SEVERANCE. East of Portland.

Q. On what line of road does that originate east of Portland?

A. On the O. R. & N.—the Oregon Railroad & Navigation.

Q. What is the rate to these Nevada points from Portland?

A. It is 40 cents by the Shasta route.

Q. And do you have to pay an arbitrary into Portland in addition?

A. If we ship from Hood River we pay a 5-cent arbitrary to Portland.

Q. You pay that to the O. R. & N.?

A. Yes, sir.

Q. So that the traffic, instead of moving around by the Short Line to Ogden and thence west to Nevada, moves west to Portland and over the Shasta route?

A. Yes, sir.

Q. And that makes you a total rate of 45 cents?

A. Yes, sir.

4012 Q. What was your rate to these same points when you were able to ship by the Oregon Short Line and west from Ogden?

A. 40 cents to as far west as Wells, I think; that is as far as lumber went.

Q. Is that the same place to which you have to pay 45 cents now?

A. Yes, sir.

Q. When did you say that change was made?

A. I don't know exactly; I would say about a year ago.

Q. Have you ever made any complaint about it?

A. Well——

Q. I mean have you ever taken the matter up with any traffic officials?

A. Yes.

Q. With whom?

A. I have spoken about the matter with Mr. Reeves.

Q. Who is Mr. Reeves?

A. The traffic or general freight agent of the Oregon Short Line here.

Q. With whom else?

A. Also with Mr. Miller and Mr. Stubbs.

Q. Mr. Miller, of Portland?

A. Yes, sir.

Q. And Mr. J. C. Stubbs?

A. Yes, sir.

Q. What is their excuse for taking out that rate this way? What reason did they assign?

A. About the only excuse I know is that the Southern Pacific wanted the long haul; that is about the main reason that was given.

Q. So the traffic is hauled west into Portland over the O. R. & N. and then around by the Shasta route, over two ranges of mountains, that Judge Lovett spoke of in questioning Mr. Babcock, to destination, instead of coming around by the Short Line and thence west to Nevada?

A. Yes, sir.

Q. Mr. Eccles, how long have you been operating up in Oregon?

4013 A. In the lumber business?

Q. Yes, sir; or otherwise.

A. About twenty years.

Q. Are you familiar with the Shasta route between San Francisco and Portland?

A. Yes; partly so, anyway.

Q. Have you traveled over it?

A. Yes.

Q. A good many times?

A. Yes, sir.

Q. Are you familiar with the boat line that used to be maintained there by the O. R. & N. Company between San Francisco and Portland?

A. I traveled on it.

Q. Did you ever know anything about any competition between those lines up there in the old days when the Southern Pacific and the Union Pacific interests were separate?

A. Yes.

Q. What was the nature of the competition between the boat line and the Shasta route?

A. They used to maintain a $5 rate between Portland and San Francisco.

Q. Who put that in?

A. Mr. Campbell.

Q. What was Mr. Campbell's position?

A. General traffic manager of the O. R. & N.

Q. Had charge of the boats?

A. Yes, sir.

Q. What did that $5 rate include?
A. Berth and board.
Q. And transportation?
A. Yes, sir.
Q. What did the Shasta route do, if anything, to meet that cut?
A. They made a $5 rate, including berth in a tourist.
Q. Including a berth. How long did that fight last?
A. Oh, I don't know; I should say the biggest part of a year.
Q. Do you remember about when it was?
A. Probably more. I don't know.

Q. Did you travel on both of the lines during the time it
4014 was on?

A. Yes, sir.

Q. And it was a matter of common knowledge, wasn't it, that that was going on for a long time up there?
A. Oh, yes, sir. It was advertised.
Q. What is the lumber rate at the present time to Ogden from Portland by the Oregon Short Line and O. R. & N.?
A. 37½ cents, I believe.
Q. What is the lumber rate, if you know, from San Francisco to Ogden by the Southern Pacific?
A. Forty cents.
Q. What is the shingle rate from Portland to Ogden by the Short Line?
A. It used to be 50, and I am not sure whether that has been cut down to 47½ or not. There used to be a 10-cent differential, and the lumber rate used to be 40, and it was cut to 37½, and I am not positive whether shingles were cut at the same time, but there was a 10-cent differential.
Q. Do you know what the shingle rate is from San Francisco to Ogden?
A. No; I do not. I think it is the same, but I am not positive of that.
Q. You don't know about that?
A. No.
Q. Now, to revert to the Oregon situation again. At the time this competition was existing between the steamer line, the boat line, did you know anything about the O. R. & N. Company using river steamers in connection with their boat line to San Francisco?
A. Yes; they used to have some light-draft steamers to go up the river as far as possible and get grain and bring it down and load it at Portland and take it down to San Francisco.
Q. By boat?
A. Yes, sir.

Q. Is that up in territory that was routed by the Shasta
4015 Route?

A. Yes.

Q. Did they bring anything else than grain down? How about wool and hops?

A. I couldn't say. I presume they brought everything. I was never interested up there, but I knew that was the common occurrence—bringing all kinds of freight.

Q. Mr. Eccles, did you have anything to do with building what was called the Utah & Pacific line of road south of Milford?

A. Yes, sir.

Q. When was that built?

A. In 1898.

Q. If you know, when was that line first projected? Not that particular company, but a line over that route.

A. I should judge eight or nine years before that—eighteen or nineteen years ago.

Mr. LOVETT. What time was that?

Mr. SEVERANCE. He said eight or nine years prior to 1898.

Q. About 1890, that would be?

A. Yes.

Q. What was done towards constructing that line down there at that time?

A. There was a grade built from Milford across the desert to the head of the canyon that runs down to the Meadow Valley Wash. That grade was completed to the head of the canyon, and most of the grading done down the canyon, and the tunnels all built and timbered down nearly to the Meadow Valley Wash.

Q. And that was done, you say, about 18 or 19 years ago?

A. I should judge so; yes.

Q. After that work was done there, what was done with it? What happened to it up to the time that you built the Utah & Pacific line?

A. What happened to it?

Q. Yes; what was done with that work which had been
4016 graded up there, and the tunnels and all that, between the time of their construction and the time you built the Utah & Pacific?

A. It was abandoned, and the understanding was that they were not going to do any more with it.

Q. When was it, you say, that you undertook the construction of the Utah & Pacific?

A. In 1898.

Q. Who was interested in constructing that line of road?

A. Mr. McCune and myself—I represented 50 per cent and Mr. McCune represented 50 per cent. Mr. Nibley and several others were interested with my 50 per cent.

Q. But Mr. McCune and yourself really represented all the interests, did you not?

A. Yes, sir.

Q. And did you build a portion of the line?

A. We built 66 miles from Milford out to Uvada. I believe it is—pretty near the state line.

Q. Now, after building that what did you do with it?

A. We operated it for about two years.

Q. Did you have any negotiations with the Oregon Short Line Railroad Company concerning that piece of road?

A. Yes; we had a contract when we built it, and they had an option on it for five years under certain terms and agreements.

Q. They had an option on it for five years?

A. Yes, sir.

Q. And that option would have expired when?

A. Would have expired in—well, I think we kept it about two years (I am not right positive) and then we sold it to them.

Q. You don't remember just when?

Mr. LOVETT. That matter is in writing; I think we ought to have the contracts.

4017 Mr. SEVERANCE. You ought to have the contracts—the Oregon Short Line.

Q. The Oregon Short Line have copies of those papers, I suppose?

A. Yes, sir.

Q. Or have the papers, I suppose?

A. Yes.

Mr. LOVETT. If we have a copy we will produce it.

Mr. WILLIAMS. It is possible that the original was burned in the fire. I am not positive that I have not an uncertified copy in my office. I will see.

Mr. LOVETT. If you want to give us notice to produce, I will try to get it, but I will not object to a copy.

Mr. SEVERANCE. I am not going into the details of it at all. I don't care anything about it for the present. I am merely getting at the fact.

Q. Now, Mr. Eccles, you say that after you had built the line you operated it for a time?

A. Yes, sir.

Q. Do you remember when it first became public that Senator Clark and his associates proposed to build the San Pedro road, or a line of road from Salt Lake to Los Angeles? I don't ask you to fix the date, but do you remember of the occasion of its being made public?

A. Yes, sir.

Q. Up to that time had the Short Line exercised its option and taken over this property from you?

A. No, sir.

Q. Did any representative of Senator Clark or Senator Clark and his associates negotiate with you for the purchase of that line of road?

A. I couldn't say. There was a man by the name of Hallenbeck or Hollingsworth, or some such name, talked to us about it, about the time that the Short Line took over the option.

4018 Q. Didn't you afterwards learn that he represented the Clark interests?

Mr. LOVETT. I object to this. It is not sufficient evidence as to whom he represented. It is hearsay.

Mr. SEVERANCE. I am not asking him whether he learned that he did represent him.

Mr. LOVETT. It is hearsay at all events, and I make the objection.

Q. Did you afterwards learn, Mr. Eccles, as to whether this gentleman represented the Clark interests?

Mr. LOVETT. I object to it as hearsay.

A. Yes, I understood that he did.

Q. How long after he was negotiating with you for this line did the Oregon Short Line exercise its option and take over the property, if at all?

A. I could not say exactly: it was somewhere about the same time—within a month or two, I should say.

Q. It was afterwards?

A. Yes.

Q. After he had seen you?

A. Oh, yes: it was after that.

Q. When you undertook the construction of the Utah & Pacific line, did you do that on your own account, that is, on account of your associates and yourself, or were you representing or working for some railroad company?

A. For ourselves.

Q. Was it before or after you had commenced work that you gave this option to the Short Line?

A. Before.

Mr. LOVETT. That is to say, the option was given before he commenced work.

Mr. SEVERANCE. Before he commenced work: yes.

WITNESS. Yes.

4019 Q. In building that Utah & Pacific line to the place you have stated, did you utilize the old grade and right-of-way that you have described?

A. Yes, sir.

Q. You used that?

A. Yes, sir.

Q. What kind of steel did you use on that line?

A. 52-pound.

Q. Where did you get it?

A. From the Short Line.

Q. After the Oregon Short Line took that over did you know anything about the work they did in extending the line down? Were you down there yourself?

A. No, sir.

Q. You never went down there?

A. Never went down.

Q. All you know about that is what you have been told?

A. Yes, sir.

Cross-examination by Mr. LOVETT:

Q. You say that some years prior to 1898 the Oregon Short Line had constructed a grade from Milford down into the canyon?

A. Yes, sir, through the canyon; built those tunnels.

Q. Through the canyon and built the tunnels and got down to where—Caliente?

A. No, down to nearly the Meadow Valley Wash, or probably 5 or 6 or 7 or 8 miles this side of Caliente—along in there; I can't tell you exactly.

Q. About what was the distance of that from Milford, to where they had constructed the grade, to the southerly end of the grade?

A. Oh, I would say about 120 or 130 miles.

Q. In 1898, then, some years after this grade was constructed, you made a contract with the Oregon Short Line Railroad Company by which you built the road from Milford—to where?

4020 A. To Uvada; 66 miles.

Q. 66 miles in a southwesterly direction from Milford?

A. Yes, sir.

Q. And you just testified, I believe, that in constructing that you used the old grade?

A. Yes, sir.

Q. And the old right-of-way?

A. Yes, sir.

Q. You did that with the consent of the Oregon Short Line, didn't you?

A. Yes, sir.

Q. You took conveyances or transfers from the Oregon Short Line?

Mr. SEVERANCE. I suppose that is not the best evidence. You didn't want me to go into any of these contracts.

Q. Was the contract by which you built this line, with the Oregon Short Line Railroad Company, in writing?

A. Yes, sir.

Q. That specified the terms upon which you might use the right-of-way and the old grade and construct the road, and the terms upon which the Oregon Short Line should have the option to buy it back?

A. It specified the terms they should have it on provided they wanted it in five years, and if they had any right to the right-of-way they waived it.

Q. They waived it or consented that you should use it? Didn't they transfer it to you?

A. No.

Q. Have you a copy of that contract?

A. Yes, sir.

Q. Have you got it with you?

4021 A. Yes, sir.

Q. May I see it?

Mr. SEVERANCE. I didn't know he had it with him. I would like to see it.

(The witness produces a paper.)

Q. The document you have just handed me does not appear to be signed.

A. It is merely a copy.

Q. Have you the original with you?

A. No, sir.

Q. Where is it, do you know?

A. I don't know. I only just picked that up.

Q. You are sure this is a copy of the original?

A. Positive.

Q. It is not dated. Do you know the date?

A. Not exactly. I know the date—the reason that makes me say that date there, is because I have another contract with my associates wherein I am to represent one 50 per cent and Mr. McCune the other, and whatever we agreed upon stood; we didn't have to call the associates on each side. And that is dated in 1898. The Short Line's contract is previous to that.

Q. What time in 1898?

A. August.

Q. About how long previous to that was the Short Line contract?

A. Oh, I couldn't say. A month or two, I should say. It was in the spring.

Mr. LOVETT. I would like to put this in evidence.

Mr. SEVERANCE. I would like to see it. I presume it is all right.

Mr. LOVETT. The defendants offer in evidence the document produced by the witness and which he has testified is a true copy of the original contract referred to in his testimony. We offer it in connection with the testimony of the witness.

The document produced by the witness reads as follows:

4022 "COPY.

This agreement, made and entered into on the sixteenth day of August, 1898, by and between the Oregon Short Line Railroad Company, a corporation existing under the laws of the State of Utah, hereinafter called the first party, and David Eccles, C. W. Nibley, A. W. McCune, and William L. Hoge, jointly and severally, hereinafter called the second parties, witnesseth:

Whereas, the second parties are contemplating the building or causing to be built of a line of railroad from Milford Station, in the State of Utah, for a distance of about eighty miles, commencing at Milford Station aforesaid, and extending thence in a southwesterly direction, and

Whereas, said line of railroad, when built, it is proposed shall connect at said Milford Station with the line of railway of the first party, now

Therefore, in consideration of the premises and of the covenants and agreements hereinafter contained on the part of the parties

hereto respectively, to be kept and performed, and other sufficient consideration the receipt whereof is hereby mutually acknowledged, the said parties do hereby covenant, promise, and agree each with the other as follows, to wit:

FIRST.

The second parties agree that they will cause to be organized a railroad corporation having the power to construct and operate a line of railway from said Milford Station in a southwesterly
4023 course for not less than seventy-five nor more than eighty-five miles, said corporation to be established and to have a capital stock of eleven thousand dollars ($11,000) for each mile built by said corporation, and no more.

Such corporation shall be hereinafter called the Railway Company, and shall be organized within two months from the date hereof.

SECOND.

Said first party agrees to furnish and deliver to the Railway Company, and the second parties agree that the railway company shall take, free on board the cars of the first party at Milford Station, in the State of Utah, a sufficient quantity of good, serviceable fifty-two (52) pound second-hand steel rails with good surface for relaying in a railroad track for a distance of about eighty miles. The said rails to be so delivered at the price of twenty-five dollars ($25) per long ton from time to time, as the same may be ordered or required by the Railway Company, provided, that the first party shall have from the Railway Company fifteen days' written notice of the amounts of said rails required from time to time.

THIRD.

The first party shall transport all such freight, construction material, fuel, supplies, and outfit which may be required or necessary for the construction, maintenance, and operation of the said line of railroad extending from Milford Station aforesaid, including
4024 grading, track-laying, and all necessary work for the completion thereof, and of branches thereof or branches connecting therewith, which may at any time be constructed, from any and all points along the line of railroad of the first party at the price of one-half cent (½c) per ton per mile in carload lots, and of three-quarters (¾) of one cent per ton per mile in less than carload lots, and shall also, during the period of the construction of the said eighty miles of road and until the same is completed, transport for the Railway Company all employes engaged in such construction between Milford and other points upon its road at the rate of one (1) cent per mile for each of such employes.

The said first party shall continue to transport all material, fuel, and supplies, required or necessary for the maintenance and opera-

tion of the said railroad and branches at the places aforesaid for and during the period covered by the traffic agreement set forth in the ninth paragraph hereof and at the rates above specified, Provided, however, that the payments for the carrying of materials for such maintenance and operation after the completion of said line of railroad extending southwesterly from Milford, as hereinabove described, shall be paid for in cash instead of the bonds of said company.

FOURTH.

The said party of the first part also agrees to sell and deliver to the Railway Company, and the parties of the second part agree that the Railway Company shall take, and pay for on the terms herein-
4025 after provided, for the equipment of said road, engines and cars of the class and description mentioned in the schedule hereto attached marked "Exhibit A" and made a part hereof, and at the prices mentioned in said schedule, the total aggregate price of the engines and cars so to be furnished to be not less than twenty-five thousand dollars ($25,000) and not more than fifty thousand dollars ($50,000).

It is mutually agreed and understood by the parties hereto that the said first party is to furnish rails and equipment as aforesaid for the proposed road and to transport freight and employes for and on behalf of the Railway Company, and to receive in payment therefor bonds to be issued by the Railway Company of the par value of one thousand dollars ($1,000) each and secured by a first mortgage as hereinafter provided, taking the said bonds at the rate of eighty per cent (80%) of the face value thereof (i. e., taking each bond of the face value of $1,000 at $800), and that the rails and equipment and the transportation of freight and employes to be furnished by the parties of the first part for and on behalf of the Railway Company shall be at least such in amount as to require in payment therefor in bonds at the rate aforesaid fifty-one per cent (51%) of the entire issue of such bonds, less not exceeding fifteen thousand dollars ($15,000) face value thereof.

In the event that the material and equipment sold and delivered by the first party to the railway company, and the transportation of freight as herein provided, shall not amount, in the aggregate
4026 at the prices aforesaid, to such sum as shall secure to the said first party fifty-one per cent (51%) of all the first mortgage bonds to be issued by the said Railway Company, as herein provided, then the said first party shall have the right and option at any time within thirty days after completion of the road to purchase from the second parties, and the second parties hereby agree to sell to the said first party upon request, such an additional number of said first mortgage bonds as will, in addition to the bonds so delivered to the said first party for said material, equipment, and transportation, amount to fifty-one per cent (51%) of the total issue of said first mortgage bonds of said railway company. In the event of such

purchase by the said first party of such bonds it shall pay for them at the rate of eighty per cent (80%) of their face value.

FIFTH.

The first party, for itself, its successors and assigns, hereby agrees that it will waive in favor of the railway company, its successors and assigns, when the Railway Company shall be established, any rights which it may have to the railway grade extending from Milford southwesterly for said distance of not less than seventy-five nor more than eighty-five miles, on and along which it is proposed that the Railway Company shall construct the said railroad: *Provided*, That the Railway Company shall complete said line of railway in accordance with the terms of this agreement.

4027 SIXTH.

The second parties agree that they will at once cause a corporation to be organized and established as aforesaid, and that as soon as it shall have been so organized the Railway Company will enter upon the construction of the line of railroad commencing at Milford Station, in the State of Utah, and running in a southwesterly direction therefrom on and along the present graded railroad bed for a distance of not less than seventy-five nor more than eighty-five miles, and complete and equip the same within one year from the date hereof, and in such construction the Railway Company shall furnish all necessary labor and material and construct the necessary buildings, engine houses, water tanks, stations, and all other structures and appliances necessary to complete and equip the said road, except such material and equipment as is hereinbefore specified to be furnished to it by the said first party. The said railroad shall be constructed in a safe and workmanlike manner and be suitable for the traffic which it is intended shall be carried thereon and acceptable to the chief engineer of the first party.

In the construction of said railroad no ties shall be used less than six by eight (6 x 8) inches and eight (8) feet in length, and at least twenty-seven hundred (2,700) ties shall be used for each mile of the main line of the proposed road and two thousand six hundred and forty (2,640) ties for each mile of side tracks, and at least one-half ($\frac{1}{2}$) of the ties shall be fir or tamarack.

4028 The second parties, or the said Railway Company, shall at their or its own cost and expense first procure the release of said railroad grade from all claims or liens whatsoever for taxes or otherwise and from all adverse claims of every kind and nature in order that the said bonds herein provided for shall be secured upon the said railroad and appurtenances by a mortgage which shall constitute a first lien upon said railroad, including said grade.

SEVENTH.

The said second parties shall cause to be legally and duly issued by the Railway Company first-mortgage bonds at the rate of nine thousand dollars ($9,000) per mile for each mile of completed road, and no more, which bonds shall be of the denomination of one thousand dollars ($1,000) each, shall bear interest at the rate of five per cent (5%) per annum, interest payable semiannually, both principal and interest to be payable in gold coin of the United States of the present standard of weight and value, and shall run for the period of twenty years from the first day of July, 1899, and the payment of all such bonds shall be equally and ratably secured by a first mortgage upon the proposed line of railroad beginning at Milford Station aforesaid and extending to its southwestern terminus, as herein provided, together with the rolling stock, equipment, appurtenances, and all rents, tolls, and income, and all its property of every kind and nature whether owned at the time of making said mortgage or thereafter acquired by the Railway Company. Said mortgage shall be in the usual form of railroad mortgages, and the form and details thereof shall be satisfactory to the general counsel of the first party.

EIGHTH.

And whereas the said second parties are to receive in part payment for the building and equipping of said railroad and the expense of constructing the same not less than fifty-one per cent (51%) of the capital stock of the Railway Company, now the second parties do hereby covenant and agree that they will as soon as said stock shall be issued deposit with such trust company, individual, or institution as shall be satisfactory to the first party not less than fifty-one per cent (51%) of the capital stock of the Railway Company duly issued and full paid, to be held by such depositary in escrow, and the party of the first part shall have, and is hereby given, the right and option to purchase and receive delivery of the stock so deposited at any time within five (5) years from the date of this contract upon paying therefor to such depositary the sum of thirty thousand dollars ($30,000): *Provided*, That the party of the first part shall give notice in writing of its intention to exercise said right and option at least one year prior to the time of exercising same: *And provided further*, That in case the party of the first part shall exercise said right and option to purchase said stock it shall also purchase and pay for all of the bonds of the Railway Company of the issue aforesaid belonging to the parties of the second part and which the parties of the second part may deliver to such depositary for sale and delivery to the party of the first part at the time of the payment for said stock, it being understood that the party of the first part shall pay for the stock and bonds purchased as aforesaid at the time of the delivery thereof, the bonds to be paid for at the rate of eighty per cent (80%) of their face value. But in

no event shall the party of the first part be obliged to purchase and pay for more than three hundred and ninety-two thousand dollars ($392,000) par value of said bonds.

The notice required to be given as aforesaid may be given by addressing the same to the parties of the Second Part in the care of said depositary.

Provided further, that in case the Party of the First Part shall notify as aforesaid the Parties of the Second Part of its intention to exercise the right and option to purchase said stock, then and in that case the Parties of the Second Part shall forthwith upon request of the First Party cause to be elected as Directors of the Railway Company such persons as the First Party shall request to the number sufficient to constitute one-half of the Board of Directors of the Railway Company.

And it is further provided, that after the giving of the said notice by the said First Party of its intention to exercise the said right and option the said Railway Company shall not until after the expiration of a year from the giving of such notice declare or pay any dividend upon its stock except with the consent of both parties hereto, but shall hold and retain all its surplus earnings in its treasury until the said stock and bonds shall be paid for and delivered to the said Oregon Short Line Railroad Company under the terms hereof.

4031 And during the said period the said Railway Company shall maintain its said railroad, rolling stock, equipment, and appurtenances in as good order and condition as at the time of giving said notice.

NINTH.

It is further mutually agreed and understood that as a part of the consideration hereof a traffic agreement shall be entered into between the First Party and the Railway Company continuing for the term of ninety nine (99) years whereby the Railway Company shall agree to give to the party of the First Part exclusively all freight and passenger business originating along or transported over the line of its railroad and all branches thereof, or to be constructed, or connecting therewith, to and for all points beyond said Milford Station which may be reached by the said Oregon Short Line Railroad Company or its connections at the present established traffic rates, so far as controlled by said first party, which are hereto attached, said rates not to be reduced except by the consent of the Party of the First Part, and also that the Railway Company shall receive exclusively all business to points upon said proposed railroad line and all branches thereof or to be constructed, or connecting therewith, from said First Party, and its connections originating thereon and shall not receive any traffic or join in any rates with any other line of railway in competition with the said first party.

And it is further mutually agreed and understood that in

4032 case it is found necessary or desirable to make any reduction in the through rates covering business interchanged between the

said Railway Company and the First Party such reduction shall be borne in proportion to the revenue derived by each line at the time such reduction is made.

TENTH.

Said Second Parties shall simultaneously with the delivery hereof give to the First Party a bond duly executed, satisfactory to the First Party conditioned upon the performance by the said Second Parties and by the Railway Company of all and every the things on the part of the Second Parties and the Railway Company respectively to be performed by the terms of this Agreement.

ELEVENTH.

This Agreement shall be binding upon and inure to the benefit of the parties hereto and of their successors and assigns and the successors and assigns of the Railway Company, except that the Second Parties shall have no right to assign this contract or any of their rights thereunder except to the Railway Company when the same shall be organized.

In witness whereof the parties hereto have caused these presents to be duly executed in duplicate:

OREGON SHORT LINE RAILROAD COMPANY.
By (Signed) W. H. BANCROFT,
*Vice President and General Manager.*

Attest: (Signed) S. W. ECCLES.
(Signed) DAVID ECCLES.
(Signed) C. W. NIBLEY.
(Signed) A. W. MCCUNE.
(Signed) WILLIAM L. HOGE.

Interlineations on "Third" and "Ninth" paragraphs made before execution.
(Signed) P. L. WILLIAMS.

4033 EXHIBIT "A."

*Second-hand equipment.*

| | |
|---|---|
| Locomotives: | |
| Nos. 500, 504, 507, and 512, Taunton build, cylinders 18" by 24". Style 10 wheeler—weight on drivers 62,000#—Wheel centers 50". Capacity of tanks, 2,900 gallons of water and 8 tons of coal. Condition, fair. Tires on engine 500, 2-12/16", 4-19/97. Engine 504, 3-8/16", 3/16/97. 507, 2-12/16", 8/12/97. Engine 512, 2-6/16", 4/30/97. Value of each | $4,500.00 |
| Coaches and baggage cars: | |
| No. 550 is 40 ft. over sills; has twelve double seats in coach, and is in fair condition. | |
| No. 552 is 43' 11" over sills; has eleven double seats in coach end; is in good condition; value of each | 1,800.00 |
| Passenger coaches: | |
| No. 277 is 43 ft. over sills; has 26 double upholstered seats; is in good condition. | |
| No. 100 is 45 ft. over sills; has 26 double upholstered seats; is in good condition; value of each | 2,500.00 |

| | |
|---|---|
| Water and tank cars: | |
| 3 iron water and tank cars remodeled from engine tanks, capacity 2,500 to 3,500 gallons, value of each | $650.00 |
| Water cars with wooden water boxes, 2,500 gallons capacity, value of each | 450.00 |
| 4034 Flat cars: | |
| 30 flat cars, 30 ft. long, 28,000# capacity, with hand brakes; value of each | 170.00 |
| Box cars: | |
| 70 cars, 28 ft. long and 30 ft. long, 28,000# capacity, with hand brakes; value of each | 240.00 |
| Coal cars: | |
| Coal cars, 28 and 30 ft. long, 28,000, 30,000, and 32,000# capacity, with 20 to 24" permanent coal sides and hand brakes; value of each | 225.00 |

Know all men by these presents, that we, David Eccles, C. W. Nibley, A. W. McCune and William L. Hoge, as principals, and Thomas D. Dee and R. C. Chambers, as sureties, are held and firmly bound unto the Oregon Short Line Railroad Company, a corporation, its successors and assigns, in the penal sum of five hundred thousand (500,000) dollars for the payment of which well and truly to be made, we do bind ourselves, our and each of our heirs, administrators and assigns, jointly and severally, firmly by these presents.

Witness our signatures this sixteenth day of August, 1898. The condition of this obligation is such that, whereas, the above
4035 bonded principals have, by an agreement bearing date of this day, a copy of which is hereto annexed, marked exhibit "A" and hereby referred to and made a part of this bond, entered into the agreements and covenants in said contract contained and performed:

Now, if the above bounden principals shall do and perform each and every of the obligations in said contract contained to be performed by them, and if the said Railroad Company mentioned in said agreement and which the said principals are to cause to be organized, shall do and perform each and every of the acts and undertakings specified in said agreement to be performed by it, and at the times and in the manner in said contract required for the performance of the same by the said principals herein and by the said railroad company respectively, then this obligation shall be null and void, but otherwise to remain in full force and effect.

(Signed) DAVID ECCLES.
(Signed) C. W. NIBLEY.
(Signed) A. W. MCCUNE.
(Signed) WILLIAM L. HOGE.
(Signed) THOMAS D. DEE.
(Signed) R. C. CHAMBERS.

Form & execution
Approved Aug. 19, 1898.
(Signed) P. L. WILLIAMS,
*Genl. Atty.*

4036 Q. The substance of the arrangement, then, as to the building of the line, that you caused to be organized, the Utah &——

A. Utah & Pacific.

Q. The Utah & Pacific Railway Company, was that under this contract you utilized the old right of way and the old material and got the material, that is, the rails, the second-hand rails, from the Oregon Short Line for building that extension?

A. Yes, sir.

Q. And you got from the Oregon Short Line the rolling stock for it too, didn't you?

A. Yes, sir.

Q. And the Oregon Short Line, in the same contract, got an option for five years to buy that piece of road?

A. Yes, sir.

Q. From your company?

A. Yes.

Mr. SEVERANCE. The contract speaks for itself.

Q. And it exercised that option before the expiration of the five years, didn't it?

A. Yes.

Q. About how long before?

A. I couldn't say. About two years. I could find all the data.

Q. About two years?

A. About two years.

Q. In other words, about three years after that contract was made?

A. Yes, sir.

Q. About 1901? The contract was made in 1898.

A. Yes.

Q. And the Oregon Short Line exercised its option early in 1901, didn't it?

A. I think so.

Q. Was there much more to do than the laying and surfacing of the track and the building of the bridges in constructing that road?

A. Much more to do?

Q. That was about all, wasn't it?

A. To furnish the ties.

4037 Q. And furnish the ties?

A. Furnish the ties, and of course we had to put the road in condition. The road had been standing there and the wind blowing it for eight or nine years, and it had been used as a wagon road, and we had to put it in order.

Q. You had to do some work on the grade?

A. Yes.

Q. There wasn't a great deal required to put it in condition?

A. The road was in very good condition considering the time it had been built.

Q. Your company, the Utah & Pacific, filed maps with the Government to get right of way across the public land, didn't they; and

didn't you in connection with such maps and application have filed the consent of the Oregon Short Line Railway Company with the department, or don't you remember as to that?

A. I couldn't say.

Q. With reference to this lumber about which you testified moving from Oregon to points in Nevada, what points are they, Mr. Eccles? What is the destination of that lumber which moves via Sacramento from Oregon?

A. Well, I don't know as I can tell you exactly.

Q. How far from Ogden, about?

A. Oh, anywhere from 150 to 200 miles, I should say.

Q. West of Ogden?

A. Yes. There used to be a rate in from Portland, coming that way; it was 40 cents; I think it was to Wells—I am not positive.

Q. Which way—from Portland by way of Sacramento?

A. No; by way of Ogden, and shipping by Portland, by the way of Ogden, to Wells and points intermediate between there and
4038 Ogden we could ship from Hood River, which is 65 miles this side of Portland, and of course using the Portland rate; but when the rate was taken out and it had all to go over the Shasta Route to the same points, of course we could not get there without paying a differential to go to Portland first—starting it over the other way.

Q. That is to say, the rate from Portland to these Nevada points is 40 cents?

A. Yes.

Q. Either by way of Sacramento or formerly by way of Ogden?

A. It was either way at one time, but it isn't now.

Q. But it is still 40 cents from Portland?

A. Yes, sir.

Q. But if you ship from Hood River you have to pay 5 cents from Hood River into Portland?

A. Yes, sir.

Q. And then the Portland rate there?

A. Yes, sir.

Q. So the rate is 45 cents from Hood River by way of Portland——

A. Yes.

Q. And the Shasta Route to these Nevada points, but 40 cents from Portland?

A. Yes, sir.

Q. Do you know why that change was made? Do you know why the rate was taken out by way of Ogden?

A. No, sir, I never learned. I tried to find out, but I never learned.

Q. Did they refuse the information, or did you make any direct inquiry about it from anybody who knew?

A. Well, I talked to the general freight men.

Q. And what did they say about it, as to why it was done?

A. Some of them didn't know any more than the Southern Pacific wanted the long haul.

Q. The Southern Pacific wanted the long haul?

A. Yes.

Q. These Nevada points being local points on the Southern Pacific?

A. On the Southern Pacific.

4039 Q. Did they say that the matter was controlled from the San Francisco office of the Southern Pacific by the general freight agent out there?

A. No. I don't know as they did.

Mr. SEVERANCE. He said he talked with Mr. Stubbs. He would hardly say that, would he?

Q. Did Mr. Stubbs know the reason for it? Did he say anything about it or know anything about it?

A. He said that was mostly in the hands of the local man here, Mr. Miller.

Q. Well, don't you know that the San Francisco office of the Southern Pacific, having this line from Portland to these local points in Nevada, required it to move that way in order to give the Southern Pacific the long haul? Isn't that your understanding?

A. Well, I might draw that conclusion; I presume that is it.

Q. You have testified just now, as I understood you, that the rate from Portland to Ogden on lumber was 37½ cents?

A. Yes, sir.

Q. And from Portland to these local points 40 cents?

A. I think so. It was 40 cents to those local points, and 44 I think, and recently the rate has been changed to 37 to Ogden—yes, it is 40. I know it is now, over the Southern Pacific to these points. Yes, I know it is.

Q. 40 where?

A. From Portland to Wells and those points I was speaking of.

Q. Does the Southern Pacific make any rate to Ogden from Portland?

A. No.

Q. The Short Line rate from Portland to Ogden is 37 cents?

A. Yes, sir—37½.

4040 Q. Did I understand you to say it was 60 miles from Hood River down to Portland?

A. I think it is 65 or 66 miles.

Q. There is another point you testified about that escaped me, that I didn't make a note of. This rate war that you testified about between the boat line from Portland to San Francisco and the Southern Pacific, when was that, Mr. Eccles?

A. I don't know as I can tell the year. I should say about eight or nine years ago.

Q. Eight or nine years ago? So recent as that?

A. Well, I wouldn't be right positive of that. It may be longer than that.

Mr. SEVERANCE. It wasn't since 1901, however.

Mr. LOVETT. I hope not.

WITNESS. I couldn't say exactly. I could hunt it up.

Q. How long did that last?

A. I think it lasted—oh, it was on several times, but one time there it lasted all summer.

Q. Wasn't that during the receivership of the O. R. & N. by Mr. McNeil?

A. It might have been; I couldn't say; I wouldn't be positive.

Q. You can't come within ten years of the time, you think, Mr. Eccles?

A. Mr. McNeil took the receivership in 1894, I think.

Mr. SEVERANCE. 1894?

WITNESS. Yes, 1894 was when he took it.

Mr. KELLY. And it lasted until 1897?

WITNESS. I said 10 or 11 years ago, so it might have been about that time. I know it was within 10 years.

Q. It was, you think, 10 or 12 years ago? You can't fix it any more definitely?

4041 A. I would think about that time; it can't be far from it.

Q. And it lasted about how long?

A. I think it lasted all summer.

Q. Was it more than one summer, or just one summer?

A. It happened more than once.

Q. The rate of $5, you say, included meals and berth as well as transportation?

A. Yes, sir.

Q. By boat?

A. By boat.

Q. And the same by railroad?

A. Including a berth on the tourist.

Q. Including a berth on the tourist, and meals?

A. No; no meals.

Q. The railroad didn't give meals?

A. No.

Q. How long did it take to make the trip by boat?

A. You left Portland Saturday night and went down to Astoria and landed in San Francisco on Tuesday morning.

Q. That was cheaper than living at home, wasn't it?

A. Pretty near; but the trouble was the most of them didn't eat much.

Q. How many boats did the O. R. & N. operate at that time?

A. Two.

Q. What were their names, do you remember?

A. No, I do not.

Q. The "Elder" and the "Columbia?"

A. I guess that was it.

Q. They were small boats, weren't they?

A. Not very large. They went out every week, every Saturday.

Q. Did the Southern Pacific keep this rate open all the time or only just about the time the boats were going out?

4042 A. All the time.

Q. That is, during the war?

A. Yes.

Q. What freight did those boats handle mostly?

A. Oh, I couldn't say.

Q. You don't know as to that?

A. I know some of the freight: I know I used to ship box shooks from Baker City to San Francisco—shipped a good many.

Q. Principally lumber and its products, wasn't it?

A. No; they hauled everything.

Q. Grain?

A. Yes; and brought sugar.

Q. And brought sugar from San Francisco?

A. Yes.

Q. And carried grain and other things down?

A. Yes.

Q. These little boats on the river that you speak of, that gathered up grain; they sent that to San Francisco then by the boat from Portland down, transferring at Portland?

A. Yes, sir. They built some special boats, what they call lighters, to go up there. I know I was on one going up through the locks once, and they claimed it only drew ten inches of water. I asked them why they made it so light draft. They said it was to go up the river that much farther to bring down the grain.

Q. When was that?

A. Well, sir, I can't tell you; but I know that I was on the boat, and Mr. Campbell was on, because that is the reason I got to speaking about it.

Q. Ben Campbell?

A. Yes; Ben Campbell. I was on it and, as I say, it was ten or twelve years ago.

Q. You can't fix the time any closer than that?

A. No.

By Mr. SEVERANCE:

Q. I notice in this contract which Judge Lovett has offered
4043 in evidence there is a stipulation that the second parties (that is, yourself and your associates, or the said Railroad Company—that is, the company they proposed to organize) shall at their own or its own cost and expense first procure the release of said railroad grade from all claims or liens whatsoever, for taxes or otherwise.

A. Yes.

Q. Did the Oregon Short Line allow this grade to stand there without paying taxes?

A. I understood so.

Q. Did you have to pay off the taxes under that contract? Did you find taxes there that had to be paid?

A. I don't know just what we did do. Mr. Lund, who lived in that country, went down and saw the commissioners about the taxes, and just what was done I couldn't say.

Q. You don't know whether they abated them or you paid them, but you got rid of them in some way?

Mr. LOVETT. Don't lead him, and don't lead him wrong on that point.

Mr. SEVERANCE. Well, he said somebody went down there and saw the commissioners.

Mr. LOVETT. But he didn't say they got rid of them.

Mr. SEVERANCE. I am asking him.

WITNESS. I don't know just what was done, but they went down there, and I don't remember of ever paying any taxes. I think they were remitted or something—I couldn't say.

Q. Mr. Eccles, you have testified in answer to Judge Lovett just now that there were two boats on that service between San Francisco and Portland. Do you remember of any time when there were three boats there?

A. No; I couldn't say. There might have been three for all I know.

(Adjourned until April 28, 10.30 a. m.)

4044 U. S. CIRCUIT COURT ROOM,
FEDERAL BLDG., SALT LAKE CITY,
*Wednesday, April 28, 1909, 10:30 A. M.*

The hearing was resumed before the Special Examiner, Hon. Sylvester G. Williams, at the above time and place.

Present: On behalf of the Complainant, Mr. C. A. Severance, Mr. Hiram E. Booth, United States District Attorney, Mr. William McCrae, Assistant United States District Attorney, and Mr. G. E. Husted.

On behalf of the Defendants, Mr. R. S. Lovett, Mr. W. R. Kelly, Mr. P. L. Williams, and Mr. Loomis.

## STEPHEN H. LOVE.

being duly sworn as a witness on behalf of the Complainant, testified as follows:

Direct examination by Mr. SEVERANCE:

Q. Mr. Love, where do you live?

A. Salt Lake City; Forestdale, rather, just outside the city limits.

Q. What is your business?

A. Traffic manager of the Z. C. M. I.

Q. Now, that doesn't mean anything on the record, Mr. Love. What is the full name?

A. Zion Co-operative Mercantile Institution.

Q. What is the business of that institution?

A. General merchandise business—wholesale and retail.

Q. How does it compare in size with other institutions of its character in Utah?

4045 A. We probably carry a larger line than any other institution.

Q. It is the largest concern of its kind in the State, isn't it?

A. Yes, sir.

Q. And what classes of commodities do you handle?

A. We handle a general line of hardware, groceries, dry goods, boots and shoes, crockery, glassware, notions. We also do a manufacturing business in boots and shoes, and some other small lines.

Q. In a general way, what is your yearly tonnage?

A. Our total tonnage for 1908 was about 16,000 tons, in round numbers.

Q. Shipments in?

A. Shipments in and what we controlled out.

Q. From what parts of the country do you receive the commodities which you handle?

A. Most of our goods come from the Middle West and Atlantic seaboard—the eastern Atlantic seaboard, and some products from the west.

Q. How does your freight moving from the Atlantic seaboard reach Salt Lake?

A. We use the Gulf port lines largely.

Q. How many years have you been with this concern?

A. I have been with them 21 years.

Q. And during what time have you had charge of their traffic?

A. Since 1891.

Q. Do you remember the time that the Union Pacific and the Southern Pacific had separate agencies here?

A. Yes, sir.

Q. Was your traffic solicited by those agencies?

A. It was.

Q. By which route did the Union Pacific solicit your traffic from the Atlantic seaboard?

4046 A. They preferred the long-haul route from the Missouri River, by the Kanawha Despatch, the Cumberland Gap Despatch, and I think there was one other water line operating at that time—I just don't recall the name. I think there were three water lines through the Atlantic portal routes at that time which they used, but the Kanawha Despatch was the preferred line.

Q. Which way did the Southern Pacific agency solicit your traffic from the Atlantic seaboard?

A. By the Morgan Line.

Q. In connection with what rail lines did that traffic move?

A. Well, our business was just a little bit different from that of other people. We always preferred to control the routing west of the Colorado junctions, for local reasons, and we sometimes used one route and sometimes the other; but as a rule we used the Rio Grande road from west of Denver.

Q. What percentage of freight from New York and New York common points would you say is brought here by boat and rail?

A. I have no way of judging that except by our own tonnage.

Q. How is your own tonnage moved—that is, as between all-rail and boat-and-rail from Atlantic seaboard territory?

A. Well, we never use the rail lines out of New York unless it is on some shipments that we are in particular hurry for, and I should say fully 90 per cent of our Atlantic seaboard stuff moves via the Gulf port routes.

Q. Has that been so ever since those rates were established—that is, either the Gulf route or the boat-and-rail route to South Atlantic ports?

A. Well, more particularly since the Gulf port rates were established.

Q. Do you remember when the Morgan Line was established?

4047 A. I don't remember the year. The Morgan Line operated through New Orleans and the Mallory Line operated through Galveston, and I am inclined to think the Morgan Line was the pioneer in that respect in here.

Q. That was before you went with the company, wasn't it?

A. Oh, no.

Q. What?

A. No, I think not. I recall the Morgan Line doing business in here, opening up their office and soliciting business in earnest. I think Mr. Halm was the agent here then. That must have been about 1892 or 1893, somewhere along there.

Mr. LOVETT. I think the Morgan Line, Mr. Severance, was established in New Orleans before the civil war.

Mr. SEVERANCE. Yes, the Morgan Line had been there, but I meant this route to Utah points.

WITNESS. That is what I understood, yes.

Q. The Morgan Line, of course, is an old line to New Orleans.

A. Oh, yes.

Q. But what I meant was the Morgan Line route to Utah, that was soliciting traffic here. Now, how was that competition between the Union Pacific and the Southern Pacific agencies here for that business? Was it an active competition or otherwise?

A. It was keen.

Q. Who was the agent of the Union Pacific here at the time Mr. Halm was soliciting the business by New Orleans?

A. I am inclined to think Mr. Eccles was in charge here at that time.

Q. You knew Mr. Eccles?

A. Very well; yes, sir.

Q. And you knew Mr. Choate?

A. Yes; Mr. Choate came later.

4048 Q. Since the agency of the Union Pacific and Southern Pacific here has been put in the hands of Mr. Gray, and the two agencies consolidated, how do they solicit shipments from the East—by what route, or do they prefer either route?

A. The Morgan line is their preferred route now.

Q. How does your business move from central states and Chicago territory?

A. Well, we use most all the lines through the Mississippi River gateways and through Chicago—Union Pacific, Burlington, Missouri Pacific, Chicago & Northwestern, Rock Island.

Q. And it reaches Salt Lake either over the Union Pacific system or the Rio Grande, I suppose?

A. Yes.

Q. You said that you received some commodities from the west. What classes of commodities do you ship in from the west?

A. What we call California products and canned goods from the canneries down the Columbia River.

Q. Salmon, you mean?

A. Salmon; yes.

Q. Do you ship Alaska salmon in, too?

A. Yes, sir; we handle some Alaska salmon.

Q. How does the Alaska salmon move here?

A. Sometimes through Portland, and sometimes we get it by San Francisco.

Q. When it comes by Portland how does it reach Salt Lake?

A. We use the O. R. & N.

Q. The Short Line?

A. The Oregon Short Line.

Q. And when it comes by San Francisco, you use the Southern Pacific, I suppose?

A. Yes, sir.

Q. Who controls the routing of that salmon from Alaska?

A. The packers virtually control the routing; they pay the
4049 freight; they lay it down here.

Q. Sometimes it is shipped one way and sometimes the other, is it?

A. Yes, sir.

Q. Mr. McCarthy was on the stand yesterday. You were present, were you not?

A. Yes, sir.

Q. I was asking him with reference to the wool situation up here north of Ogden and the territory that is tapped by the Southern Pacific and the Short Line, where they are not very far apart. Do you know anything about the former competition for wool shipments out of that region?

A. I did not come personally in contact with any of that business, Mr. Severance. I had a conversation one time with Mr. Eccles regarding a rate that he had in on salt up into that country, which he said was put in for the benefit of the sheep men operating in that part of the country. So far as the wool shipments were concerned, I know very little about them.

Q. That was a Short Line rate from here?

A. Yes.

Q. How did you happen to be interested in that salt rate?

A. We had some complaint from customers of ours in that part of the country regarding the rate on salt, and they complained that they were carrying these sheep men through the winter for supplies, and in the spring the railroad company were shipping up there and distributing it through their agents, and these sheep men would take the little cash they had and pay it out to the railroad company for salt; and I went to Mr. Eccles and complained about the situation, and he said he had to do that in order to invite the sheep men to shear along his line, in competition with the Southern Pacific Company.

4050 Q. How far west of Salt Lake, Mr. Love, are you able to wholesale?

A. Not very far, Mr. Severance. The transcontinental rates from New York and Pittsburg and Chicago to San Francisco are very much less than the rates direct to Salt Lake, and the California jobbers, the Portland and San Francisco and Los Angeles jobbers can come away east on that account. The rates from San Francisco and from Portland and from Los Angeles east are established on a basis about the same as the rates from Salt Lake out, and therefore they have a big advantage over the Salt Lake jobbers in territory that we feel is naturally tributary to Salt Lake.

Q. You made up some comparative tables——

A. Yes, sir.

Q. Showing this situation on important commodities?

A. Yes.

Papers marked Complainant's Exhibit 153 (Love).

Mr. Lovett. I see some pencil notations here; do they go in?

Mr. Severance. You mean where he has struck a balance there. It shows the difference.

Q. Mr. Love, I show you Complainant's Exhibit 153. What is that exhibit?

A. It is a comparative statement of rates on Salt Lake, Portland, San Francisco, and Los Angeles.

Q. On what classes of commodities?

A. A lot of staple commodities that every merchant is familiar with.

Q. From what source did you make up this table?

A. From tariffs of the railroad companies operating through these different cities.

4051 Are you able to state that the data shown upon that exhibit is correct?

A. Yes, sir; I think it is.

Q. Just explain a little more fully what that paper is—what it shows.

A. The first sheet shows rates from New York to Portland via the all-rail route on dry goods, such as underwear and hosiery, carload rate of $1.50. The local distributing rate, which is first class, from Portland to Huntington and points about midway between Salt Lake and Portland, is $1.40—a combination of $2.90. On the

same articles Salt Lake pays, via the Gulf port routes, the cheapest route to Salt Lake, a rate of $3.14, first class; Salt Lake to Huntington, $1.50; total, $4.64. A differential in favor of Portland of $1.74 per 100 pounds.

Q. Are you able to do business in that territory with that differential against you?

A. Absolutely no.

Q. Now, that explanation is a sample of all the items that appear on that exhibit, is it not?

A. Yes, sir.

Mr. LOVETT. I think that had better speak for itself. I object to that question.

Q. I don't mean there is that extent of differential in each case, but I mean that is an explanation of the way you made up your tables.

A. Yes, sir.

Q. What point have you selected on the Southern Pacific? You selected Huntington on the Short Line.

A. Elko, Nevada.

Q. Is that about halfway to San Francisco?

A. I think that is about midway; we consider it about halfway between here and San Francisco.

4052 Q. And you have made up a table similar in kind to the one you just read?

A. Yes.

Q. Based on Elko?

A. Based on Elko.

Q. As between San Francisco on the one hand and Salt Lake on the other?

A. Yes.

Q. And what town did you use on the San Pedro, Los Angeles & Salt Lake road?

A. We used Moapa, Nevada.

Q. Is that about half way to Los Angeles?

A. As against Los Angeles, yes, sir.

Q. I say is that about half way to Los Angeles?

A. Yes, sir, about half way; approximately half way.

Q. Mr. Love, are your local rates graded according to distance out of Salt Lake and out of San Francisco?

A. Graded according to distance?

Q. Yes.

A. Yes, sir.

Q. Is the rate out of San Francisco on the Southern Pacific graded?

A. Only in a measure. The rates out of San Francisco are established more on a blanket idea. They extend—well, from a given point out of San Francisco; then east of that point they are practically the same until they reach Ogden.

Q. Are they in all cases graded out of Salt Lake?

A. Graded out of Salt Lake.

Q. On distance?

A. Yes, sir.

Q. What is the net result of this system of rates that is in vogue here, that you have been testifying about, upon the business of Salt Lake, as a jobbing point, in its efforts to compete with Portland for the northwest, San Francisco toward the west and Los Angeles toward the southwest?

A. Very detrimental.

4053 Q. About how is your territory circumscribed? How far back can you get on the Short Line, for instance, in competition with Portland?

A. It depends altogether on the commodities. The differential is greater on some commodities than on others. On some commodities the Portland jobber can come within a very short distance of Salt Lake City, while on other commodities he cannot.

Q. How is it in your competition with the San Francisco jobber? How far can you get west of Ogden to do business?

A. The Salt Lake jobbers go over in what is called the Ely country, and that is about as far west as we expect to get.

Q. Where is the Ely country?

A. The Western Pacific road reaches Ely and the Southern Pacific reaches Ely over a road running down from a place called Cobre on the Southern Pacific.

Q. It is in eastern Nevada, isn't it?

A. It is in eastern Nevada.

Q. And how far can you do business on the San Pedro route?

A. Well, the same answer would apply. On some commodities we can go a fair distance down the line, on others we cannot. But we get down around Modena, Milford, around in that country; and we do some business up in the Pioche country, a line running up from Caliente to Pioche, and we do some business up there. But in all that country we are under a handicap, of course.

Q. That is what I was going to ask you.

Mr. SEVERANCE. I offer Complainant's Exhibit 153 in evidence.

4015 Mr. LOVETT. Defendants object to complainant's Exhibit 153 upon the ground that it is irrelevant to the issues in this suit.

Complainant's Exhibit 153 is as follows:

(1) COMPLAINANT'S EXHIBIT 153. (Love.)

| | Dry goods, n. o. s., underwear and hosiery. | Cotton piece goods, viz: Calicoes, cambrics, etc. | Boots and shoes, boxed. | Canned goods, viz: Fish, fruits, meats, etc. | Crockery, not including ornaments or plumbers' crockery. bbls., crates, or boxes. | Glassware, n. o. s., in boxes, barrels, or casks. | Tariff authority. |
|---|---|---|---|---|---|---|---|
| New York to Portland..... | L. C. L. (Com.) 150 | Minimum 30,000. C. L. (Com.).. 110 | L. C. L. (Com.) 275 | Minimum 40,000. C. L. (Com.).. 100 | Minimum 24,000. C. L. (Com.).. 95 | Minimum 24,000. C. L. (Com.).. 120 | T. C. A. W. B. Tariff 4-D. |
| Portland to Huntington, Oreg. | L. C. L. (1st).. 140 | L. C. L. (1st).. 140 | L. C. L. (1st).. 140 | L. C. L. (4)... 82 | L. C. L. (2)... 130 | L. C. L. (2nd). 130 | O. R. & N. Tariff L-525. |
| | 290 | 250 | 415 | 182 | 225 | 250 | |
| New York to Salt Lake via Seaboard. | C. L. (1st).... 314 | Minimum 30,000. C. L. (Com.).. 215 | Minimum 20,000. C. L. (Com.).. 302 | Minimum 30,000. C. L. (Com.).. 138 | Minimum 24,000. C. L. (Com.).. 149 | Minimum 24,000. C. L. (4th).... 179 | Atlantic Seaboard Joint Tariff No. 35-A. |
| Salt Lake to Huntington..... | L. C. L. (1st).. 150 | L. C. L. (1st).. 150 | L. C. L. (1st).. 150 | L. C. L. (4th). 113 | L. C. L. (2nd). 140 | L. C. L. (2nd). 140 | O. S. L. Tariff 2024-A. |
| | 464 | 365 | 452 | 251 | 289 | 319 | |

(2) COMPLAINANT'S EXHIBIT 153—Continued.

| | Iron, viz: Bar, band, and rod. | Nails and spikes, cut or wire, in kegs. | Wire, iron or steel. | Woodenware, in boxes, barrels, etc. | | | Tariff authority. |
|---|---|---|---|---|---|---|---|
| New York to Portland, Oregon. | Min. 30,000. (C. L.) Com.. 80 | Min. 40,000. C. L. (Com.).. 85 | Min. 40,000. C. L. (Com.).. 85 | Min. 16,000. C. L. (Com.).. 135 | ..... | ..... | T. C. A. W. B. Tariff 4-D. |
| Portland, Ore., to Huntington, Ore. | L. C. L. (4th). 82 | L. C. L. (4th). 82 | L. C. L. (4th). 82 | L. C. L. (2nd). 130 | ..... | ..... | O. R. & N. Tariff L-525. |
| | 162 | 167 | 167 | 265 | | | |
| New York to Salt Lake via Seaboard. | Min. 36,000. C. L. (5th).... 149 | Min. 40,000. C. L. (Com.).. 126 | Min. 40,000. C. L. (Com.).. 126 | Min. 15,000. C. L. (4th).... 179 | ..... | ..... | Atlantic Seaboard Joint Tariff No. 35-A. |
| Salt Lake to Huntington..... | L. C. L. (4th). 113 | L. C. L. (4th). 113 | L. C. L. (4th). 113 | L. C. L. (2nd). 140 | ..... | ..... | O. S. L. Tariff 2024-A. |
| | 262 | 239 | 239 | 319 | | | |

(3) COMPLAINANT'S EXHIBIT 153. (Love)—Continued.

| | Dry goods, n. o. s. | Cotton piece goods, viz: Calicoes, cambrics, etc. | Boots and shoes, boxed. | Canned goods, viz: Fish, fruits, meats, etc. | Crockery, not including ornaments or plumbers' crockery, in boxes, bbls., or crates. | Glassware, n. o. s., in boxes, barrels, or casks. | Tariff authority. |
|---|---|---|---|---|---|---|---|
| | | Min. 30,000. | | Min. 40,000. | Min. 24,000. | Min. 24,000. | |
| New York to San Francisco.. | L.C.L. (Com.).300 | C. L. (Com.)... 110 | L.C.L. (Com.).275 | C. L. (Com.)... 95 | C. L. (Com.).. 95 | C. L. (Com.).. 120 | T. C. A. W. B. No. 1-H. |
| San Francisco to Elko, Nevada | L. C. L. (1st). 172½ | L. C. L. (1st). 172½ | L. C. L. (1st). 172½ | L. C. L. (4th). 107 | L. C. L. (2nd). 150 | L. C. L. (2nd). 150 | S. P. Co. Local Trf. 102. |
| | 472½ | 282½ | 447½ | 202 | 245 | 270 | |
| | | Min. 30,000. | Min. 20,000. | Min. 30,000. | Min. 24,000. | Min. 24,000. | |
| New York to Salt Lake via Seaboard. | C. L. (1st).... 314 | C. L. (Com.).. 215 | C. L. (Com.).. 302 | C. L. (Com.).. 138 | C. L. (Com.).. 149 | C. L. (4th).... 179 | Atlantic Seaboard Joint Tariff No. 35-A. |
| Salt Lake to Elko, Nevada... | L. C. L. (1st). 142 | L. C. L. (1st). 142 | L. C. L. (1st). 142 | L. C. L. (4th). 85 | L. C. L. (2nd). 121 | L. C. L. (2nd). 121 | O. S. L. Tariff 2235-A. |
| | 456 | 357 | 444 | 223 | 270 | 300 | |

(4) COMPLAINANT'S EXHIBIT 153—Continued.

| | Iron, viz: Bar, band, and rod. | Nails and spikes, cut or wire, in kegs. | Wire, iron or steel. | Woodenware, in boxes, barrels, or crates. | | | Tariff authority. |
|---|---|---|---|---|---|---|---|
| | Min. 30,000. | Min. 30,000. | Min. 30,000. | Min. 16,000. | | | |
| New York to San Francisco.. | C. L. (Com.).. 80 | C. L. (Com.).. 70 | C. L. (Com.).. 70 | C. L. (Com.).. 135 | ..... | ..... | T. C. A. W. B. No. 1-H. |
| San Francisco to Elko, Nevada | L. C. L. (4th). 107 | L. C. L. (4th). 107 | L. C. L. (4th). 107 | L. C. L. (2nd). 150 | ..... | ..... | S. P. Co. Local Trf. 102. |
| | 187 | 177 | 177 | 285 | | | |
| | Min. 36,000. | Min. 40,000. | Min. 40,000. | Min. 15,000. | | | |
| New York to Salt Lake via Seaboard. | C. L. (5th).... 149 | C. L. (Com.).. 126 | C. L. (Com.).. 126 | C. L. (4th).... 179 | ..... | ..... | Atlantic Seaboard Joint Tariff No. 35-A. |
| San Francisco to Elko, Nevada | L. C. L. (4th). 85 | L. C. L. (4th). 85 | L. C. L. (4th). 85 | L. C. L. (2nd). 121 | ..... | ..... | O. S. L. Tariff 2235-A. |
| | 234 | 211 | 211 | 300 | | | |

(5) COMPLAINANT'S EXHIBIT 153. (Love)—Continued.

| | Dry goods, n. o. s. | Cotton piece goods, viz: Calicoes, cambrics, etc. | Boots and shoes, boxed. | Canned goods, viz: Fish, fruits, meats, etc. | Crockery, not including ornaments or plumbers' crockery, in boxes, crates, or bbls. | Glassware, n. o. s., in boxes, barrels, or crates. | Tariff authority. |
|---|---|---|---|---|---|---|---|
| | Min. 30,000. | Min. 30,000. | | Min. 40,000. | Min. 24,000. | Min. 24,000. | |
| New York to Los Angeles | L. C. L. (Com.) 300 | C. L. (Com.) 110 | L. C. L. (Com.) 275 | C. L. (Com.) 95 | C. L. (Com.) 95 | C. L. (Com.) 120 | T. C. A. W. B. No. 1-H. |
| Los Angeles to Moapa, Nevada | L. C. L. (1st) 200 | L. C. L. (1st) 200 | L. C. L. (1st) 200 | L. C. L. (4th) 139 | L. C. L. (2d) 186 | L. C. L. (2nd) 186 | S. L. Route No. 121. |
| | 500 | 310 | 475 | 234 | 281 | 306 | |
| | | Min. 30,000. | Min. 20,000. | Min. 30,000. | Min. 24,000. | Min. 24,000. | |
| New York to Salt Lake, via Seaboard | C. L. (1st) 314 | C. L. (Com.) 215 | C. L. (Com.) 302 | C. L. (Com.) 138 | C. L. (Com.) 149 | C. L. (4th) 179 | Atlantic Seaboard. Joint Tariff No. 35-A. |
| Salt Lake to Moapa, Nevada | L. C. L. (1st) 192 | L. C. L. (1st) 192 | L. C. L. (1st) 192 | L. C. L. (4th) 133 | L. C. L. (2nd) 183 | L. C. L. (2nd) 183 | S. L. Route No. 100. |
| | 506 | 407 | 494 | 271 | 332 | 362 | |

(6) COMPLAINANT'S EXHIBIT 153—Continued.

| | Iron, viz: Bar, band, and rod. | Nails and spikes, cut or wire, in kegs. | Wire, iron or steel. | Woodenware, in boxes, barrels, or crates. | | | Tariff authority. |
|---|---|---|---|---|---|---|---|
| | Min. 30,000. | Min. 30,000. | Min. 30,000. | Min. 16,000. | | | |
| New York to Los Angeles | C. L. (Com.) 80 | C. L. (Com.) 70 | C. L. (Com.) 70 | C. L. (Com.) 135 | | | T. C. A. W. B. No. 1-H. |
| Los Angeles to Moapa, Nevada | L. C. L. (4th) 139 | L. C. L. (4th) 139 | L. C. L. (4th) 139 | L. C. L. (2nd) 186 | | | S. L. Route No. 121. |
| | 219 | 209 | 209 | 321 | | | |
| | Min. 36,000. | Min. 40,000. | Min. 40,000. | Min. 15,000. | | | Atlantic Seaboard. |
| New York to Salt Lake | C. L. (5th) 149 | C. L. (Com.) 126 | C. L. (Com.) 126 | C. L. (4th) 179 | | | Joint Tariff No. 35-A. |
| Salt Lake to Moapa, Nevada | L. C. L. (4th) 133 | L. C. L. (4th) 133 | L. C. L. (4th) 133 | L. C. L. (2nd) 183 | | | S. L. Route No. 100. |
| | 282 | 259 | 259 | 362 | | | |

(7) COMPLAINANT'S EXHIBIT 153—Continued.

| | Shelf hardware. | | Tariff authority. |
|---|---|---|---|
| New York to Portland..... | L. C. L. (Com.).. | 175 | Trans-Cont., West Bound 4-D. |
| Portland to Huntington, Oregon. | L. C. L. (2nd).... | 130 | O. R. & N. L-525 |
| | | 305 | |
| New York to Salt Lake via Seaboard. | L. C. L. (Com.).. | 249 | Atlantic Seaboard Joint Trf. No. 35-A. |
| Salt Lake to Huntington, Oregon. | L. C. L. (2nd).... | 140 | O. S. L. 2024-A. |
| | | 389 | |
| New York to San Francisco... | L. C. L. (Com.).. | 175 | Trans-Cont., West Bound 1-H. |
| San Francisco to Elko, Nevada. | L. C. L. (2nd).... | 150 | S. P. Co. Local Trf. No. 102. |
| | | 325 | |
| New York to Salt Lake via Seaboard. | L. C. L. (Com.).. | 249 | Atlantic Seaboard Joint Trf. No. 35-A. |
| Salt Lake to Elko, Nevada ... | L. C. L. (2nd).... | 121 | O. S. L. Tariff 2235-A. |
| | | 370 | |
| (8) | | | |
| New York to Los Angeles..... | L. C. L. (Com.).. | 175 | Trans-Cont. West Bound 1-H. |
| Los Angeles to Moapa, Nevada. | L. C. L. (2nd).... | 186 | S. P., L. A. & S. L. No. 121. |
| | | 361 | |
| New York to Salt Lake via Seaboard. | L. C. L. (Com.).. | 249 | Atlantic Seaboard Joint Trf. 35-A. |
| Salt Lake to Moapa, Nevada... | L. C. L. (2nd).... | 183 | S. P., L. A. & S. L. No. 100. |
| | | 432 | |

Paper marked Complainant's Exhibit 154 (Love).

Q. I have forgotten something else I wanted to inquire into. Are there any divisions in so that you can ship into Salt Lake by way of the northern lines and the Butte connection?

A. No, sir.

Q. There are no divisions between the Oregon Short Line and the Great Northern and Northern Pacific?

A. Except on the added locals.

Q. The rates that way amount to the sum of the locals, do they?

A. Yes, sir.

(There is no objection that complainant's Exhibit 154 is not sufficiently identified.)

Mr. SEVERANCE. I offer in evidence at this time, as I desire to interrogate Mr. Love concerning the matter, Complainant's Exhibit 154, which is a copy, certified by the city recorder of the city of Salt Lake, of petition No. 3845, made by T. E. Gibbon, representing a company of gentlemen composed of Senator W. A. Clark and others, presented to the city council of Salt Lake City, Utah, September 25, 1900; also a letter from the defendant, W. A. Clark, dated Salt Lake City, Utah, October 2, 1900, referring to the said petition made by Mr. Gibbon; also report from the committee on streets, public grounds, and municipal laws relative to the said matter; also an ordinance which is entitled "Bill No. 372," an ordinance vacating "Pioneer Park" as a public park, and repealing and revoking an ordinance entitled "An ordinance dedicating block 48 of plat A, Salt Lake City

survey, commonly called Pioneer Square, in Salt Lake City, Utah, as a public park for the use of the inhabitants of Salt Lake City, Utah, approved the 6th day of July, A. D. 1898.

Mr. LOVETT. It is objected to upon the ground that it is irrelevant to the issues in this case.

4055 Complainant's Exhibit 154 is as follows:

COMPLAINANT'S EXHIBIT 154. (Love.)

Copy.

Petition No. 3845 of T. E. Gibbon.

"SALT LAKE CITY, UTAH, *Sept. 25, 1900.*

"*To the honorable the mayor and city council of the city of Salt Lake:*

"GENTLEMEN: Representing a company of gentlemen at whose head is Senator W. A. Clark of Montana, and including the original stockholders of the Los Angeles Terminal Railway Company, who propose to organize a corporation for the purpose of establishing a line of railway between the harbor of San Pedro and the city of Los Angeles in southern California and Salt Lake City, Utah, I have the honor to request that you will grant to the promoters of this enterprise depot facilities in your city consisting of the square designated upon your city maps as 'Pioneer Square,' and also the necessary franchises over your streets to give the proposed railway an entrance into your city.

"The corporation has not yet been organized and can not be for a short time, for the reason that we have not yet fully collected certain data necessary for us to have before organizing the same. For that reason, should this application meet with your approval I have to suggest that the depot site desired shall be granted to the two principal promoters of the enterprise, to-wit: Senator W. A. Clark of Montana and Honorable R. C. Kerens of St. Louis, Mo and

4056 their assigns, for the use of a corporation to be promoted by them which shall establish and operate the proposed railway as an independent line.

"In as much as we desire this accommodation only in consideration of the line being established and operated as an independent line of railway, I would suggest that if you shall decide to make the grant, it shall be so formulated as to become effective only upon this condition being complied with. That is, that you require the organization of the proposed company, the completion of a certain amount of the proposed line of railway, before the deed, which pending this may be held in escrow, shall be delivered, and that the title shall express that it is granted upon these conditions and for the purpose of there being maintained on the ground a railway station. These, however, are matters of detail, which I assume can be worked out for the full protection of the city if you shall decide to grant our request. We

also request that if you are disposed to grant our application, action may be taken in that behalf at as early a date as is practicable, in as much as the action of your honorable body will in some ways affect the matter of the proposed organization of our corporation.

"As to the franchises which it will be necessary for us to have over some of your streets in order to enter your city, I will suggest that final action be deferred until our proposed company can be incorporated and our engineer can meet with the appropriate committees of your honorable body and decide upon the route which will be of least disadvantage to your citizens and city, compatible with
4057 the accommodations which we will require, it being our desire to, as far as is consistent with the efficient operation of the proposed railway, consult the interests of individual citizens and also the best interests of your city at large.

"I have further to say, that should you decide to grant this application with reference to depot facilities, we are informed by our attys., that the first steps necessary looking to the accomplishment of this matter will be the formal abandonment, by ordinance, of Pioneer Square as a public park, which we are advised your city council has power to do.

"I remain,

"Very respectfully,

"(Signed) T. E. GIBBON."

Presented to the city council of Salt Lake City, Utah, September 25, 1900, and referred to the committee on streets, municipal laws, public grounds, and city attorney associated, to meet at 7.30 p. m. October 4th, 1900.

Copy.

Petition No. 3860 of W. A. Clark.

"SALT LAKE CITY, UTAH, *Oct. 2, 1900.*

"*To the honorable the mayor and city council of Salt Lake City, Utah.*

"GENTLEMEN: As has been heretofore stated to you, myself and associates are engaged in an enterprise, having for its ultimate
4058 result the establishment of a line of railway between the city of Los Angeles, Cal., and Salt Lake City, Utah.

"In that connection permit me to say to your honorable body, that we feel that the organization of our corporation and its achievement of the intended result, will be very much facilitated by the granting by you of Pioneer Square in your city, for use by our corporation as station grounds, in accordance with the petition heretofore presented to your honorable body by Mr. Gibbon.

"Very respectfully, yours.

"(Signed) W. A. CLARK."

Presented to the city council of Salt Lake City, Utah, October 2nd, 1900, and referred to the committees on streets, municipal laws, public grounds, and attorney associated, to meet October 4th, 1900, at 7.30 p. m.

Copy.

Report No. 5536 from the committees on streets, public grounds, and municipal laws.

"SALT LAKE CITY, UTAH, *October 23, 1900.*

"*To the president and members of the council of Salt Lake City.*

"GENTLEMEN: We the members of the committee on streets, public grounds, and municipal laws, to whom was referred the petition of T. E. Gibbon asking that Pioneer Park be granted to the promoters of the Los Angeles and Salt Lake Railroad Company for depot purposes; also a communication from W. A. Clark and certain
4059 petitions of residents and tax payers of Salt Lake City, on the same subject, beg leave to respectfully report as follows:

"Two public meetings of the committee have been held for the consideration of said petitions and the communications accompanying the same. All persons interested have been given an opportunity to be heard. After having duly considered this matter, and all the arguments and petitions in favor of and against the council granting the petition and after having been duly advised by the city attorney as to the power and authority of the council to act in the premises, it was resolved that the chairman of the committee be instructed to report to the council an ordinance vacating 'Pioneer Park' as a public park. Pursuant to such instructions and authority an ordinance vacating said park, prepared by the city attorney, is herewith submitted for your consideration.

"Very respectfully,

"(Signed) J. J. THOMAS, *Chairman.*
"CHARLES COTTRELL,
"R. B. WHITTEMORE,
"F. J. HEWLETT,
"A. A. ROBERTSON,
"E. A. HARTENSTEIN."

Presented to the city council October 23, 1900, and laid over for one week.

Again taken up November 13, 1900, and adopted.

Approved by the mayor, Ezra Thompson, November 17, 1900.

Bill No. 372 for

An ordinance vacating "Pioneer Park" as a public park and repealing and revoking an ordinance entitled "An ordinance dedicating block 48, of plat "A," Salt Lake City Survey, com-
4060 monly called "Pioneer Square," in Salt Lake City, Utah, as a public park for the use of the inhabitants of Salt Lake City, Utah," approved the 6th day of July, A. D. 1898.

SECTION 1. Whereas it is deemed inexpedient to further continue to maintain, reserve, and use block 48, plat "A" Salt Lake City survey, known as "Pioneer Park" as a public park; therefore be it—

*Resolved*, That said Pioneer Park be, and the same is hereby, vacated as a public park and declared to be a part of the vacant and unused property of said city.

SEC. 2. That an ordinance entitled "An ordinance dedicating block 48, of plat "A," Salt Lake City survey, commonly called "Pioneer Square," in Salt Lake City, Utah, as a public park for the use of the inhabitants of Salt Lake City, Utah," approved the 6th day of July, A. D. 1898, be, and the same is hereby, repealed.

SEC. 3. All ordinances and resolutions in conflict herewith are hereby repealed.

SEC. 4. This ordinance shall take effect from and after its approval.

Passed by the city council of Salt Lake City, Utah, November 13th, 1900, and referred to the mayor for his approval.

By R. C. NAYLOR, *City Recorder.*
J. O. NYSTROM, *Deputy.*

Approved this 17th day of November, 1900.

EZRA THOMPSON, *Mayor.*

4061 OFFICE OF THE CITY RECORDER
of
SALT LAKE CITY, UTAH.

STATE OF UTAH,
*City & county of Salt Lake, ss:*

I, J. B. Moreton, city recorder of Salt Lake City, Utah, do hereby certify that the attached and foregoing documents are full, true, and correct copies of petition No. 3845 of T. E. Gibbon, presented to the city council September 25, 1900; petition No. 3860 of W. A. Clark, presented to the city council October 2nd, 1900; report No. 5536 from the committee on streets, public grounds, and municipal laws, presented to and adopted by the city council November 13, 1900, and approved by the mayor November 17, 1900; and bill No. 372 for an ordinance vacating "Pioneer Park" as a public park, passed by the city council November 13, 1900, and approved by the mayor November 17, 1900, as appears of record in my office.

In witness whereof, I have hereunto set my hand and affixed the corporate seal of said city this 27th day of April, 1909.

J. B. MORETON, *City Recorder.*

[Corporate seal of
Salt Lake City, Utah.]

4062 Q. Just look that over. I want to examine you with reference to certain matters following that. Does that recall the matter mentioned there to your mind, Mr. Love?

A. Yes, sir; distinctly.

Q. What official position did you occupy in the winter of 1900–1901?

A. In 1901 I was a member of the state senate, elected in the fall of 1900.

Q. Do you know Mr. Gibbon?

A. Yes, sir.

Q. Mr. T. E. Gibbon who is mentioned in Senator Clark's communication here, that I have included in this exhibit?

A. Yes, sir.

Q. Did you see Mr. Gibbon here in Salt Lake City during the session of the legislature of 1901?

A. Frequently; yes, sir.

Q. Did you see him here at any time when he was in Salt Lake on business connected with this ordinance for the granting of Pioneer Square?

Mr. LOVETT. The defendants object to all evidence as to any action by Mr. Gibbon with reference to the matter referred to in complainant's Exhibit 154, because it is irrelevant and because it does not appear that he had any authority to act for any of the corporations defendants to this suit in that matter; also to any testimony from the witness with reference to any official action of his as holding the position of state senator or any other public office, on the ground that it is irrelevant and not the best evidence of such action. I make this general objection so as not to repeat it to all these questions. Let it apply to all testimony on those subjects.

4063 Mr. SEVERANCE. Yes, that is all right.

Q. Did Mr. Gibbon appear before any committee of the senate at which you were present with reference to any legislation conferring authority upon the city council or upon city councils generally to make grants of this character?

A. Yes, sir.

Q. Did he make remarks there and an argument?

A. Yes, sir; very extended argument.

Mr. SEVERANCE. I offer in evidence—this is a little out of order, but I want to examine Mr. Love about it—chapter 49 of the Laws of Utah for 1901. Of course I understand federal courts take notice of all the laws, but I want that in the record.

Mr. LOVETT. We won't object to the law.

Mr. SEVERANCE. I will read this into the record, and I want to ask Mr. Love some questions about it. "Laws of Utah, 1901. Chapter 49. Authorizing cities to grant depot sites to railroad companies." It is entitled:

"AN ACT Authorizing cities and incorporated towns to aid and encourage the construction of railroads by granting to railroad companies, for depot sites or other railroad purposes, real property of

certain cities and incorporated towns not necessary for municipal or public purposes, and providing for submitting such proposed grant to the qualified electors of such city or incorporated town and prescribing the manner of holding said elections.

"*Be it enacted by the Legislature of the State of Utah:*

"SECTION 1. *Cities and towns may grant depot sites.—Vote of people thereon.*—That the city council of any city or
4064 board of trustees of any incorporated town of this State is authorized to aid and encourage the building of railroads by granting to any railroad company, for depot or other railroad purposes, real property of such city or incorporated town, not necessary for municipal or public purposes, upon such limitations and conditions as said council or board of trustees may prescribe: *Provided, however*, That no such grant shall be made to any railroad company, unless the question of making said grant has been submitted to the qualified electors of the city or town at the next municipal or special election to be called for that purpose by the city council or town board. If the question is submitted at a special election, it shall be held as nearly as possible in conformity with the general election laws of the State. Notice shall be given of such election by publication in some newspaper or newspapers published in the city or town for four weeks prior thereto; or if there be no newspaper, then by posting notices. The city council, or town board, shall cause ballots to be printed and furnished to the qualified electors, which shall read: 'For the proposed grant for depot or other railroad purposes: "Yes." "No."' If a majority of the qualified electors voting thereon shall have voted in favor of such grant, the city council, or town board, shall then proceed to convey the property to the railroad company.

"SEC. 2. This act shall take effect on approval.

"Approved this 14th day of March, 1901."

Q. Mr. Love, who, if you know, is responsible for putting that proviso in that act?

4065 A. Senator Lawrence and myself were instrumental in having that proviso put on the end of the law.

Q. Did Mr. Gibbon appear before this committee in support of this law—chapter 49?

A. Yes, sir.

Q. When that bill was introduced, and at the time he made his argument on it, was that proviso in it?

A. No, sir.

Q. Did Mr. Gibbon, in his argument before the legislative committee in support of that law, make any statements as to whether the proposed railroad to be constructed by the San Pedro, Los Angeles & Salt Lake, or by Senator Clark and his associates, would be maintained as an independent line of road?

Mr. LOVETT. That is objected to as hearsay.

A. Yes, sir.

Q. What did he say in that connection?

A. He felt that the people of Utah should encourage the building of that line, in view of the fact that it meant much to the citizens of Salt Lake, that it meant an independent road; and I discussed with him the possibility of his using transcontinental rates, which at that time were very much lower than they are today, and using the Los Angeles route to Salt Lake to get shipments from the Atlantic seaboard, and he said he could see no reason why it could not be used; that they would be very glad when the road was completed to take up that feature with the Salt Lake shippers.

Q. Who were present at those committee meetings at which Mr. Gibbon made the representations that this would be an independent line of road?

A. Well, I can't recall. There were members of the committee and some other senators, who were somewhat opposed to the bill in the form in which it was received in the senate, and Mr. Gibbon
4066 had some friends there. I remember Senator Smoot came down and appeared before the committee; Mr. Penrose, of the News, editor of the News at that time, was there, and some other Salt Lake attorneys—Mr. Whittemore.

Q. Mr. Whittemore, attorney of the Salt Lake road, so called?

A. I don't recall whether he was an attorney of the Salt Lake route at that time or not; I am inclined to think not.

Q. He was afterwards, wasn't he?

A. I think afterwards; yes, sir.

Q. Did you have any private conversation with Mr. Gibbon in connection with this proposed legislation, in which he made any statements as to whether this road would be maintained as an independent line?

Mr. LOVETT. The same objection is interposed to all this.

A. I had a conversation with Mr. Gibbon, in the presence of Senator Lawrence. Mr. Gibbon requested us to go to lunch with him one Sunday. We did not feel we should do that, but we offered to meet him at the senate chamber and go over the situation. He came down to the senate chamber and we had a long conference over the proposed bill. He said that it meant a great deal to them, to their line, and he hoped we would see our way clear to withdraw the amendment that had been offered to the bill.

Q. That amendment is the proviso submitting it to a vote of the people?

A. Yes. And he again went over the feature of the benefits that would accrue to the people of Salt Lake when this line was built, and he thought, in view of all the circumstances connected
4067 with the thing, that we ought to be willing to forego the amendment and let the bill pass in its original form. We still refused to do that.

Q. It appears by complainant's exhibit 154 that an ordinance vacating the park had been passed on the 17th of November, 1900,

shortly before this session of the legislature. Did Mr. Gibbon state any reason why it was desired to have this legislation: that is, did he give any legal reasons why he desired it?

A. Yes, he said some question had been raised by financiers who were about to purchase the securities of his line, about the title that they held to this square, and he wanted this measure enacted into law in order to validate the act of the city council. I asked Mr. Gibbon at that time—I said "I happened to be present at the mass meeting of citizens when that question was raised by some prominent Salt Lake attorneys, and I distinctly recall the fact, Mr. Gibbon, that you brought in some high-class gentlemen to testify as to the validity of the act of the city council, and that you yourself got up and said you were perfectly willing to accept such title as the city council could vest." And he recalled that: he said that was true, but it was different when you come to deal with people who were buying your securities.

Q. At the time Mr. Gibbon was advocating the passage of this act, did he in his remarks make any representations concerning the opposition his people were encountering in the building of their line?

Mr. LOVETT. Same objection.

A. Yes. That was one of the arguments he used. He said, "You gentlemen know the opposition that is confronting us down
4068 in the Meadow Valley Wash." He said, "The Oregon Short Line Railroad have a band of thugs down there that are holding us up, preventing us from going ahead with our work." He said, "This is a matter that the people of Utah are interested in as well as ourselves, and you certainly ought to come to our rescue and help us build this road."

Q. I call your attention to chapter 2 of the Laws of Utah, approved January 18, 1901, entitled "Railroad corporations. An act to amend section 433, chapter 7, title 11 of Revised Statutes of Utah of 1898, as amended by an act approved January 17, 1899, chapter 1 of the Laws of the State of Utah, passed at the third regular session of the legislature, 1899; and sections 435 and 442 of said chapter 7, title 11, of the Revised Statutes of Utah of 1898, providing for formation and powers of railroad corporations." I ask you to look at that act. Do you remember the circumstances attending the passage of that law?

A. I do, sir.

Q. Who was instrumental in having that legislation introduced, if you know?

Mr. LOVETT. The defendants object to all testimony of the witness as to the purposes or objects of the legislature of Utah in enacting the statute mentioned, or as to who was interested in its enactment, or the circumstances under which it was enacted.

Mr. SEVERANCE. I propose to show that the Union Pacific Railroad Company, one of the defendants, was instrumental in having that legislation passed.

A. A Mr. Winslow S. Pierce (I think that was the gentle-
4069 man's name), from New York, and local officials of the Union Pacific and Oregon Short Line roads.

Q. Did those gentlemen appear before legislative committees?

A. No, sir; they didn't appear before any committee.

Q. Did you have any conversation with them with reference to the legislation?

A. I had conversation with Mr. Pierce and Mr. Spencer of the Oregon Short Line Railroad.

Q. What was that?

Mr. LOVETT. It is understood that the objection applies to all the testimony, without repeating it.

Mr. SEVERANCE. Yes.

A. It was just before the convening of the legislature: I think about a day before the legislature met. Mr. Pierce sent Mr. Spencer for me, and I met him down in his suite of rooms at the hotel, and he told me what they intended to do, what they wanted to do, the purposes of the act, and went into the thing in detail.

Q. What were they?

A. He said that they were going to reorganize the Union Pacific Railroad and they wanted to file articles of incorporation in Utah, and it meant a very great deal for the people of Salt Lake—it would virtually make the headquarters of these vast systems of railroads in this city, and a lot of things of that sort. We discussed the thing for probably half an hour or more, and I told him that so far as I was concerned I had no objection particularly to the measure with the exception of the feature which permitted a road to increase its capital to such an enormous amount without a bill of particulars. Mr.
Pierce said, "Well, you can readily understand, Senator, that
4070 we could not let the general public in on a proposition of this sort." I said, "Well, at least the members of the legislature ought to know something about what you intend to do," and he replied that he did not mind telling me of some of the good things that would come to the people of this State if the measure was enacted into law. He said they intended to double-track the Union Pacific road from Omaha to Salt Lake; they intended to build a line to California; they intended to build a cut-off from Evanston to Salt Lake; it was their intention to build magnificent terminals in this city, and also build the Deep Creek Railroad, a line in which the people of Utah had been interested for a long time. I said, facetiously, "Well, under this measure, Mr. Pierce, we will get all the good things we have been looking for lo! these many years," and he said, "Time will demonstrate that what I say to you is correct." He said I appeared to be about the only opposition they had in the senate or in the house, either. I told him at that time that I did not think I could oppose the measure because I understood from some members of the senate that they were going to rush the bill through, and a bill of the importance that this measure appeared to be would

certainly take some time to investigate; and when I left him I told him that I would not raise any objection to it, that I did not feel I had the ability to do so.

Q. Was anything said by Mr. Pierce at that time indicating that it was proposed to purchase the stock of the Southern Pacific Company?

Mr. LOVETT. Same objection.

4071 A. No, sir. I will say that the bill was introduced on the third day of the session (I think it was the third day) in the senate and in the house, I presume simultaneously. The house bill passed the house on the fourth day and came up to the senate and was put on the table. The next morning, on the fourth day, the senate bill was referred to the committee and recalled, the house bill was taken up and passed, and signed by the governor the same day. I don't think the bill was even printed.

Mr. SEVERANCE. That was good, speedy work.

Cross-examination by Mr. LOVETT:

Q. What impression did you mean to convey, Mr. Love, by that last statement?

A. Simply completing my statement, that is all.

Q. Did you mean to create the impression that the Utah legislature was corrupt in passing that bill in such haste?

A. No, sir; I did not. It was a very unusual proceeding, however, Judge. I don't know of any other piece of legislation that was ever passed in that form while I was a member of the senate.

Q. Well, was there any opposition to it?

A. No, sir; no opposition whatever.

Q. Did you oppose it?

A. I did not, except to Mr. Pierce, in the conversation that I had with him.

Q. Do you mean to imply that there was any improper influence in any way that suppressed the opposition to the bill?

A. No. I would not want to draw that inference.

4072 Q. Would you want to intimate by your statement just now, then, that there was any corruption or any undue influence of any kind?

A. No. I think that the members of the senate and the house were misled.

Q. Misled how?

A. Well, the general impression was given out that this measure was simply a codification of existing statutes.

Q. Didn't the members know whether or not that was true?

A. I don't think they did. I don't think that you could take a bill and introduce it—a bill of the length of this bill—and pass it in two days and have the members know, especially when the organization of both houses was just taking place.

Q. Didn't the members read the bill?

A. I don't think they did.

Q. They passed this bill, then, that you regarded of so much importance, without reading it? Didn't you read it?

A. I read the bill, yes, sir; I took the bill home and read it—that is, I took a copy of it that I had one of the clerks prepare and took it home and read it.

Q. Did you know whether it was a codification of existing laws or not?

A. No, sir; I was a new member, Judge; I had just been elected, and knew very little about legislation. But there were members there who were old, experienced men and should have known better.

Q. Did you see any reason to oppose the bill?

A. The only reason was the reason I gave Mr. Pierce. I told him that I didn't think a measure of that importance, which granted to a corporation such vast powers, should be passed
4073 without a bill of particulars.

Q. What vast powers do you refer to?

A. Well, to permit railroads to own the capital stock of any other railroad, permit railroads to merge.

Q. Why didn't you oppose it on that ground?

A. Simply because as I explained to him. I told him that it wouldn't do. I was practically a youngster in the legislature. People would have laughed at me if I had got up there and attempted to oppose a measure which everybody else there was in favor of. They had prepared the way; they had talked to all these members; in fact, I went to the president of the senate myself, and said, "How about this measure, Mr. President?" and he said, "It's all right, it's a good thing;" he said, "I have investigated it, and it's all right."

Q. Well, you never have had any reason to doubt it since then, have you?

A. Yes, sir, I have.

Q. Have you? Why?

A. Because I don't think for a minute that a legislature should pass a bill of that kind and permit railroads to own the stocks and bonds of any corporation. They came to us two years ago with this measure in another form; that is, enlarging the power, and the same argument was made then, the same argument was made by Mr. Williams—it was simply a codification of existing laws. When we looked into it we found that it permitted railroads to own stocks and bonds of any corporation—not only railroads but any other corporation.

Q. That bill, two years ago, was printed and before the legislature a long time before it was enacted, wasn't it?

4074 A. How is that?

Q. The bill that you referred to, two years ago, was to some extent and to a large extent a codification of existing laws? It was printed and before the legislature a long time, too, wasn't it?

A. Yes; but it had a very great deal of new matter in it.

Q. Yes; and that was before the legislature for a long time?

A. That was introduced before the legislature in a legitimate way and considered properly—given all the consideration that was necessary; the other bill was not.

Q. You think, then, that legislation of that sort ought not to be enacted, that these powers ought not to be conferred; that is your idea, is it?

A. That is my honest opinion; I don't think they ought to have that power.

Q. When was this conversation with Mr. Pierce, that you referred to?

A. I don't recall the date, but it was either the first day of the session of the legislature or the day before the legislature convened—just about that time.

Q. What year?

A. 1901, January.

Q. When did you become a member of the senate?

A. I was elected the fall before that.

Q. You don't happen to know, then, Mr. Love, that the bill you are talking about and the bill Mr. Pierce spoke to you about was passed in 1897—not in 1901?

A. In 1897?

Q. Yes.

A. The bill that I was talking to Mr. Pierce about was passed in 1901.

Q. But the bill for the incorporation of the Union Pacific Railroad Company, following the reorganization, and conferring these vast powers that you speak about, was passed in 1897.

4075 A. Oh, there was some statute on the books at that time, but there was a lot of new matter put into that bill that Mr. Pierce had introduced.

Q. Did Mr. Pierce tell you in 1901 that the Union Pacific Railroad was about to be reorganized, when it had been reorganized in 1897 under the law of Utah?

A. Well, I don't know that he told me it was about to be reorganized, but the conversation was along that line.

Q. You testified just now that he told you that the Union Pacific was going to be reorganized.

A. That was my impression, Judge.

Q. And that this was going to be the headquarters of the Union Pacific?

A. That was my impression.

Q. Well, don't you think your memory is bad on that point?

A. It may be. I can't remember all of those little details; I don't pretend to; I know there was a general conversation along that line.

Q. Do you know when the Union Pacific was reorganized and incorporated?

A. I don't know the date exactly; no, sir.

Q. Don't you know that in 1901, at the time of this conversation, the receivership had terminated four years before, the company had been reorganized, that headquarters were located in Omaha, and the company had been incorporated under the act of January 22, 1897, which conferred upon the Union Pacific all the powers that were conferred by the act which has been offered in evidence here, except possibly the power to own the stock of lines that were not connecting? You don't know that?

A. Well, I was not a member of the legislature at that time.

4076 I know that there was a lot of new matter in the bill which Mr. Pierce introduced. I know that it was vital matter.

Q. If the statement I have just made is true, that the legislature of Utah did pass an act in January, 1897, under which the Union Pacific Railroad Company was incorporated, and that it had been incorporated, and that its headquarters were located that year in Omaha and have been there ever since, and that that act conferred upon it the power to buy other railroads and buy the stock and bonds of other railroad corporations—that is, of corporations that had connecting lines—would you care to modify your testimony on direct examination as to your conversation with Mr. Pierce?

A. Yes. I don't want to infer that I know absolutely the details of this matter. I only know that one of the arguments Mr. Pierce made was this: He said, "Now, it means $25,000 in fees to your State," and I naturally supposed that was something in connection with the reorganization. I was a young legislator. I didn't pretend to know all the details of these things at that time as I know them now.

Q. Do you still say that Mr. Pierce told you they were going to reorganize the Union Pacific Railroad Company and put headquarters here?

A. I would not insist on that statement, because I don't know whether that is true. I know he did say that it meant $25,000 in fees to the State. I know he said that, because that was one of the arguments he used.

Q. You are positive about that, are you?

A. Yes, sir.

Q. Wouldn't you have been equally as positive a while ago about his statement that the Union Pacific was going to be reorganized, with headquarters located here?

A. No; I would not.

4077 Q. You would not have been as positive about that as you would have been about what you said about the $25,000?

A. No.

Q. What makes you so much more positive about one than the other?

A. Well, the $25,000 fee proposition was talked about among the members of the senate quite a good deal. That was one of the arguments. I remember the secretary of state coming down and talking to the members of the senate. He said, "Now, the State is hard up

for money, and we want to encourage these people to come here and incorporate under our laws."

Q. Well, that statement was made good, wasn't it? The State did get the fees, didn't it?

A. I understand it did; yes, sir.

Q. Would you be equally positive as to his statement about the locating of headquarters here? That meant a good deal to the State, too, didn't it?

A. I remember that he explained to me the benefits that would accrue to this city. He said, "Now, this would naturally be the headquarters for the Union Pacific—for these vast interests that are taking hold of this property out here."

Q. You still swear that he said that?

A. Well, that is my impression. I know that I had a general conversation with him. I can't remember the absolute language of this gentleman; I can't remember that, except some things that were impressed upon me.

Q. Don't you think you would have laughed in his face if he had said that to you, in view of the fact that the company had been incorporated and already had its headquarters at Omaha?

4078 A. Well, I don't think I knew at that time. I naturally supposed that this measure that meant so much for the company, as he explained to me, and meant $25,000 in fees—I naturally supposed at that time that that was some sort of a reorganization, and it impressed itself upon me at that time.

Q. You "suppose," then, rather than take it from Mr. Pierce's statement? Is that it?

A. I may have done that; I may have been impressed by——

Q. You testified here as to what Mr. Pierce said to you. Now, do you mean to say that he said that or that you supposed that that would be the result?

A. Well, I am not going to swear on detailed statements of that kind, because my memory is not sufficiently strong.

Q. Well, you have done it, and I want to know which is correct.

A. I don't recall that I did swear to it.

Q. You swore here that Mr. Pierce told you that if this bill were passed——

A. No; I think if Mr. Severance had asked me at that time if I would swear that he did that, I would say, no; I wouldn't swear to it.

Q. Well, you are testifying here.

A. Yes.

Q. Where do you draw the line between statements which you are swearing to and statements to which you are not swearing on the stand?

A. Well, I can't go back ten or twelve years and recall in detail a statement made at that time, and I wouldn't swear to it at all.

Q. Do you mean to swear to anything now that Mr. Pierce told you at that time?

A. If it came down to the exact language I would say no, sir; I wouldn't swear to anything that he told me at that time in the way of detailed language. I say I had a general conversation with Mr. Pierce at that time and he went into details regarding the reorganization or the filing of the incorporation papers of the railroad, or something of that sort; and I know that we talked of the benefits that would accrue to Salt Lake, and I know that he was quite prolific in his statements as to what would happen here if such a thing took place.

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Q. But you don't mean to swear to any statement made by him, either in words or substance?

A. Yes; I will swear to some statements. I will swear to his statement that they were going to build a line to California; that they were going to build magnificent terminals in Utah; that they were going to double-track the Union Pacific road, and that they were going to build a cut-off from Evanston to Salt Lake. I would swear to those statements.

Q. Are you any more positive about those statements than you were about his statement to which you testified just now, that they were going to put the headquarters here?

A. Yes, sir; very much more so.

Q. And also that they were going to reorganize the Union Pacific?

A. Yes, sir; very much more so.

Q. You are positive about these others?

A. Very much more so.

Q. Is that due to the fact that your attention has just been called to the fact that you are not correct about the others?

A. No; I think not.

Q. I have no way of correcting any mistake you make as to these other matters. The charter of the company and the act of 1897 make it easy to correct your statement as to the reorganization and as to the establishment of the headquarters, but I have no way of correcting your statement about these other matters; so I want to know if you are any more positive about them than you are about those upon which you have been corrected.

4080

A. You can understand how I might be misled in regard to the reorganization.

Q. How?

A. In view of the fact of Mr. Pierce's statement in regard to the fees, and I could readily misunderstand a reorganization from a filing of the articles of incorporation or something of that sort.

Q. Could you any more readily understand about the location of the headquarters of the company than about the building of a new depot?

A. Yes; I think I could, because I remember telling Mr. Pierce—I said "Well, then, if this thing happens we are going to get all the good things we have been wanting here for lo! these many years," and we laughed about that.

Q. You are willing to swear to that, are you?

A. Yes, sir.

Q. And are you willing to swear to his answer?

A. Well, I think he acquiesced in it; yes, sir; I would swear as to that; yes, sir; that he acquiesced in it. I don't remember the exact language he used; I wouldn't swear to that.

Q. You don't know of any way by which your statement on that can be checked up, do you?

A. No, I don't; unless you might put Dan Spencer on the stand. I don't know whether he was present at that time or not.

4081 Q. You don't know whether he was present or not?

A. If he was not present, he was sitting outside the door.

Q. You don't know whether he heard the conversation or not?

A. No; I do not.

Q. Now, will you state again, so I get it on the record clearly, just the statements you are willing to swear that Mr. Pierce made to you?

A. I said to Mr. Pierce: "I think this, Mr. Pierce, that a measure which is of so much importance to the people of this State and to your company, as you claim this measure is, that we are entitled to a bill of particulars before we enact a measure of this kind into law." And he said, "Well, Senator, you can readily understand that we could not take the public into our confidence on a matter of so much importance as this measure is or this affair is;" and I replied, "I presume that is correct." "But," he said, "I don't object to telling you some of the things that will happen or some of the good things that will come to Utah." And then he said, "Now, one of the things that we intend to do is to double-track from Omaha to Salt Lake; we intend to build this line to California; we intend to build magnificent terminals here in Salt Lake City, and we intend to build the Deep Creek railroad." Now, in detail, those are about all that I would be willing to swear that he said during that conversation.

Q. This conversation occurred either on the first or second day of the session of the legislature in 1901?

A. It was just about the time that the legislature convened. I would not be positive as to dates. It may have been the sec-

4082 ond day—well, I am sure it wasn't before the third day, because Mr. Pierce explained to me that he was very anxious to get away, and was very anxious to have this bill go through; he wanted to get back to New York; he was extremely anxious to have this bill passed soon—very soon—and I told him at that time, "Well, if that is the case, and all the other members of the senate with whom I have talked seem to be in favor of the bill, I presume there is no use in my trying to make any opposition." And I told him that a bill that was as long as that, the people ought to have time to consider it, to digest it.

Q. You told Mr. Pierce that?

A. I told Mr. Pierce that; yes, sir.

Q. Did you tell anybody else that?

A. I don't recall whether I did or not.

Q. Did you tell the president of the senate that, or any member of the senate?

A. I talked to the president of the senate about it; I asked him what he thought about the measure.

Q. Didn't you tell him that you ought to have more time to consider it? Didn't you interpose any objection?

A. I don't recall whether I told him that or not. I believe I talked to Senator Lawrence about it.

Q. Now, the bill to which you refer is the bill that afterward became chapter 2 of the Acts of the Utah Legislature, passed at the fourth regular session of the legislature of Utah, in 1901?

A. I think there was more than one——

Q. And the act I refer to is the one that has been introduced. Did you introduce this, Mr. Severance?

Mr. SEVERANCE. No; I just called his attention to it.

4083 Q. One of the acts to which Mr. Severance referred in his direct examination.

A. Well, there was more than one bill. I wouldn't want to say whether that was the particular bill or not.

Q. More than one bill passed at the same session?

A. There was more than one bill passed.

Q. At the instance of Mr. Pierce?

A. Well, I don't know whether at the instance of Mr. Pierce or not, but there was more than one bill in which this question was involved.

Q. Which bill was it that you say was rushed through with such haste? Is that the bill that now appears as chapter 2?

A. Well, I wouldn't say. I would want to examine that to find out.

Q. Examine it. [Handing book to witness.]

A. So many of these bills read so much alike I wouldn't want to say whether that was the act or not.

Q. You can't say whether it was chapter 2, or some other chapter of the Laws of 1901, that was the bill you discussed with Mr. Pierce?

A. I could find out if I had time to look at the files I have.

Q. You can have all the time you want.

A. I kept my old files.

Q. You can have all the time you want. I would like you to find out. I will ask you also, while you are looking that up, Mr. Love, to bring back with you a copy of the Laws of 1897, if you don't mind.

I want to ask you something about that. With reference to

4084 Pioneer Park, the land referred to in the petition of Mr. Gibbon and the ordinance of the city council and the first act of the legislature read in evidence by Mr. Severance upon your examination, what became of that property?

A. I presume it would revert to the city.

Q. Did the Salt Lake Railroad Company ever get it?

A. I understood—I am not positive about that, but I understood that at the last meeting that was held here in the city, that the city

council had already at that time deeded the square to the railroad company and——

Q. I am not asking you as to the deed. If there is any deed I guess that is the best evidence of it. Did the San Pedro company ever get into possession of it at all?

A. No, sir.

Q. And it always continued as a park, didn't it?

A. Yes, sir.

Q. The only ordinance passed by the city council in reference to it, so far as you know, is the one that has been introduced in evidence here as Complainant's Exhibit 154, isn't it?

A. Well, I am not acquainted with that ordinance. I looked at the ordinance as it was handed to me by Mr. Severance, and I recognized it as being an ordinance for that purpose, but I was not a member of the city council and paid no attention to it.

Q. I understood you to say you were familiar with that ordinance when it was handed to you by Mr. Severance.

Mr. SEVERANCE. No; I asked him if he was familiar with the matter that it related to.

Q. Did you examine that ordinance?

A. No, sir; just casually, cursorily.

4085 Q. You don't understand that that conveyed this lot to the San Pedro or authorized the conveyance of it to the San Pedro Company, do you?

A. I wouldn't say that it did or didn't.

Q. Don't you understand that merely vacated it as a park and provided it should become a part of the city's unappropriated lands?

A. I will answer that question by saying that I don't know.

Q. Well, what was the ordinance or transfer to which you referred when you mentioned the statement that you said was made by Mr. Gibbon, that he would be satisfied with the title that the city was then giving. Didn't you refer to this ordinance in Exhibit 154 then?

A. I referred to a circumstance that happened in a mass meeting which was held here, in which the question of whether or not the city could deed this property or vest it in a railroad company came up, and the Salt Lake route brought in Mr. Ellis, of Dickson, Ellis & Ellis, and he was the gentleman who gave the opinion there that night, and when I talked to Mr. Gibbon in Mr. Lawrence's presence I said, "Mr. Gibbon, I happened to be present at a meeting where this question came up, and I remember your rising upon your feet or saying in the crowd of people there that you were willing to accept such title as the city could give you."

Q. It was on that occasion that Mr. Gibbon made the statement to which you refer?

A. And when I called his attention to it, he said, "Yes, that is right; I did say that."

Q. When was that?

A. I don't just recall. It was when the question of building the road from here to Los Angeles came up.

4086 Q. Was it before the legislature convened?

A. Oh, yes, I think so.

Q. Some time in 1900?

A. I wouldn't say just when it was. I know it was when the question of building the Salt Lake route was up here and being agitated in Salt Lake.

Q. You testified on your direct examination to some statement made by Mr. Gibbon about Oregon Short Line thugs. When was that statement made?

A. I am inclined to think that was made in the senate chamber on the Sunday we had this conversation about the measure that Mr. Gibbon was wanting to get through.

Q. That measure has been read into the record, and is chapter 49 of the laws of 1901, and was approved on the 14th of March, 1901?

A. Yes.

Q. How long before the 14th of March, 1901, do you suppose this conversation was?

A. I couldn't say.

Q. The bill hadn't been passed at the time that conversation was held?

A. The bill was in the senate then; I am inclined to think it had already passed the house and was in the senate, being considered.

Q. How long after the conversation before it was passed, do you know?

A. I couldn't say.

Q. Don't you know that it was some time after the 14th of March before the contending forces of the San Pedro line and the Oregon Short Line met, when the road was under construction?

A. No, sir; I do not.

Q. Don't you know that at the time you say Mr. Gibbon spoke of the Oregon Short Line thugs there had been no conflict or controversy on the ground between the Oregon Short Line forces

4087 and the San Pedro forces?

A. No.

Q. You don't know that the San Pedro's engineers didn't go on to that line until the 20th of March, 1901?

A. No, I don't know anything about the details of the matter.

Q. But you do remember pretty distinctly what Mr. Gibbon said about the Oregon Short Line thugs?

A. I remember a good deal of talk about that thing. I am not absolutely positive about that. I know that we talked along general lines, and he told us of the trouble they were having.

Q. Do you mean to swear, then, or not, to the statement that you said Mr. Gibbon made with reference to that?

A. No; I wouldn't swear to a detailed statement of that sort.

Q. Well, you did on direct examination. Do you mean to qualify that statement?

A. Well, now, when it comes right down to a detailed statement of that sort, I wouldn't want to swear to the exact language used by Mr. Gibbon with reference to that matter.

Q. Don't you think, then, you ought to be a little more careful in your statement, Mr. Love, as to what you do swear to? You have been swearing to that right along.

A. Well, I am making a general statement.

Q. You also testified, as I recall, that you had some conversation with Mr. Gibbon about the transcontinental rates, as to what might happen after this road was constructed.

A. Yes, sir.

4088 Q. And you said the transcontinental rates at that time were lower even than now. What rates do you refer to—Pacific coast points rates?

A. Yes, sir.

Q. The transcontinental rates, that is, rates from the Missouri River, and east to Los Angeles, San Francisco, and other Pacific coast points, were lower then than now?

A. Yes, sir.

Q. How about the Salt Lake rates? Were they lower then than now?

A. No, sir; they are lower now than they were then.

Q. There was a greater discrimination against Salt Lake in favor of the Pacific coast points at that time than now?

A. Yes, sir. That is, in a way there was. That statement would have to be qualified.

Q. How?

A. In those days we could get most any kind of a local rate by a private arrangement, outside of Salt Lake, with any of these lines. Since the passage of the last amendment to the inter-state-commerce act, of course that situation has all been changed. And in those days there were rate wars continually between the lines operating into Salt Lake. Take it year in and year out, I think the rates to Utah in reality were lower then than they are now. But so far as the published tariff was concerned, the rates are now lower than they were then, and the transcontinental rates are higher now than they were then. So, from a paper standpoint, the discrimination against Salt Lake was greater ten or fifteen years ago than it is now.

Q. How long has this adjustment of rates, by which the Pacific coast points are allowed very much lower rates than Salt Lake from points east of the Missouri River, existed? Is that a recent thing, or has it always been so?

4089 A. It has existed ever since I have been in the traffic business.

Q. Salt Lake has always suffered that disadvantage as against the Pacific coast?

A. Yes, against the Pacific coast. Well, I don't say always: it has for the last twenty years.

Q. Salt Lake's condition in that respect hasn't improved in the last twenty years?

A. I say so far as the schedules are concerned it has, but otherwise it has not. So far as the published rates are concerned, Salt Lake's condition is better now than it was fifteen or twenty years ago.

Q. So far as the published rates and the maintained rates are concerned?

A. Yes.

Q. The adjustment of rates, as shown by the tables prepared by you and introduced as Complainant's Exhibit 153, how long has that existed, approximately? Substantially the relation of rates and the adjustment of rates as shown by Complainant's Exhibit 153 has existed how long?

A. Oh, a considerable time.

Q. Always?

A. Generally speaking, for twenty years, I should say; maybe prior to that.

Q. You testify from your knowledge of a period of twenty years?

A. Yes, twenty years.

Q. And it has existed substantially as shown by Exhibit 153 for twenty years at least?

A. So far as the tariffs are concerned, yes.

Q. You took Huntington as a point for comparison in one of the statements, or perhaps more, embraced in Complainant's Exhibit 153, and testified specially with reference to that in answer to ques-
4090 tions by Mr. Severance on your direct examination. Why did you select Huntington?

A. The local tariff of the Oregon Short Line Railroad runs out to Huntington, the local tariff of the O. R. & N. is eastbound to Huntington, and the Salt Lake jobbers, in complaints that we have had up with the railroads in times gone by, have always felt they were entitled to go out in their jobbing business as far as Huntington on the O. S. L. and north on the O. S. L. as far as Red Rock or Dillon, Montana, and west to Elko on the Southern Pacific, and east to Rock Springs, Wyoming, on the Union Pacific, and Grand Junction on the Rio Grande.

Q. Do you think you are entirely fair in selecting Huntington as the point for comparison as between Salt Lake and Portland?

A. I think so, yes, sir.

Q. How far is Huntington from Salt Lake?

A. I haven't compared the mileage: I couldn't say absolutely.

Q. What is the difference, do you say, in favor of Portland on Huntington? You stated it on your direct examination.

A. The difference in rates?

Q. Yes, as against Salt Lake, on a particular commodity that you mentioned on your direct examination: I think you said it was underwear.

A. I said on underwear and hosiery it is $1.74; on cotton piece goods, $1.15; on boots and shoes, 37 cents; on canned fruit, 69 cents; on crockery, 64 cents; on glassware, 69 cents, and so on.

Q. Don't you know that Huntington is nearly 100 miles nearer Portland than Salt Lake City?

A. I wouldn't be surprised at that.

4091 Q. Do you know the distance from Salt Lake City to Arcadia?

A. No, sir.

Q. You don't know that it is about equidistant between Portland and——

A. I only know in a general way that we regard Huntington as being about half way.

Q. That doesn't answer my question. My question is, if you don't know that Arcadia is about midway between Salt Lake City and Portland?

A. I never checked that up.

Q. And that the rates at this midway point—that is, the adjustment of rates—puts Salt Lake City and Portland on an equality, at this midway point? Don't you know that?

A. I testified, I think, in my direct examination, that the rates from Portland and from San Francisco and from Los Angeles, as a general thing, were about equal when you struck a midway point.

Q. Why didn't you take the midway point, then, in preparing the statement Exhibit 153?

A. Because in all our controversies, as I have said, between the railroads and our-selves, the jobbers here have always selected Huntington as the point.

Q. And that is 100 miles nearer Portland than Salt Lake City?

A. Well, that is all right; I think that is fair. I don't see why they should haul goods to Portland and perform a service of a thousand miles and haul them back and then complain because we talk about a hundred miles farther east.

Q. You don't see why they should do that?

A. No.

Q. They all do it, don't they?

A. Unfortunately, yes.

Q. And you say they have been doing it for over twenty years?

A. Yes, and unlawfully, too.

4092 Q. Unlawfully?

A. Yes.

Q. That has continued for over twenty years, unlawfully?

A. Yes, sir; they have been doing it ever since the passage of the interstate commerce act. They have never been relieved from the fourth section of the interstate commerce act, so far as I can find.

Q. And you think that because they carry freight across the continent to a Pacific coast point at a lower rate than they carry it to an intermediate point, it is unlawful? Is that the reason of that statement?

A. How is that?

Q. I was just asking the reason why you said it was unlawful.

A. Well——

Q. Do I understand you, in your reference to the fourth section of the interstate commerce act, to mean that in your opinion it is unlawful because the railroads are carrying across the continent to San Francisco and other Pacific coast terminals at a lower rate than they carry it to intermediate points without the previous consent of the commission?

A. Yes, sir.

Q. You mean it is unlawful in that sense?

A. I think so.

Q. Coming back again to Huntington. You have not shown the relative position of Portland and Salt Lake City, or of Salt Lake City and San Francisco, or of Salt Lake City and Los Angeles, or of Salt Lake City and Sacramento, or of Salt Lake City and Denver, at points equidistant between those cities, on statement Exhibit 153, have you?

A. Well, Arcadia must be an awfully small place, otherwise I would know something about it. It may be a prepaid station
4093 out there, or something of that sort. When we take up a matter of that kind we certainly would not select Arcadia as a town on which we should meet on mutual ground. We would certainly select some town of some consequence. Huntington, being the end of the division of the Oregon Short Line and the end of the division of the O. R. & N., and in view of the fact we have always considered that as mutual ground on which to meet, that is the reason I selected it.

Q. I ask you to answer the question.

A. As I testified on direct examination, we selected towns that we considered about midway.

Q. That is all right; but will you answer the question, Mr. Love?

A. What is the question? Read it.

The following question was read: "Coming back again to Huntington. You have not shown the relative position of Portland and Salt Lake City, or of Salt Lake City and San Francisco, or of Salt Lake City and Los Angeles, or of Salt Lake City and Sacramento, or of Salt Lake City and Denver, at points equidistant between those cities, on statement Exhibit 153, have you?"

A. From a mileage standpoint?

Q. From a mileage standpoint; yes.

A. No, sir; only approximately.

Q. In preparing that statement you selected points that would present the strongest complaint against the existing rates from your position, didn't you, Mr. Love?

A. No, sir; I think I could have selected other points. I could have selected other items that would have produced even a worse result than those.

4094 Q. But about the points: you selected the points that you thought would present the strongest cause of complaint, didn't you?

A. No, sir; I did not. I simply took our general way of figuring. At the time I started to figure this I didn't know just how it would figure out. In some instances it shows rates in favor of Salt Lake. I have shown those.

Q. Now, isn't it true, Mr. Love, that since 1901 there have been numerous reductions in class rates from Salt Lake to points on the Southern Pacific west of Ogden?

A. Yes, sir; there have been some reductions.

Q. And isn't it also true that rates from Ogden to points west on the Southern Pacific have been reduced, and that rates from Salt Lake, which formerly were made on the full combination of the locals through Ogden, were made the same as from Ogden?

A. The condition out to the Ely country has been very much better in the last few years, so far as Salt Lake is concerned.

Q. Where is the Ely country?

A. What we call the Ely country is that road which runs down from Cobre.

Q. How far west from Ogden?

A. I should say about a couple of hundred miles; something like that.

Q. The condition of that territory has been very much improved, so far as Salt Lake is concerned, in recent years?

A. Yes. Of course, it is a new country; it has just been building up. However, in some instances the rates north have been increased in the last few years.

Q. Where?

A. Well, up in the Idaho country; up north of Pocatello. The rates from Salt Lake to points north of Pocatello have been increased.

4095 Q. What territory?

A. Well, Idaho Falls, Blackfoot, Market Lake.

Q. What rates?

A. Class rates.

Q. Any commodities, or only the classes?

A. No; class rates generally.

Q. That is on the Oregon Short Line?

A. On the Oregon Short Line.

Q. Up to Pocatello and points north of there?

A. No; I don't think they were increased to Pocatello, but north of Pocatello.

Q. Aren't the rates out of Salt Lake—that is, your distributing rates—fair as compared with the distributing rates from Denver and California and other cities?

A. On the Short Line?

Q. On all of the lines.

A. No, sir; they are not.

Q. Did you ever compare the rates out of San Francisco and Los Angeles and Denver and other places?

A. Yes, sir.

Q. Were they higher?

A. They were higher out of Salt Lake than out of any of them.

Q. I am not speaking of the transcontinental rates or the inbound rates; I am speaking of the distributing rates out.

A. I made a comparison a little while ago of 200 miles out of Salt Lake, taking the Rio Grande, the Union Pacific, the Oregon Short Line, the Western Pacific, the Southern Pacific, and the Salt Lake route. The fourth-class rate, which distributes most of the staple goods, such as heavy groceries and heavy hardware, ran between $15 and $16 a ton. The nearest rates to those points—and, by the way, I will say I didn't take Portland and I don't think I took San
4096 Francisco (I am not certain about that); I didn't have the tariffs handy at that time—the nearest I came to was out of Denver, and there the rates ran a little over $9 a ton for an average haul of 200 miles, which was running up into that high altitude. I took the Union Pacific out of Denver, the Burlington out of Denver, the Colorado Midland, the D. & R. G., the Santa Fe, I think, or the Colorado & Southern (I am not positive which); I used the same number of lines that I use here. I found the rates out of Salt Lake for 200 miles were greater than any of these cities to a very marked extent.

Q. That is on fourth class?

A. On fourth class; yes.

Q. Carload?

A. No; that distributes the less-than-carload items which I have mentioned, such as——

Q. Well, you said $16 a ton?

A. Between $15 and $16 a ton.

Q. You apply that basis to less-than-carload rates?

A. Using a ton of stuff as a basis for making the estimate. I might have used a hundred pounds; it would have been just as simple.

Q. Well, I am accustomed to think of less-than-carload rates in cents per hundred pounds.

Mr. SEVERANCE. They are published in cents per hundred pounds, but I suppose it is easier to reduce it to tons as a matter of figuring.

Mr. LOVETT. It is a question of thinking, and I don't think in tons.

Mr. SEVERANCE. It does seem like an awful lot of freight—a whole ton!

Q. You say that was $16 a ton out of Salt Lake?

A. Between $15 and $16.

4097 Q. For 200 miles?

A. For 200 miles.

Q. And out of Denver it was $9 a ton for the same distance?

A. Yes.

Q. Over all lines?

A. Well, I simply picked out half a dozen lines. There are more lines out of Denver than there are out of Salt Lake, and I took the same number of lines.

Q. How is it for shorter distances, say 50 miles?

A. I didn't make that comparison.

Q. How for 100 miles?

A. I only made the comparison on 200 miles, but I should say the same thing would apply.

Q. Isn't most of your distribution on hauls less than 200 miles?

A. Yes, sir.

Q. You didn't take the basis, then, on which most of your shipments are made?

A. Well, the same thing would apply out of Denver or out of any other city.

Q. How do you know? Sometimes, where they get up to paper rates, where the traffic does not move under them, they are not so particular, but I was asking you about distances and the localities over which the traffic actually moves.

A. Well, 200 miles wouldn't be a very extensive jobbing territory.

Q. It might be in some places and it might not be in others; but, as a matter of fact, the most of your business is handled on a very much shorter distance than 200 miles, isn't it?

A. Well, of course the bulk of our business is really handled within 100 miles.

Q. What I wanted to know was whether Salt Lake didn't really have better rates on which its actual distribution was made than a good many of the large jobbing cities.

4098 A. Do you want that?

Q. If you can give it I would like to have it.

A. I can't give it to you now, but I can get it for you.

Q. When?

A. I can furnish it in a couple of hours.

Q. I would be glad to have you look it up, if you can get it accurately; I would like to have the comparison.

A. It might not be very accurate.

Q. I don't want it unless it is accurate.

A. I may not have all the tariffs; but I think I can give it to you accurately.

Q. If you can give it to me complete for Salt Lake and for San Francisco and Los Angeles and Denver and Portland, I would be very glad to have it.

Mr. SEVERANCE. What do you want it for—a hundred miles?

Mr. LOVETT. I would like it for 50, 100, and 150.

Mr. SEVERANCE. You have given him too big a job to do in two hours.

Mr. LOVETT. Let us say 100 miles.

WITNESS. Do you want them out of Kansas City, St. Paul——

Mr. LOVETT. I would like them to be where conditions are more similar. The volume of business is supposed to have a good deal to do with the amount of the rate, you know. Perhaps it would be better to take Sacramento than Los Angeles. There is a good deal of water transportation in there, and so at Portland. But, still, we will take it even with those conditions.

(A recess was here taken until 2 o'clock p. m., at which time the witness was recalled and his cross-examination resumed by Mr. Lovett.)

4099 Q. Have you made up the figures that you were asked about before luncheon, Mr. Love?

A. Yes, sir.

Q. May I see the statement?

(Witness hands paper to Mr. Lovett.)

Q. In preparing the statement that you were requested before the noon recess to prepare, what points did you compare?

A. Why, I took, at your request, 100 miles out of Salt Lake, or approximately 100 miles out of Salt Lake, and 100 miles out of Denver; but I had to do this work so hurriedly, and had no way of checking up with the railroad people, and had to take what tariffs I had in my office; and in using the Union Pacific I had to take the rate out of Ogden and the Southern Pacific rate out of Ogden. But I presume they are practically the same. By using five railroads, the Rio Grande Western, the Salt Lake Route, the Union Pacific, the Oregon Short Line, and the Southern Pacific out of Salt Lake or Ogden, the D. & R. G., the C., B. & Q.——

Q. If you are going to give the substance of the statement, if that is the statement which you have in your hand and you have made it up, and that is the document you produce, just let it go in the record as it is. Let it be read into the record.

The statement is as follows:

| | |
|---|---|
| Rio Grande Western—Salt Lake to Castle Gate, 111 miles, 4th class | 45¢. |
| Salt Lake Route—Salt Lake to Juab, 102 miles, 4th class | 37¢. |
| Union Pacific—Ogden to Antelope, 112 miles, 4th class | 37¢. |
| Oregon Short Line—Salt Lake to Cornish, 99 miles, 4th class | 26¢. |
| Southern Pacific—Ogden to Tecoma, 113 miles, 4th class | 59¢. |
| | 204 |
| D. & R. G.—Denver to Pueblo, 119 miles, 4th class | 30¢. |
| C., B. & Q.—Denver to Ackron, 112 miles, 4th class | 25¢. |
| Colorado & Southern—Denver to Greeley, 99 miles, 4th class | 15¢. |
| Union Pacific—Denver to Cheyenne, 107 miles, 4th class | 30¢. |
| Colorado Midland—Denver to Divide, 102 miles, 4th class | 34¢. |
| | 134 |

4100 Q. Your comparison, then, was between Salt Lake City and Denver; that is, the local rates out of Salt Lake City and out of Denver?

A. Yes.

Q. In examining this statement I observe that you did take, as you say, Ogden, instead of Salt Lake City, in the case of the Union Pacific and Southern Pacific. The Southern Pacific case that you have taken, Ogden to Tecoma, 113 miles, you show fourth-class rate of 59 cents. Don't you know, Mr. Love, what the rate is from Salt Lake City to Tecoma?

A. No, I couldn't say right off; I couldn't give you that rate in my office. I suppose it is there in the tariffs, but I didn't get back here on time as it was, and I was in a hurry.

Q. Don't you know that the rate from Salt Lake City to Tecoma is the same as from Ogden to Tecoma?

A. I imagine it is; yes.

Q. What is the distance from Salt Lake City to Ogden?

A. Salt Lake City to Ogden is 37 miles.

Q. Then, you have shown here, in the case of the Southern Pacific, a 59-cent rate for 113 miles, and from Salt Lake City to the same point the rate is the same, 59 cents, for 150 miles.

A. Well, I don't think that is material, for this reason: Our rates here are arranged on a certain basis; for instance, Salt Lake and Ogden and Provo are common points. We start on the mileage basis when we get south of Lehi; the rates from Ogden and Salt Lake apply. So if you use the mileage, the rates are the same. For instance, the mileage from Salt Lake to Lehi would only be 31 miles, but it would be 67 miles to Ogden, and the same rate applies. The same is true of the north country. Salt Lake and Ogden are common, north of Cache Junction, I think.

4101 Q. After that discourse, Mr. Love, I will ask you to come back to the question. Do you think it is a fair answer, to a request to prepare a statement comparing rates out of Salt Lake with Denver, to bring in here a statement that shows a rate of 59 cents for a 113-mile haul from Ogden to Tecoma, when you know that the rate from Salt Lake City to the same point (Tecoma) is only 59 cents?

A. I don't know that, but we can make three railroads instead of five (as I have used) if you wish.

Q. I am asking you as to what you did, not what you might have done. That is what you have done, isn't it?

A. I have given my reasons.

Mr. SEVERANCE. Just a moment, Mr. Lovett. I don't think I have ever objected to a question by Judge Lovett since we commenced taking the testimony, but I think I must object that it is improper to ask this witness to characterize his own statement. The statement shows for itself.

Q. You were asked to bring in a statement comparing the rates out of Salt Lake City with similar distances out of Denver, weren't you?

A. Yes, sir.

Q. And you brought in a statement with reference to the Southern Pacific which shows a rate of 59 cents to Tecoma from Ogden, 113 miles, when you know that the rate from Salt Lake City to Tecoma, 150 miles, is the same.

A. No, I don't know that; I don't know that the rate from Salt Lake to Tecoma is the same. I have not checked that up. We do very little business at Tecoma and I could not say whether that is true or not, but I imagine it is, for the reason I have given you.

4102 Q. Your opinion is that it is the same?

A. That it is the same.

Q. For the 150 miles, as shown here, as for the 113.

A. On the other hand, I might have used the rate to Cornish; I might have used the Ogden rate on the O. S. L., but I used the Salt Lake because I had the tariff. I didn't have the tariff in the other two cases.

Q. Don't you keep all tariffs in your office?

A. I try to, but my files are not always complete.

Q. What particular tariffs did you use in compiling this statement? Can you indicate them?

A. I took the last tariffs we had in the file.

Q. Well, that might have been ten years ago. If you haven't got the Southern Pacific, I don't know how your file is. Don't you know what tariffs they are? I would like to have you identify them in some way.

A. I can have the authority put in there if you desire. I didn't know you wanted that or I would have had it put in.

Q. Yes, I want to know the particular tariffs from which you compiled those figures. I understood you to testify upon this same subject before recess; that upon figures compiled by you some time ago it appeared that the rates out of Salt Lake City, on fourth-class, for 200 miles, were about $16 a ton as against $9 for Denver. Did I understand you correctly?

A. I think $9 or $9.75, something like that; between $9 and $10 for Denver, and something over $15 for Salt Lake.

Q. How much is that a hundred? You say $16 a ton. How much is that a hundred?

A. I said between $15 and $16.

Q. How much per hundred is $15 per ton?

4103 A. $15 a ton would be 75 cents a hundred.

Q. And $16 a ton would be 80 cents a hundred, wouldn't it?

(No answer.)

Q. Do you do any business with Blackfoot, Idaho?

A. Yes, sir.

Q. Idaho Falls?

A. Yes, sir.

Q. American Falls?

A. Yes, sir.

Q. Soda Springs?

A. Yes, sir.

Q. Alexandria?

A. I don't know Alexandria.

Q. Excepting Alexandria, those points are all on the Oregon Short Line, are they not?

A. Yes, sir.

Q. Don't you know that the rate from Salt Lake City to Blackfoot, Idaho, 195 miles, is 40 cents?

A. Yes, sir.
Q. On fourth-class?
A. Yes, sir.
Q. To Idaho Falls, 220 miles, 50 cents?
A. Yes, sir.
Q. American Falls, 194 miles, 40 cents?
A. About that, yes.
Q. Soda Springs, 192 miles, 42 cents, fourth-class?
A. Yes, sir.
Mr. SEVERANCE. He told you this morning they had lower rates into that region. The rate has been reduced.
Mr. LOVETT. I understood him to say that the rates had been increased into Idaho.
WITNESS. They have, yes, sir, since 1892.
Mr. LOVETT. I didn't understand him to say they had been reduced to Idaho at all.
Mr. SEVERANCE. Then, I misunderstood him.

Q. The rates I have just mentioned to those points are
4104 covered by the Oregon Short Line Railroad Company's tariff, effective October 25, 1907, aren't they? February, I should have said.

A. I think those rates are substantially correct, as I remember them.
Q. Now, in the case of the Union Pacific, Bryan, Wyoming. Do you ever sell any goods there?
A. Not very much.
Q. The rates to other points in that locality are about the same, aren't they, as to Bryan?
A. Mention some point that I know.
Q. Don't you know Bryan?
A. We do very little business there.
Q. Do you know what the rate is on fourth-class to Granger?
A. No, I couldn't recall it.
Q. Don't you know that the rate to Bryan, which is the next station to Granger, on fourth-class, over the Union Pacific from Salt Lake, is 42 cents, a distance of 200 miles?
A. Approximately there. The rates on the Oregon Short Line and the Union Pacific are very much less than on the other railroads.
Q. Very much less than on the other one?
A. Yes.
Q. You didn't mention that this morning.
A. I wasn't asked to mention it. I said that I took six railroads—I think it was six railroads—running out of Salt Lake and six railroads out of Denver and six railroads out of Kansas City and those other towns that I used, and averaged the rate. That was my testimony.
Q. You didn't mention the relative rates?
A. No, sir.

Q. As to which was lower?

A. No, sir.

4105 Q. So, it is true, then, that the rates on the Union Pacific and Oregon Short Line are very much lower than on the other lines from Salt Lake City?

A. Yes, sir, very much lower.

Q. How about the Southern Pacific?

A. The rates are not so low on the Southern Pacific.

Q. Not so low as on the Union Pacific?

A. Not so low as on the Short Line; I haven't compared them with the Union Pacific. I say, offhand, I wouldn't say the rates of the Southern Pacific are quite as low.

Q. Would you say the fourth-class rate for a distance of 200 miles out of Salt Lake City on the Southern Pacific is 75 cents or 80 cents or anywhere near 75 cents or 80 cents?

A. I am inclined to think it would be less than that on account of these new rates that have been published.

Q. What do you mean by the new rates?

A. Well, the rates have been published within the last two or three years, since that country opened up, up there.

Q. You think they are considerably less than 75 cents, don't you?

A. I wouldn't say. I would want to look that up. I don't know.

Q. Do you still think it is a fair statement that the rates, at least so far as the Union Pacific and the Oregon Short Line and the Southern Pacific out of Salt Lake are concerned, are anywhere near $16 a ton?

A. No, sir, it is not fair as to those roads; but we were talking about the general distributing rates out of Salt Lake.

Q. Those are pretty important lines around here, aren't they?

A. Pretty important. I am inclined to think, by saying that,

4106 that the jobbers of Salt Lake have always considered that the rates on the Oregon Short Line out of Salt Lake are fair and reasonable rates for a reasonable distance. We hardly think they are fair when you get a little way west of Pocatello, but up to Pocatello and in that country we think that the rates are very fair.

Q. How far does that take you?

A. It takes us up into that Idaho country there.

Q. 250 miles?

A. It is about 250 miles, around there.

Q. You think that up to that distance they are fair, but when you get up about Huntington they are unfair?

A. Well, they run up pretty high. And then, of course, there are other conditions that enter into the thing. Since 1896, the Union Pacific, after consolidation, published a tariff from Missouri River and east, or from Missouri River into that point, which made the rates practically common with Salt Lake.

Mr. SEVERANCE. Which year did you say?

WITNESS. 1906.

Mr. SEVERANCE. I thought you said 1896.

Mr. LOVETT. He did, but he meant 1906.

WITNESS. They published a tariff in there which practically made the rates common with Salt Lake, and in order for the Salt Lake jobber to get into that territory we have practically to absorb the local.

Q. Who is your competitor in that territory?

A. Missouri River, Denver, Chicago.

Q. Didn't that change you speak of reduce rates from Salt Lake into Montana?

A. No, sir.

4107 Anywhere else?

A. The Salt Lake jobber was put on the Montana basis.

Q. What do you mean by that?

A. We were given the same rates as the Montana people had.

Q. And that resulted in a reduction, didn't it?

A. It resulted in a reduction from the east, but it also resulted in a reduction to all this intermediate territory that we were doing business in.

Mr. SEVERANCE. That is, into that intermediate territory from the east?

WITNESS. Yes.

Q. You spoke about a conversation with Silas Eccles about supplying salt to sheep men in Idaho. When did that conversation occur?

A. I don't remember the date.

Q. Can't you approximate it?

A. No, I couldn't. We had several conversations about that business up there.

Q. Was it 15 years ago?

A. It must have been at least 10 years ago, or probably more than that.

Q. Probably more than that?

A. Probably more than that. I don't recollect just when it was.

Q. Mr. Eccles has not been connected with the company for 8 or 9 years, has he?

A. Well, time flies. It is quite a long time ago.

Q. Did you mean to testify that the Oregon Short Line bought this salt and sold it to the sheep men?

A. I don't know the particulars. I was told by Mr. Eccles that it was distributed there through their agents, and I don't know

4108 just exactly how the matter was handled, but our customers complained that it was distributed through the Oregon Short Line agents up there.

Q. Don't you know that the cattle men themselves bought the salt from the Inland Salt Company here and moved it up there, the cost of the salt being carried as advance charges by the railroad company and collected at the time they delivered the salt to the cattle men?

A. The sheep men, you mean?

Q. The sheep men.

A. That would seem to be the logical way to handle it.

Q. You didn't mean that the Oregon Short Line itself was buying and supplying the salt?

A. No. I said that our customers complained it was being distributed through the agents of the Oregon Short Line.

Q. I don't remember just what you testified as to your knowledge about the wool business up there.

A. I said I had no knowledge of the conditions, except what Mr. Eccles said in that particular.

Q. You have no knowledge as to how the wool traffic moves or as to what competition exists with reference to it?

A. No, sir.

Q. Now, with reference to the traffic from the Atlantic seaboard to Salt Lake City, which moves partly by rail and partly by water. I think you said that probably 90 per cent of the traffic of your company from the Atlantic seaboard comes by part rail and part water lines?

A. Yes, sir.

Q. There is a differential in favor of the water-and-rail lines, isn't there?

A. 39 cents differential now; it used to be 42 cents.

Q. That is, the rates are 39 cents lower by rail-and-water
4109 lines than by the all-rail lines?

A. The first-class rate?

Q. Yes.

A. Yes, sir.

Q. About what proportion of the business handled by your company would you say comes from the Atlantic seaboard, that is, moves that way? I don't mean what percentage——

A. You mean of all the business?

Q. The total. I think you said you handled 16,000 tons last year.

A. I said that the total tonnage handled, our in-and-out freight, such stuff as we control, was about 16,000 tons.

Q. That includes a good deal that originates in this territory, on the Pacific coast and in the Middle West, as well as on the Atlantic seaboard?

A. And a good deal of local business.

Q. About what percentage or what portion of that 16,000 tons comes from what we call the Atlantic seaboard territory?

A. In tonnage?

Q. Yes; that is moved over this part rail and part water line.

A. I should say that of the tonnage that originates east of the Missouri River, or from the Missouri River east, 60 per cent of that business would originate along the Atlantic seaboard, what we call Atlantic seaboard territory, from Buffalo and Pittsburg east.

Q. What percentage would that be of your total of 16,000 tons?

A. I have no figures on that; it would be a mere guess.

Q. Have you any figures on this other that you just mentioned?

A. On which—on the total?

Q. On the tonnage east of the Missouri River.

4110 A. No, I have not.

Q. Can't you approximate one about as well as the other?

A. I should say of the total tonnage that we handle in and out, the eastern business would amount to probably 33⅓ per cent of the total tonnage. I mean the Atlantic seaboard business.

Q. You think that 33⅓ per cent of the 16,000 tons is from the Atlantic seaboard?

A. In that neighborhood. Of course I don't know. I have never made any figures on that. I couldn't say positively, because sometimes low-class freight that we get around here, for instance flour and Utah canned goods and a lot of that stuff, might run away up in tonnage, you know.

Q. You have not specially looked up that question?

A. No, sir.

Q. Over what routes has that eastern tonnage moved in recent years, I will say in the last two or three years, mainly?

A. Well, the last year we have been using the Kanawha Despatch, the Missouri Pacific out of St. Louis. Prior to that time we used the Mallory Line and the Morgan Line largely.

Q. By Galveston?

A. By Galveston, yes. The Morgan Line has been operating into Galveston; quite a number of years prior to that it operated through New Orleans.

Q. Prior to the time you commenced the use of the Kanawha Despatch again—when was that—a year ago?

A. I think we started to use the Kanawha Despatch somewhere around a year ago. The service was very bad around the other way, and we took up the Kanawha Despatch on that account.

4111 Mr. SEVERANCE. What was that answer? I didn't catch it.

WITNESS. I said the service was bad around by the Gulf Port line, and we took up the Kanawha Despatch.

Q. How long prior to that had you been using the Gulf lines?

A. Since about 1892 or 1893, somewhere around there.

Q. You have been using the Gulf lines largely since 1892?

A. Since that time, yes.

Q. And that moved to Galveston or New Orleans from New York?

A. First it moved via New Orleans.

Q. Then what lines out of New Orleans, usually?

A. The Southern Pacific connection, Texas & Houston Central—that line of road.

Q. By way of Denver?

A. It came up through Denver; yes, sir.

Q. Didn't some of it come up by the Illinois Central and Chicago?

A. No, we never used that route.

Q. Did any of it come through Kansas City?

A. No, sir.

Q. Practically all of it that came through the Gulf, then, came by way of Denver?

A. We did use another route at one time. We used a route via the Mallory Line to Galveston, M. K. & T. to Junction City, and then the Union Pacific in here.

Q. Did you use that a good deal?

A. No, not a great deal. We used that during war days.

Mr. SEVERANCE. You used that—what?

WITNESS. During railroad rate-war days.

Q. When was that?

A. In the early nineties—or the late nineties, I mean to say. They were cutting rates a great deal.

Q. That which came by the Morgan Line and the Mallory
4112 Line, with the exception that you have mentioned, largely came to Denver?

A. Yes, sir.

Q. And then over the Denver & Rio Grande or the Union Pacific, or both?

A. We used both lines, both the Union Pacific and the Rio Grande.

Q. From Denver?

A. From Denver.

Q. One about as much as the other?

A. No; I think we used the Rio Grande very much more than the Union Pacific.

Q. You never undertook to equalize your business as between the two lines?

A. No, sir, not unless there were some local condition here that sometimes affected the thing. We sometimes did in cases of that kind.

Q. Then, when you used the Kanawha Despatch, or using the Kanawha Despatch now, what line does that freight take from Newport News?

A. The C. & O., I think.

Q. And——

A. And Missouri Pacific at St. Louis, D. & R. G. and Colorado Midland at Denver and Colorado Springs.

Q. You haven't been giving any of that to the Union Pacific during the last year?

A. No, sir, none of that trade.

Q. Does all of it come by the Chesapeake & Ohio?

A. I am inclined to think so, yes; I haven't checked up the billing, but I think it does.

Q. The Chesapeake & Ohio to where—to Cincinnati?

A. The deliveries are made—of course we call that the Kanawha Despatch line to St. Louis.

Q. You are indifferent as to the routing beyond St Louis?

A. Yes, we are indifferent.

Q. You want it sent over the Missouri Pacific from St. Louis?

4113 A. We had a through car established. When they adopted this new route we had a through car put on from Newport News to Salt Lake, called the Salt Lake car.

Q. How often does that run?

A. Well, the Kanawha Dispatch, of course, has daily boats out of New York and Philadelphia and Baltimore, as I understand it, and I think they run that car out of Newport News if they get 8,000 pounds of what we call "shoe-string" business—that is, package business.

Q. Don't you know how often that car comes into Salt Lake City?

A. I think it comes in, maybe, triweekly.

Q. Do you get any business from the Atlantic seaboard all rail?

A. Yes, sir.

Q. Which way does that come, usually?

A. We usually use the Merchants' Despatch, the Chicago & Northwestern and Union Pacific; occasionally the Burlington out of Chicago.

Q. Is your business from the east solicited by other lines than the Denver & Rio Grande and the Union Pacific?

A. Oh, yes; the Rock Island, the Burlington, the Chicago & Northwestern, the Milwaukee & St. Paul, and some of the eastern lines.

Q. The Pennsylvania?

A. The Pennsylvania, the Baltimore & Ohio. The B. & O. man comes over here occasionally.

Q. The New York Central lines?

A. The New York Central has a man here all the time; an agent located here.

Q. And all principal lines located east of the Rocky Mountains solicit your business, don't they?

A. Yes, sir.

4114 Q. From the Atlantic seaboard and from the Middle West?

A. Yes, sir.

Q. Now, during the time prior to 1901, when you said that the Southern Pacific and the Union Pacific had separate soliciting agencies here, and you said that the competition between them was keen, you meant competition for this Atlantic seaboard business?

A. Yes, sir.

Q. Did the Denver & Rio Grande have an agent here, too?

A. Oh, yes.

Q. Was it competing for the business?

A. Yes, sir.

Q. Other agents were here soliciting, too, weren't they?

A. Oh, yes.

Q. Other lines—they were all trying to get the business?

A. Yes, sir; all of them trying to get the business.

Q. The business that the Southern Pacific got—the business that came by the Morgan line—I believe you have testified already came some by the Union Pacific and some by the Denver & Rio Grande?

A. Yes.

Mr. SEVERANCE. He said mostly by the Denver & Rio Grande.

Mr. LOVETT. Yes; he said mostly that; but they brought it both ways.

Q. Was there competition between the Southern Pacific and the Denver & Rio Grande?

A. Was there competition?

Q. Yes.

A. I think that the Rio Grande at that time—I think its natural alliance was with the Mallory line and the Santa Fe; and when they secured business I don't think they gave any of that to the Morgan line. They were in that respect competitors.

Q. Wasn't the Southern Pacific in this position, then, just
4115 like every other eastern line—it was trying to get the business, and whenever it could get it, it would send it any way you wanted it, over either the Union Pacific or the Denver & Rio Grande?

A. Yes, sir.

Q. It was working with the Union Pacific and the Denver & Rio Grande, wasn't it?

A. How is that?

Q. The Southern Pacific was working both with the Union Pacific and with the Denver & Rio Grande, wasn't it?

A. I am inclined to think so; yes, sir.

Q. All of the lines, water-and-rail and every line lying east of here, were trying to get a haul out of this business?

A. Oh, yes.

Q. That is the kind of competition you referred to as between the Union Pacific and the Southern Pacific, wasn't it?

A. Between the Union Pacific and Southern Pacific?

Q. And Southern Pacific?

A. Yes, practically.

Q. If the Southern Pacific got the business, it got a haul by boat to New Orleans or to Galveston and then a haul as far north as Fort Worth or Denison, Texas?

A. In Texas somewhere; I don't know just where the junction point was.

Q. And then its connecting lines handled it beyond that? If the Union Pacific got it, it got a haul from Denver, if it got it from the Southern Pacific, or possibly farther east?

A. Yes.

Q. If it got it from the Missouri, Kansas & Texas, it got it from Junction City, Kansas?

A. Yes.

Q. If it got it from the Kanawha Despatch, it got it from the Missouri River—Kansas City or Omaha?

A. Yes, sir.

4116 Q. Got a longer haul than by way of Denver?

A. Yes, sir.

Q. But you don't know how much revenue it got; that is, you don't know anything about the division of the rates either by way of Denver or the Missouri River?

A. I knew all about the divisions in those days.

Q. Can you tell us what the Union Pacific got out of the business which it got from the Southern Pacific at Denver?

A. I wouldn't undertake to give those figures, but I knew them in those days when they were competing—knew them very well, indeed.

Q. But you are not able to state them now?

A. Only approximately.

Redirect examination by Mr. SEVERANCE:

Q. The Union Pacific in soliciting business, boat and rail, worked, as you have stated, I believe, with the Kanawha Despatch, didn't they—tried to route it that way?

A. That was their preferential route.

Q. And the Southern Pacific, you think, were impartial—that is, as between the connections? You stated that the Denver & Rio Grande got most of the stuff that the Morgan line carried to Texas points. Did the Southern Pacific agency work with the Rio Grande agency, or how was that done?

A. I am not posted on that. My impression, from what I recall of the situation at that time, is that the Southern Pacific's preferential line west of Denver was the Rio Grande, but I am not absolutely sure.

Q. You heard the testimony of Mr. McCarthy yesterday?

4117 A. Yes, sir.

Q. Did he solicit your traffic?

A. Yes, sir.

Q. When he was with the Union Pacific?

A. Yes, sir.

Q. Now, you were interrogated at considerable length on cross-examination about these conversations with Mr. Gibbon. Did you see a good deal of Mr. Gibbon during that session of the legislature; that is, was he around a good deal?

A. Yes; I saw a good deal of Mr. Gibbon during that session of the legislature and later. For quite a number of months Mr. Gibbon was around here a good deal. When the line was first projected Mr. Gibbon was around here quite a lot, in Salt Lake.

Q. And also through the winter following?

A. Yes.

Q. Counsel called your attention to the fact that at the time you had this talk with Mr. Gibbon concerning the passage of the law to authorize the city to donate the park, in which you said you thought he spoke of the Short Line thugs being at work in the Meadow Valley Wash, that the thugs hadn't gone to work at that time and didn't get down there for about a month later, as I understood Judge Lovett. You had other conversations with Mr. Gibbon later than that, during the winter, had you?

A. Yes. I met and talked with Mr. Gibbon a number of times.

Q. It is possible he might have used that expression in some of these other conversations?

A. He may have done so. That is a long while ago. I can't exactly place the time or place in which that conversation was had.

Q. You are quite confident, however, that he had this interview with you and urged the passage of that bill?

4118

A. Oh, there is no question about that.

Q. And stated they proposed to conduct an independent railroad here?

A. Yes, sir.

Q. Counsel brought out the fact from you that one argument made by Mr. Pierce for the passage of the legislation that he desired for the Union Pacific, was that the State would get a revenue of $25,000. What was that to come out of?

A. The issuance of some new stock.

Q. Fees?

A. Yes, sir: fees that would accrue to the State.

Q. On the issuance of new stock?

A. The increase of the capital stock of the railroad.

Q. One thing I neglected to ask you, Mr. Love. How is the service of the Union Pacific from the Missouri River in the matter of time (freight service) as compared with what it was ten years ago?

A. It is not as good.

By Mr. LOVETT:

Q. You have not been testing it for the last year, have you? It may have improved.

A. The last year?

Q. Yes.

A. Yes, sir: we have practically divided our business between the two roads.

Q. I thought you were shipping by the——

Mr. SEVERANCE. That is seaboard business he is talking about.

WITNESS. The seaboard.

Q. But the Middle West business—that is, the business this side of the seaboard territory—you say you have been sending that by both lines?

A. We try to be fair to both of these lines: try to divide up the business; give them an equal share. We don't always succeed. Sometimes it slops over a little to one line and the next month to the other.

4119

Q. I don't recall distinctly whether I asked you about this Pioneer block that was referred to in the petition of Mr. Gibbon to the city council and the ordinance with reference to it, as to whether that is still a city park.

A. Yes; it is still a city park. My impression in regard to that is this: That after we passed that bill in its amended form I was

impressed with the idea that the railroad company didn't care to have that matter submitted to the people, and they simply let it go.

Q. It was dropped and the railroad company never went into possession of it?

A. No.

Q. Now, in connection with the conversation with Mr. Pierce about the Union Pacific, I want to call your attention to chapter 1 of the laws of the State of Utah, passed at the second regular session of the legislature of that State, held in 1897, being an act entitled, "An act to provide for the formation of railroad corporations, for the purpose of purchasing, owning, maintaining, operating, and extending railroad lines, franchises, properties, and appurtenances, authorizing the issue of bonds, the making of deeds of trust, mortgages, and defining the rights and powers of such corporations," section 2 of which provides, among other things, that "such corporation shall have the power to purchase, hold, enjoy, maintain, and operate the railroads, property, rights, and franchises, or any part thereof, which shall have been or may be sold as aforesaid, upon such terms as the directors may deem expedient, and to extend the said railroad
4120 within or without this State, and to acquire, by purchase or otherwise, the capital stock of any other railroad corporation whose lines are or may be within or without this State, and to issue from time to time capital stock to an amount not exceeding the amount authorized by and stated in the articles of association, and from time to time to issue bonds for such sum or sums and payable at such times and places and drawing interest at such rates as the directors may deem proper," and various other powers. That act was approved January 22, 1897. That was long before this conversation with Mr. Pierce about which you testified, wasn't it?

A. Yes, sir.

4121 JOSEPH A. WEST,

being duly sworn as a witness on behalf of the Complainant, testified as follows:

Direct examination by Mr. SEVERANCE:

Q. Mr. West, where do you live?

A. Ogden, Utah.

Q. What is your business?

A. Civil engineer.

Q. How long have you been a civil engineer?

A. About forty years.

Q. Where have you practiced your profession as civil engineer?

A. In the West, mainly.

Q. What kind of engineering have you done?

A. Railroad building.

Q. Do you remember of making any surveys toward the southwest from Salt Lake?

A. Yes, sir.

Q. When did you make the first survey?

A. In 1880, I think, or 1881.

Q. Where?

A. From what has since become the terminus of the Salt Lake & Western: that is the Tintic branch of the Oregon Short Line system, or the San Pedro system now, I believe, down to central Nevada, down to Freiburg Pass. I ran a line from the terminus of the Tintic road to Freiburg Pass, situated north of Morongo Valley.

Q. For whom did you make that survey?

A. For what was known then as the Utah Southern Railway Company, I think it was. Salt Lake & Western it was called.

Q. Did that survey pass through what was called the Meadow Valley Wash?

A. No, sir.

4122 Q. Where did it go with reference to the Meadow Valley Wash?

A. A long distance to the north of it.

Q. Was that survey made with reference to a route to be used for a through line to Los Angeles?

A. Yes, sir: to Los Angeles.

Q. Where, if at all, did that survey reach what is now the line of the San Pedro road?

A. It didn't reach it at all. This went over the country to the north, a hundred or so miles, parallel with it.

Q. You say it was parallel with it?

A. Yes: nearly so. It went through Nevada to the north of the present San Pedro line.

Q. I understand that, but didn't that survey of yours at one end touch the present line of the San Pedro road?

A. No, sir: not that line.

Q. How is that?

A. Not that survey. I made a subsequent survey.

Q. That is what I want to get at. Did you make another survey down through there? What I want to get at is, did you ever make a survey which connected up with part of the present San Pedro line and avoided the Meadow Valley Wash?

A. In connection with Mr. J. Pearson Smith I did: yes, sir. Mr. J. Pearson Smith had charge of the line from Milford west, and I went to Barstow and ran some lines through Death Valley, eastward from Barstow, and Mr. Smith's party and mine met at Freiburg Pass, the point to which I had previously run a line, ten years before.

Q. When was that last survey made?

A. That last survey was made in 1888, if I remember rightly.

4123 Q. And for whom did you make that survey?

A. It was made for the Utah Southern Railway Company. I believe it was so called at that time. The Sharps were in charge of it.

Q. Did that survey make a complete line through to California?
A. Yes, sir.
Q. And it ran north of the Meadow Valley Wash?
A. Yes, sir; it avoided the Meadow Valley Wash.
Q. Was that a feasible route?
A. Oh, yes; it was a feasible line.
Q. Did you have anything to do with the construction of the Utah & Pacific?
A. Yes, sir.
Q. Where did that run?
A. It ran from Milford to Uvada.
Q. Uvada on the state line?
A. On the state line, yes, sir; between Utah and Nevada.
Q. And that is the line concerning which Mr. Eccles testified yesterday?
A. Yes, sir.
Q. For whom did you survey or lay out that line?
A. The Utah & Pacific Railway Company.
Q. Was that Mr. Eccles' company?
A. Mr. Eccles and a Mr. Hoge.
Q. What did you have to do with the construction of that line, Mr. West?
A. I had charge of the preparation of the grade, the laying of the rail.
Q. What, if anything, did you have to do with it after the line was built?
A. I had charge of it as superintendent: I had charge of the operation of the line until, I think, the spring of 1900.
4124 Q. Until the spring of 1900?
A. Yes, sir. I went down to Milford in the fall of 1898, if I remember rightly, and remained until the spring of 1900.
Q. Then who took charge of it from the spring of 1900 up to the time that Mr. Eccles sold it to the Short Line?
A. I can't recall his name now.
Q. At any rate, some one else ran it in the meantime?
A. Yes, sir.
Q. Were you down there after you ceased to have charge of it?
A. No, sir; I think not.
Q. Never went down there afterwards?
A. I don't remember to have gone down subsequent to the time of leaving.
Q. At the time you made this survey for the Utah Southern, which did not include the Meadow Valley Wash, had any survey been made through the Meadow Valley Wash?
A. Not to my knowledge.
Q. What was the condition of the road or the roadbed at the time you commenced the construction of the Utah & Pacific?
A. Some of it was in very good condition. Portions of it had been used for a wagon road. Of course it was considerably worn, and

there were places where the grade had not been connected up, and it required considerable work to repair it and put it in proper condition for the rails.

Q. Did you say you were not down there at all on that road after you left there in the spring of 1900?

A. I think not: I don't remember to have gone.

Q. You never saw the line after that?

A. No.

Q. You don't know the condition it was in, then, at the time
4125 it was turned over to the Short Line by Mr. Eccles?

A. No, sir: I do not.

Q. Now, this survey of yours running to the north there in Nevada, did it reach any mining region?

A. There were a number of mining districts through which it ran. Of course the mining operations had ceased a few years before. There wasn't much activity in the country, but it was very rich mineralized country, I think.

Mr. LOVETT. Which particular survey is that you asked about?

Mr. SEVERANCE. I am speaking of the survey he made first, going to the north of the Meadow Valley Wash.

Mr. LOVETT. In 1880?

Mr. SEVERANCE. Yes.

WITNESS. In 1888.

Mr. SEVERANCE. How is that?

WITNESS. It was in 1888 the last survey was made.

Q. You surveyed down to a certain point in Nevada in 1880, as I understood it?

A. In 1880 or 1881.

Q. Then afterwards another gentleman, Mr.—what is his name?

A. Mr. J. Pearson Smith.

Q. Mr. Smith laid out the line of your old survey, and met you, you coming north from Barstow?

A. No: J. Pearson Smith started this at Milford. Tintic is probably about 100 miles from here. Milford is 200 odd miles farther south. He started at Milford and went to Uvada, and then from the Summit his line bore to the north, off towards Pioche and through that section of the country, and he came to the same pass that
4126 I had surveyed to ten years before, just north of the Morongo Valley.

Q. And your line met him up there—the one you surveyed from Barstow eastward?

A. Yes, sir.

Q. Is there a line now built into Pioche?

A. Yes, sir; I believe there is. I have not been down since the line was completed.

Q. You don't know whether that is built along the line of the survey he made or not?

A. I have been along the survey that he made.

Q. I say do you know whether the road that is constructed now is built along the line of the survey that he made at that time?

A. No; it is not.

Cross-examination by Mr. LOVETT:

Q. As I understand, Mr. West, you have mentioned in your testimony three different surveys made by you; one made in 1880 or 1881, another in 1888, and then the survey of the Eccles work in 1898?

A. Yes, sir.

Q. Now taking up the first in order of time, the survey made in 1880. You say you made that at the instance of the Utah & Southern Railway Company?

A. The Salt Lake & Western it was called at that time.

Q. The Salt Lake & Western?

A. Yes, sir.

Q. Did it own a railroad?

A. At that time it did not. Of course I started on the preliminary survey at the time they began construction from Lehi down here into the Tintic Valley. The line was subsequently constructed from Lehi into the Tintic Valley.

Q. By——

4127 A. By the Salt Lake & Western Railway Company—a separate corporation.

Q. What became of the Salt Lake & Western Railway?

A. As I understand it was subsequently owned by the——

Q. The Utah & Southern?

A. The Utah & Southern: yes.

Q. The name was changed to Utah & Southern?

A. Yes: I think so.

Q. It afterwards became merged in the Oregon Short Line and Utah Southern?

A. Yes.

Q. Utah Northern Railway Company?

A. Yes.

Q. And they were consolidated with the Oregon Short Line Railroad under the name of Oregon Short Line and Utah Northern Railway Company?

A. Yes, sir: I believe that is right.

Q. Now, the survey made in 1888 was from where?

A. From Boulder Pass, what we call Boulder Summit, a point on the north boundary of the Tintic Valley.

Q. How far from Salt Lake City?

A. Oh, it is probably 100 miles.

Q. The survey began at that point and went where?

A. It went westward into central Nevada. My instructions were to go on through to California, but before completing the survey I was called back.

Q. Your first survey, then, went from Tintic to central Nevada, went westward from Tintic to central Nevada?

A. Yes.

Q. How far?

A. About 250 or 300 miles.

Q. And there it was discontinued, in central Nevada?

A. Yes, sir.

Q. Was any line of railroad ever built along that survey?

A. No, sir, except down through the valley. The line subse-
4128 quently constructed down the valley followed it for a little distance, a few miles, and then took up the line on the left.

Q. That is the line subsequently constructed down in the valley by the Utah Southern or by the Oregon Short Line and Utah Northern?

A. Yes; called then the Salt Lake & Western.

Q. The next survey, as I understood you, was made in 1888, and you commenced at Barstow?

A. At Barstow; yes, sir.

Q. Where is Barstow?

A. Barstow is situated on what was then the A. & P.—Atlantic & Pacific Railway, in the Mojave district, north of San Bernardino.

Q. And your survey from Barstow went in what direction and where to?

A. Well, I ran two or three lines from Barstow; I ran one off to the north and down by what is called Owl Springs and down into Death Valley, in that way.

Q. Did you select any particular line as a preferred line?

A. I subsequently ran a line from Daggett eastward into Death Valley, farther south than this line, and we finally decided that was the better line from Daggett eastward.

Q. To what point did you run those lines? You say into Death Valley?

A. Across Death Valley and up to just north of Perump Valley to pass Kane Springs.

Q. About how far? What distance?

A. About 400 miles, I think, or 450, something like that.

Q. What did you do when you got to the terminus of that survey? What was there—anything?

A. The first line I ran I met Mr. Smith at Freiburg—the first line running to the north, up through Ash Meadows. I ran up the Amar-
gosa Wash on that survey, passed Ash Meadows and the Kane
4129 Springs. Subsequently I went to Daggett and ran another line to Kane Springs by a route farther south.

Q. Was anything ever done with any of those lines?

A. No road was ever built.

Q. No right-of-way maps were ever filed, to secure right of way for anybody?

A. No, sir. There has been a line built since up to Amargosa by another company, on the line I surveyed at that time.

Q. From where to where?

A. From Daggett into the mines up there, I think into Bullfrog.

Q. How long was that line as constructed?

A. That line has been constructed from Daggett, I presume, 150 miles long.

Q. What railroad is that?

Mr. KELLY. It is the Burke-Smith road. I guess it is Santa Fe. It commences at Ludlow on the north and runs up through Bullfrog and Rhyolite to Goldfield.

Q. But except this Bullfrog railroad no railroad was ever constructed on any of those surveys—with that exception?

A. No, sir.

Q. No right-of-way maps or profiles or maps for the purpose of acquiring right of way were ever filed?

A. No, sir, not on those surveys.

Q. What would be the distance from Barstow to Salt Lake by the line you surveyed from Barstow?

A. I don't believe I could recall.

Q. Approximate it as nearly as you can.

A. Between eight and nine hundred miles, I think.

Q. It would be nearer 900 than 800, wouldn't it?

4130 A. No, sir, I hardly think so. I think it would be nearer 800 than 900; that is my recollection.

Q. From Barstow?

A. From Barstow to Salt Lake by way of Milford?

Q. No, by way of the line you located.

A. Well, you see I ran two lines.

Q. I mean the one you ran from Barstow, the one you thought was the preferred line.

A. Well, I guess it would be nearer 900 miles that way, yes, sir.

Mr. SEVERANCE. 900 between what points?

Mr. LOVETT. Barstow and Salt Lake.

Q. How far is Barstow this side of Los Angeles, do you know?

A. About 100 miles, I think.

Mr. KELLY. 141 to 145 miles.

WITNESS. Yes.

Q. Now, the third survey that I understood you to refer to in your direct examination. You were asked by Mr. Severance whether you had surveyed or laid out the line from Milford, constructed by Eccles and his associates in 1898. That was the third survey, was it not?

A. That was the third, yes.

Q. Now, that line was already laid out; you did not change that line?

A. No, we didn't change that.

Q. That line was already laid out and it was graded and the right of way was secured, and all the surveying you did was to make a survey for the purpose of filing maps in the general land office?

A. Yes, sir.

Q. You didn't have anything to do with the laying out?

A. No, sir.

4131 Q. And the construction work done by Eccles and associates was to shape up the grade which had been constructed some years before, supply the ties, build bridges, and lay and surface the track, wasn't it?

A. Yes, sir; that is all.

By Mr. SEVERANCE:

Q. Where is Caliente?

A. Caliente is in the Meadow Valley Wash, where the present San Pedro line reaches the Meadow Valley Wash.

Q. Is it this end of the Wash?

A. This end of the Wash; yes, sir—that is, this end of the Wash where the railroad strikes it; that is the first point where the railroad strikes it; the Wash runs farther up.

Q. Would it be feasible to build a road over the existing line down as far as Caliente and then bear off to the north, and adopt this line you surveyed?

A. Well, you can connect with the line that Mr. Smith surveyed from Milford, at a point north of Pioche.

Q. North of Pioche?

A. Yes, sir.

Q. How far from Salt Lake would that be to make a connection?

A. It would probably be 500 miles—400 miles.

Q. If the line was built over the present line of the San Pedro road as far as this point of connection and then bore off to the north, as you have stated, and avoided the Wash, how much longer would that route be than the present route through the Wash?

A. I presume about 100 miles—probably longer than that, because you see in building from Caliente you go in an opposite direction from the line down the Wash—you go up the Wash instead of down.

4132 The line that Mr. Smith surveyed started back at the summit, where you begin to go down to the Wash, and bore off to the right and went to the north of Pioche and through Bristol Pass.

Q. Would it be your opinion that if the line was constructed, avoiding the Wash to the north, the difference between the distance from Salt Lake to the other terminus of the road—say at Los Angeles—would be about a hundred miles longer than the present route?

A. At least that; yes, sir.

Q. Is that your judgment as to about how much longer it would be?

A. By that route it would probably be 150 miles. By the other route, which was surveyed from the summit of the Escalante range, going north of Pioche, the difference would be about 100 miles. It has been so long since I referred to the data I am not familiar with it.

Q. So by one of these routes—the one north of the Wash—it would be about 150 miles longer, and by the other about 100?
A. Yes, sir.

By Mr. LOVETT:

Q. How long has it been since you examined your data with reference to the line—20 years?
A. No; I had all the data in my possession in 1898 when I went South.
Q. Have you ever been over the line on which the San Pedro is constructed?
A. Yes, sir.
Q. When were you over that?
A. I went over that last spring.
Q. All the way through?
A. All the way through; yes, sir.

4133 KENNETH KERR,

being duly sworn as a witness on behalf of the Complainant, testified as follows:

Direct examination by Mr. SEVERANCE:

Q. Mr. Kerr, where do you live?
A. Salt Lake City.
Q. What is your business?
A. District passenger agent of the Salt Lake route.
Q. That is, of the San Pedro, Los Angeles & Salt Lake?
A. Yes, sir.
Q. How long have you been district passenger agent of the defendant company?
A. Four months, very nearly.
Q. Previous to that time what was your business?
A. I was commercial agent at Riverside, and prior to that traveling passenger agent and some other duties that attended upon the passenger department.
Q. How long have you been employed in one capacity or another by the Salt Lake road? We will call it the Salt Lake road for short.
A. Since May 1, 1905.
Q. Previous to that what was your business?
A. Newspaper man.
Q. Whereabouts?
A. Here in Salt Lake.
Q. What paper were you on?
A. I was regularly attached to the Salt Lake Tribune and represented eastern papers and western papers.
Q. What was your position on the Salt Lake Tribune?

A. Railroad editor, so called.

Q. How long had you occupied that position?

A. About 13 or 14 years. I think I took the position on
4134 November 13, 1892.

Q. And what were your duties as railroad editor of the Tribune?

A. To handle railroad news exclusively, get up railroad news exclusively.

Q. You don't mean "get up" in the sense of inventing railroad news, do you?

A. No. In newspaper parlance "handling" is handling the telegraphic and outside correspondence, and "getting up" is writing it up.

Q. That is the technical language you newspaper men use?

A. Yes.

Q. I thought you would like to explain it. Mr. Kerr, was it a part of your duty to keep as thoroughly informed as you could about railroad matters in this locality?

A. Yes, sir; as nearly as possible.

Q. You devoted all of your time to that?

A. All of my time to it; yes.

Q. Were you acquainted with Mr. T. E. Gibbon?

A. Yes, sir.

Q. When did you first know Mr. Gibbon?

A. September, 1900.

Q. Do you know Senator W. A. Clark?

A. Yes, sir.

Q. How long have you known Senator Clark?

A. As a newspaper man I should say since about 1889 or 1890.

Q. Do you know Mr. J. Ross Clark?

A. Yes, sir.

Q. How long have you known Mr. J. Ross Clark?

A. Since September or October, 1900.

Q. Was it part of your duty as railroad editor of the Salt Lake Tribune to interview gentlemen interested in railroads
4135 either present or prospective in this locality?

A. Yes, sir.

Q. And did you do that?

A. Yes, sir.

Q. And were the interviews that you took truthfully put into writing by you and published?

A. I endeavored to make them truthful.

Mr. LOVETT. Some allowance for poetic license, I suppose.

Q. You endeavored to faithfully reproduce in your columns what the gentlemen said to you on such subjects?

A. Yes.

Q. And to the best of your ability you did so, didn't you?

A. Always.

Mr. SEVERANCE. These papers I got from the library under subpœna, but I have had a typewritten copy of the articles I wish to introduce. Is it agreed that typewritten copies, marked as exhibits, may be used in lieu of attaching the newspapers to the record and introducing them as exhibits, with the same force and effect as though the newspapers themselves were put in evidence?

Mr. KELLY. Yes.

Q. Do you know Mr. R. C. Kerens?

A. Yes, sir.

Q. Do you know Senator Kerns of Salt Lake?

A. Yes, sir.

Q. I call your attention, Mr. Kerr, to copy of Daily Tribune of Salt Lake, of Monday, September 17, 1900, and to an article under the heading "Gibbon has arrived." Did you write that article?

A. Yes, sir.

Q. Have you looked at that article recently so as to familiarize yourself with it?

A. No, sir.

Q. Just look at it, will you, Mr. Kerr?

A. (After looking at the article in the newspaper.) Yes, sir.

4136 Q. That article purports, does it not, to be in substance an interview with Mr. Gibbon?

A. Yes, sir.

Q. And is it a truthful statement of an interview you had with Mr. Gibbon?

A. It is my language as I remembered talking with him, except wherein it might be quoted as verbatim.

Q. But the substance is as he gave it to you?

A. Yes, sir, as I recalled it when I wrote the article.

Q. In this article I observe Mr. Gibbon, in speaking of this proposed railroad, says, among other things, "The line will be absolutely independent." Did he state that to you?

Mr. KELLY. I object to either the whole or any part of the article as irrelevant and hearsay, and as not coming from any person authorized to speak for either of the defendants.

Mr. SEVERANCE. That objection may stand as to all testimony of the same character.

Mr. KELLY. Yes.

Q. You may answer the question now.

A. I can't recall now what he may have said, as I——

Q. If the article so states——

A. If the article so states, it was my language, and possibly he had another word where I used the word "absolutely," in my own words, in writing the article. He may have said something that was possibly the same.

Q. Well, did he say that in substance? Did he say in substance what you have written here?

A. Well, that whole article is what he said, in substance.

Q. Yes, that is what I mean.

Mr. KELLY. As you understood it.

WITNESS. As I understood it.

4137 Q. Your hearing is good, isn't it, Mr. Kerr?

A. Yes, sir.

Q. And you were for many years trained in interviewing men, and it was your duty to correctly report what they said to you, wasn't it?

A. Yes, sir.

Q. And you endeavored to do it?

A. I endeavored to do it.

Mr. SEVERANCE. I offer in evidence this article from the "Salt Lake Tribune" of September 17, 1900, under the heading "Gibbon has arrived," just identified by the witness.

A typewritten copy of the article referred to was marked "Complainant's Exhibit 155 (Kerr)", and the same is as follows:

COMPLAINANT'S EXHIBIT 155. (Kerr.)

Salt Lake Tribune, September 17, 1900.

GIBBON HAS ARRIVED.

Vice-president of the Los Angeles Terminal gives details of the Salt Lake road, which is surely to be built, and at once.

Vice-President T. E. Gibbon, of the Los Angeles Terminal Railway, arrived in the city yesterday. His visit is of the utmost importance to the State of Utah as he is the official to whom is largely due the credit for interesting Senator W. A. Clark in the project to build the Los Angeles-Salt Lake road. He is the first of those who are behind the big plan to arrive in the city to attend the meeting, and in another interview last evening he fully detailed

4138 the plans of the company and his words are convincing that the road will be built and built immediately, provided the cities of Los Angeles and Salt Lake grant the new company what is to be asked of them. "With the franchises secured," said Mr. Gibbon, last night, "I can positively state that work will begin in 30 days and pushed steadily to its completion." The line will be absolutely independent. The company to be formed will absorb the Los Angeles Terminal Railway and the new corporation will be wholly for the purpose of building the line. No other corporation has a dollar or will have a dollar in it and a new line will be built right through to Salt Lake. The money with which to build the line is all subscribed and the important things now to be accomplished are the organization of the company and the securing of franchises. Hon. R. C. Kerens comes on Tuesday, J. Ross Clark follows on Thursday, and by Saturday Senator W. A. Clark and the president, George B. Leighton, of the Terminal, are expected to be here, when the matters will be formally taken up. The company's request for the franchises through Salt Lake and the old Fort square, as already

told, will be all that (will) be asked of Salt Lake. Mr. Gibbon says this is not at all an unreasonable or a great demand when it is considered that no bonus, no government aid or other donation, is asked for, and when it is remembered that the building of the road will double Salt Lake's population in a short time, open vast mining regions, and make this State the chief place between Chicago and Los Angeles.

TWENTY-FOUR-HOUR TRAIN.

4139 The road will be built solidly from the very first, says Mr. Gibbon. 70-lb. steel will be used and the line ballasted as built. This will not only be for the purpose of securing speed for passenger service, but the heaviest engines and cars can be used for freight service. It is the intention of the company to have the road in such perfect condition that a 24-hour passenger train can be put on between Los Angeles and Salt Lake. In fact, this will be the aim, for the tourist traffic to Southern California is something tremendous, and with the completion of the line Salt Lake would be on the great highway between the East and Los Angeles. Then, again, says Mr. Gibbon, the attraction of Salt Lake would aid greatly to the attractiveness of the whole route and this would be a great boon to Salt Lake, as everyone knows that when a man of money keeps passing through a beautiful city he becomes interested in it and sooner or later makes investments.

SHORTEST LINE OF ALL.

The line itself would be the shortest of any to Los Angeles. Mr. Gibbon, some months ago, got out a pamphlet for Mr. Clark. This describes the whole country and the resources, and in a table of distances from the important points to Los Angeles the Salt Lake line has first place.

AS TO THE ROUTE.

The pamphlet goes into details as to the grades, distances, mineral, general traffic, and San Pedro Harbor, much of which has already appeared in these columns. As to the route, Mr. Gibbon says
4140 it has not been decided upon. The best route will be selected, and this means the easiest line to operate with best traffic results. It is interesting to note, however, that in the pamphlet mentioned the Deep Creek route is given in detail, the one described last week in the Tribune.

Mr. Gibbon feels assured, as do others who have an intimate knowledge of the company, that the road will prove to be one of the most important transcontinental links in the whole West and that its success will be inaugurated with the first train, and the two cities, Salt Lake and Los Angeles, will receive the greatest direct benefits.

Just as soon as all the gentlemen interested arrive in the city, the meeting will be held and steps taken toward securing the desired

franchises from Salt Lake. In the next few days Mr. Gibbon will become acquainted with Salt Lake citizens and study the local situation, so that he may be prepared to get the matter properly before the others.

If it is reasonably sure that the city will grant the franchises, the company may be incorporated during the coming visit. No spade will be turned, however, until the Los Angeles and Salt Lake matters are finally settled. If they are settled, work will begin at once, and no stop made until the two cities are joined by rail.

HOW PROJECT WAS STARTED.

Mr. Gibbon was asked how long he had been at work on the plan and how Senator Clark had become interested in the project. In reply, he explained that for years it has been his one great aim, and it was the thought of the Salt Lake road that spurred him to
4141 work on the San Pedro free harbor proposition. About 10 years ago there was an understanding between the Union Pacific and the Los Angeles Terminal people to the effect that the former would build from Milford and connect with the latter. The panic of 1893 completely upset all the plans, and when he went East he found it impossible to negotiate with either the Rio Grande Western or the Union Pacific, simply because of the Southern Pacific's connection of those two roads at Ogden. Then the reorganization of the Santa Fe had floated a large amount of securities, and financiers holding these and Southern Pacific paper would not take hold of any new railroad whose securities would naturally be upon a line competing with the roads in which they were so heavily interested. And so the doors of Wall street were closed to the Los Angeles Terminal project, even with the great future before it. Then it was that Mr. Gibbon interested Sen. Clark through friendship with J. R. Clark, of Los Angeles. The Montana millionaire took hold of the matter, with the result that to-day the company is prepared to build the line. It was in January, 1899, that Senator Clark became interested, and in July of that year, in the Waldorf, New York, the papers were signed.

Q. I now call your attention, Mr. Kerr, to the Daily Tribune of Salt Lake City of Wednesday, September 19, 1900, especially to an article under the heading "R. C. Kerens arrives." Did you write that article?

A. Yes, sir.

Q. That purports to be an interview with Mr. Kerens, does it, to the best of your belief?

A. Yes, sir.

Q. And correctly states what Mr. Kerens said to you?
4142 A. It is in my own language.

Q. Yes, but the substance?

A. The substance; yes, sir.

Mr. SEVERANCE. I offer this article in evidence.

Mr. KELLY. Same objection.

A typewritten copy of the article referred to was marked "Complainant's Exhibit 156 (Kerr)," and the same is as follows:

COMPLAINANT'S EXHIBIT 156. (Kerr.)

Salt Lake Tribune, September 19, 1900.

R. C. KERENS ARRIVES.

## Railroad Official Talks of New Road.

## Gives Further Assurances.

Los Angeles-Salt Lake Line surely to be built as an independent road. Money is ready and only preliminaries necessary before work can be commenced.

Hon. R. C. Kerens, of St. Louis, arrived in the city yesterday in his private car "Catherine." He was accompanied by his son Richard and S. A. Bemis. Mr. Kerens has been one of the foremost men in the fight for the free harbor at San Pedro and is one of the leading men of the Los Angeles Terminal. For ten years he has been at work on the extension of that road to Salt Lake and now he expects to see the realization of his hopes in the actual construction of
4143 the line on the plan already detailed. In speaking of the matter last night Mr. Kerens said there was no doubt at all that the road would be built, but there was little he could add to what has already been told of the purposes of Senator Clark, the Los Angeles Terminal, and others to push the road through. He said he was here to meet Senator Clark, who will arrive next Monday, and as the financial arrangements have all been successfully made, nothing remains but to organize the company, secure the needed franchises, and begin work.

It will be an absolutely independent line, Mr. Kerens reiterates, and has no connection with any other corporation beyond the expected traffic arrangements which may be made in the future, or trackage rights in California which may be economical or necessary. The line itself, however, is to be operated and owned as an independent Salt Lake–Los Angeles line and those two cities will be greatly benefited by its construction, as Southern California is the Mecca for tourists and San Pedro is the coming port on the Pacific. Then, too, the freight traffic developed by the new line will be very great. The projectors have carefully considered the coal and iron of Utah and the development of these resources with the great sulphur deposits will likely be a prominent feature of the building of the road.

There is to be no request for financial aid and Salt Lake is only to be asked for such concessions as would place the new line on an equality with other roads by giving it right of way and terminal facilities. All these matters will be fully discussed at the pub-
4144 lic meeting, so that all will fully understand the situation.

The people who are behind the project are ready to begin work the moment these minor details are settled and the line will eventually prove to be one of the most important links in the transcontinental route.

Q. I call your attention to an article in the "Salt Lake Tribune" of September 27, 1900, headed:

"CONFIRMED BY CLARK.

Senator's brother met by others of new road.

Talks of company's plans."

Did you write that article?

A. It is my impression that I did. From the fact that Mr. Clark was in Ogden that day, it may be possible that the Ogden correspondent sent that down; but if my memory serves me right, I went to Ogden with Mr. Whittemore and others for the purpose of meeting the gentlemen. So I wouldn't be positive about that.

Q. That is your best recollection?

A. My best recollection is I went to Ogden for the purpose of meeting Mr. Clark.

Q. That is Mr. J. Ross Clark?

A. Mr. J. Ross Clark. The interview took place at the Ogden Union Depot.

Q. Yes. It says: "If the doubting ones could have heard J. Ross Clark talk of the Salt Lake road as he did yesterday to the Tribune at Ogden Union Depot, all their fears that the project is not
4145 liable to be carried out would have been instantly dispelled."

That sounds like your writing, doesn't it?

(Laughter.)

Q. Who was Mr. Whittemore?

A. Mr. Whittemore was the assistant attorney at that time.

Q. Of what company?

A. Of the San Pedro, Los Angeles & Salt Lake.

Q. Assistant to Mr. Gibbon?

A. Assistant to Mr. Gibbon. I don't think it had a corporate name, though, at that time. He was assisting Mr. Gibbon in his work.

Q. And it is what these gentlemen organized into the San Pedro road?

A. Yes.

Q. And to the best of your recollection you have already stated you took this interview with Mr. Clark, and I assume, as was your habit, that you correctly stated in substance what he said to you?

A. Yes, sir.

Q. That is Mr. J. Ross Clark?

A. Mr. J. Ross Clark.

Mr. SEVERANCE: I offer in evidence the "Confirmed by Clark" article from the "Salt Lake Tribune" of September 27, 1900, testified to by the witness.

Mr. KELLY. Same objection.

A typewritten copy of the article referred to was marked "Complainant's Exhibit 157," and the same is as follows:

4146 COMPLAINANT'S EXHIBIT 157. (KERR.)

Salt Lake Tribune, September 27th, 1900.

CONFIRMED BY CLARK.

Senator's brother met by others of new road.

Talks of company's plans.

Says Senator Clark became interested nearly two years ago. Line will be built. Organized as soon as local franchises can be secured. Moving satisfactorily at Los Angeles end. Went on to Chicago to meet others. A. W. McCune's significant statement.

If the doubting ones could have heard J. Ross Clark talk of the Salt Lake road as he did yesterday to the Tribune at Ogden Union Depot, all their fears that the project is not liable to be carried out would have been instantly dispelled. Mr. Clark spoke for himself and for his brother, Senator W. A. Clark, and he spoke not only encouragingly, but enthusiastically. He said that the road would surely be built on the lines laid down in interviews and reports heretofore given in the papers and in public speeches made by the several officers and directors of the company. Mr. Gibbon first presented the matter to Mr. Clark nearly two years ago, the proposition of taking an interest in the properties of the Los Angeles Terminal and
4147 of extending a line to Salt Lake. It was not until the whole question had been presented to his brother and they had received accurate reports of the route, its resources and topography, taking into consideration the general traffic condition, that the two Clarks consented to become interested, and the proper papers were drawn up and signed. It was entered upon as an independent project in every way, and from the moment the agreements were signed all parties thereto have been determined to push the road through to a successful termination. As to the general business outlook of the big undertaking, Mr. Clark says that it will develop in time into a

splendid road. In taking hold of the project he and his brother went in with the fixed determination of asking merely a reasonable return on the money invested, and they will see to it that the nominal investment does not exceed the actual investment. It is their aim and intention to make a property and not a speculation out of the Salt Lake-Los Angeles road, to build it, in the first place, upon the best plan, to establish and conduct it on conservative, safe, and business lines, and to endeavor to make it of much value to its future patrons as well as to its owners.

Asked as to when the company will be organized and when work will commence, Mr. Clark replied that the organization would be perfected just as soon as the Salt Lake franchises are arranged. It is of the first importance that the new road is assured of as good a location at Salt Lake as those held by other roads, for this city is to be the terminal, and much depends upon the terminal facilities secured. Matters in Los Angeles have already assumed so promising a condition that everything is practically assured to make a
4148 success at that end of the line. Surveyors are already in the field at work on preliminary lines for the first extension.

Q. I now call your attention to a copy of the "Salt Lake Tribune" of Wednesday, October 3, 1900, and to an article therein headed: "Clark will build the road. With City Council at a banquet he gives assurance that he is backing the Los Angeles Railroad project. Senator Clark states that his line will be completed within the coming two years and will be an independent road. He is delighted with the spirit manifested by Salt Lake citizens. Tendered a banquet at the Alta Club." Did you write an article appearing under that heading?

A. Yes, sir.

Q. Included in that article was what purports to be a portion of the speech made by Senator Clark at the dinner, that is, a verbatim report of a portion of the speech made at this dinner. Where did you get the data from which to include that?

A. That in quotation marks is a verbatim report of the speech. It was a typewritten copy of the speech, as I recall it.

Q. And was handed to you by Senator Clark himself?

A. I received it from one of his assistants after the banquet.

Q. After the banquet?

A. Yes.

Q. At the Alta Club?

A. At the Club.

Q. I notice in the center of the page, in large type, with a border, these words:

4149 "CONSTRUCTION WILL BE PUSHED.

Senator Clark says his line will be built within two years and will be an independent road.

In an interview last night Senator W. A. Clark expressed great delight with his meeting in this city many prominent citizens and the enthusiasm which was shown towards the Los Angeles terminal project. He was much gratified with the feeling manifested at the banquet. The railroad, he said, would be built within two years. It will be an independent line in every way, and will be built by the most direct route. Branches will also be built to points where it may be warranted in the future.

Senator Clark expressed great enthusiasm over Salt Lake, saying that it had a most beautiful outlook. Situated as it is, over 500 miles from any competing metropolis, its position was of the greatest importance. He had always felt that it would be a great city.

Surveyors will be placed in the field, he says, as quickly as possible, and route mapped out." Did you take that interview?

A. That was my own language from a collection of statements made, and worked up in newspaper style, with a box border to bring out the salient points.

Q. Does that in your language convey the substance of what was said to you by Senator Clark?

A. Yes, sir.

A typewritten copy of the article referred to was marked Complainant's Exhibit 158 (Kerr), and the same is as follows:

4150 COMPLAINANT'S EXHIBIT 158. (Kerr.)

CONSTRUCTION WILL BE PUSHED.

Senator Clark says his line will be built within two years and will be an independent road.

In an interview last night Senator W. A. Clark expressed great delight with his meeting in this city many prominent citizens and the enthusiasm which was shown towards the Los Angeles terminal project. He was much gratified with the feeling manifested at the banquet. The railroad, he said, would be built within two years. It will be an independent line in every way, and will be built by the most direct route. Branches will also be built to points where it may be warranted in the future.

Senator Clark expressed great enthusiasm over Salt Lake, saying that it had a most beautiful outlook. Situated as it is, over 500 miles from any competing metropolis, its position was of the greatest importance. He had always felt that it would be a great city.

Surveyors will be placed in the field, he says, as quickly as possible, and route mapped out.

The following is a verbatim speech, a portion of same, made by Senator Clark at banquet tendered him by the Alta Club, Salt
4151 Lake City, October 2, 1900, published in Salt Lake Tribune, October 3, 1900.

SENATOR CLARK'S SPEECH.

"From the day of my first visit to this city I have always been impressed with the commanding position it occupies as a distributing center, and predicted for it a brilliant future. The lapse of years has served only to strengthen and confirm that opinion.

"It was in the fall of 1863, about 37 years ago, at the close of the mining season in Montana, then a part of Idaho, that I bought a span of mules and a wagon at East Bannock, so called in contradistinction to West Bannock, in the Boise Basin, and with two companions, similarly equipped, started down to see the great Salt Lake and the Mormons and lay in some supplies for our mining camp on Horse Prairie, to which place we returned about the middle of January. The old Salt Lake House, a wooden structure situated on the east side of Main street, was about the only hotel here at that time, and most of the business of the place was conducted on that and the opposite block and in the neighboring cross streets.

"I remember well the names of Hooper & Eldredge, Wm. Jennings, W. S. Godbe, Walker Bros., and other leading firms at that time. We had escaped being held up by the road agents that infested every highway in the southern country, and sold our gold dust at about $6.00 per oz., taking greenbacks in return, which was about 240% premium.

UTAH'S BASE OF SUPPLIES.

"For several years our mining camps had to rely largely
4152 upon Utah for supplies and particularly provisions, and we can not overlook the fact that the Mormon people have been a great factor in the development of the mining regions in all this western country, as well as in hastening by several years, without doubt, the construction of our first transcontinental railway.

"Since that early day, when everything here was of a primitive character, I have been a frequent visitor to Salt Lake and have watched its gradual development into a large and beautiful city, with fine buildings and comprising all the modern and luxurious equipments of the day, but your most sanguine expectations have not yet been fulfilled. The resources of your State are varied and almost boundless. You have already developed great mines and are throwing that wealth into the laps of the world's commerce, but there doubtless remains thousands of others of prodigious wealth that have not yet been uncovered which lack only improved facilities and railroad connections to effect their development, and thereby add to your population, increase your traffic, and swell the tide of your prosperity.

THE RAILROAD SITUATION.

"Less than 800 miles away as the bird flies, yet more than 1,500 by any rapid means of communication, lies another city, neat as a new pin and beautiful as a flower, Los Angeles, the metropolis of southern

California. In many respects these two cities are similar, but have resources of a different character.

"Although so near they are comparatively strangers to
4153 each other. They are separated by a narrow strip of arid waste whose desolation and silence the strong arm of monopoly has not hitherto permitted to be broken by the whistle of the iron horse.

"This should no longer be. The time has come when these two people, looking over the intervening desert, should stretch out their arms in friendly greeting, one to the other, and say, we will join you and break down the barrier that has so long separated us and hereafter form forces in the march of progress and destiny.

"When this takes place the Los Angeles and Salt Lake Railway will be an assured fact.

"I can not see any obstacle that might prevent its consummation.

"Over more than a third of the entire distance from this city there are fertile valleys and large settlements and important mineral developments that would furnish a large local traffic.

"Vast deposits of coal and iron, elements of the greatest utility, the latter depending upon the former for conversion into available forms, are said to exist on or near the line of the proposed location.

"Should coking coal be found, it is not improbable, in the same or neighboring vicinity, the possibilities of the iron industry alone would warrant the extension of the road.

"At the other end the road now in operation enjoys a large local passenger and freight traffic, which will be greatly increased
4154 when it is extended as contemplated in the near future, through the vast fruit ground districts to San Bernardino.

"Local traffic is a great auxiliary to the railroad business and must necessarily be considered, but the main proposition and governing factor in deciding upon such a vast undertaking, and of which we should have reasonable assurance, is the through business between the two cities, and in connection with transcontinental lines to eastern points.

ADVANTAGES OF THE ROUTE.

"I feel convinced that by reason of shorter distances, lower grades, and freedom from climatic disturbances this route would be immeasurably superior to all other routes, and particularly for the transportation of desiduous fruits. This product, notwithstanding three consecutive dry seasons, is increasing largely, and it is estimated will reach by next year a total aggregate of 25,000 carloads.

"With trains running on a schedule of 24 hours, which is very practical, between the two cities this would become a very popular passenger route. It would serve the growing States to the north and northeast, including Idaho, Montana, Wyoming, the Dakotas, and Minnesota.

"There is still another important consideration and that is the fact that the southern terminal of this road lies in the great harbor of

San Pedro, upon which the Government is now spending millions of dollars for its improvement and along which this company owns an extensive water front. This concession was obtained after a
4155 struggle for many years between San Pedro and Santa Monica, and mainly through the influence of my friend and colleague, Mr. Gibbon. In this connection we might point to the possibilities of commerce with foreign ports, which may assume proportions of great magnitude. A study of all these and other considerations induced me to purchase a large interest in the Los Angeles Terminal with a view of extending it to this city if all the conditions seem to warrant it, and with the cordial cooperation of the good people of these two cities, whom we hope to bring into close business and friendly relations, we feel confident that the enterprise will in due time be pushed to a successful and satisfactory termination."

Mr. SEVERANCE. Mr. Kelly wants me to read into the record what is published just above the matter that is in this exhibit. It is agreed that the newspaper article just introduced as Exhibit 158 is preceded in the newspaper by the following: First, a copy of the petition to the honorable mayor and city council of Salt Lake City, signed by W. A. Clark, which appears in complainant's Exhibit 154, introduced in evidence this morning. Immediately following the matter contained in Exhibit 158 is the following:

"The above is Senator W. A. Clark's official letter presented to the city council last night. It proves beyond any doubt that the wealthy Montana man is deeply interested in the road and that he desires to see it built, and that the statements heretofore made by others
4156 interested were correct. The communication was well received and referred to the proper committees. Following Senator Clark's letter, which is the keynote of the situation, was his speech made at the Alta Club last night. This banquet was given in honor of Senator Clark and he was introduced by the host, Thomas Kerens, as the president of the Los Angeles and Salt Lake road. Mr. Clark's speech was received with the greatest enthusiasm and applause was frequent. His remarks all show conclusively that he had carefully studied the situation. As it was the first public utterance touching the Los Angeles-Salt Lake project, there was joy manifested on the faces of all present, for any lingering doubt disappeared with his words."

Q. I call your attention to a copy of the "Salt Lake Tribune" of Monday, January 7, 1901, and to an article headed "Select Cajon Pass." Was that article written by you?

A. Yes, sir.

Q. I don't care to put the whole article in. I just call your attention to one sentence at the beginning of the article: "From what Vice-President J. Ross Clark said at Ogden on Saturday about the surveyors of the Los Angeles road now being at work at Cajon Pass,

the route to be selected by the San Pedro, Los Angeles & Salt Lake can be easily guessed as far as relates to California and Nevada."

A. Yes, sir.

Q. Did Mr. Clark state to you on the Saturday preceding January 7, 1901, at Ogden, that the surveyors were at work on the Cajon Pass?

A. I can't recall that. That article was written by me. I remember it from my own data, you know, information that I had. Possibly something that he said before just gave me that hint. You see
4157 that is not protected by quotation marks, and it clearly shows the article is my original work.

Q. Undoubtedly; but it says, "From what Vice-President J. Ross Clark said at Ogden Saturday about the surveyors of the Los Angeles road now being at work," etc. Did he speak to you about their being at work?

A. I don't remember. I couldn't possibly remember that. It would evidently show that some hint was dropped, by the article appearing in that way.

Q. You understood him so to state, didn't you, or you would not have written the article in that way?

A. That is what I say; the article appeals to me now as there having been a hint of some sort about the Cajon Pass.

Q. From Mr. J. Ross Clark?

A. From Mr. J. Ross Clark, although after all these years I do not remember that circumstance at all; I don't remember that it ever came up.

Q. Did you, early in April, 1901, go down the line of what is now the San Pedro road, at the time there was some difficulty between the San Pedro and the Short Line people?

A. Yes, sir.

Q. Where did you go, and when, if you remember?

A. To a point about 200 feet within the State of Nevada.

Q. That is where you first went?

A. Yes; near Uvada.

Q. Did you know Mr. Whittemore?

A. Yes, sir.

Q. Was he down there at that time?

A. He was at the front. He was not at Uvada.

Q. Where was the front?

A. The front was about 43 miles from Uvada.

4158 Q. Did you go to the front?

A. I went 20 miles to the front, but did not go all the way through, because it was too far from the telegraph.

Q. I see some articles by you on the matter in the "Tribune." Where did you get the data from which you wrote those articles?

A. By interviewing representatives of the two parties at interest.

Q. In these articles I see statements that many teams have been chartered from this place—that is, where this is sent from; Pioche it seems to be sent from.

A. If the date line is Pioche, I have no responsibility for the article; that is the Pioche correspondent.

Q. That is another man?

A. That is another man. My matter, appearing in the various papers that I represented, would be dated either Uvada or Uvada via Milford.

Q. Did you see representatives of both the San Pedro and the Short Line roads down at Uvada at that time?

A. Yes, sir.

Q. What was going on so far as you observed? I don't ask you for any statements made by them, but anything that you observed.

A. Nothing at all as far as outward appearance went.

Q. Everything was off down the line somewhere—whatever was happening?

A. Whatever was happening was merely the legal status, I suppose; there was no outward appearance.

Q. You personally did not observe any of the trouble?

A. No, I did not.

(No cross-examination.)

4159 GEORGE N. LAWRENCE,

being duly sworn as a witness on behalf of the Complainant, testified as follows:

Direct examination by Mr. SEVERANCE:

Q. Mr. Lawrence, where do you live?

A. Salt Lake City.

Q. What is your business?

A. Practicing attorney.

Q. How long have you lived in Salt Lake City?

A. All my life—since 1872.

Q. What official position, if any, did you hold in the year 1901?

A. A member of the state senate.

Q. And were you chairman of any committee of that body?

A. Yes, sir; I was chairman of the committee on county and municipal corporations, which was a standing committee of the senate.

Q. Do you recall the introduction into the senate, or into that legislature, rather, of the act which finally passed as amended, with the proviso, as chapter 49 of the laws of Utah for that year?

A. Yes, sir; I have looked it up.

Q. Are you familiar with that?

A. Yes, sir.

Q. State the circumstances under which that bill was introduced and the form in which it was introduced, if you know.

A. The measure was originally introduced in the house and passed the house in the form in which the present measure is, down to the

proviso, and came to the senate and was referred to the committee on railroads, and came out of that committee with a favorable report the day or second day following. I asked for recommittment to
4160 the committee on county and municipal corporations, as it was affecting municipalities, and it was recommitted to that committee, where the amendment was made.

Q. Was any argument made on that bill before your committee?

A. Yes, sir.

Q. By whom?

A. Well, those who appeared on behalf of the measure were Mr. T. E. Gibbon, of Los Angeles; Mr. Smoot; if my recollection is correct, Mr. McCornick was before the committee.

Q. Who is Mr. McCornick?

A. He is a banker of this city; I think one of the earlier directors of the Salt Lake and Los Angeles road.

Q. What was the statement made in support of this measure by Mr. Gibbon, so far as you recall it?

Mr. Lovett. The defendants object to any statements made by Mr. Gibbon or anybody else before the legislature in connection with the passage of the bill as hearsay and as irrelevant.

A. Mr. Gibbon said they were very anxious to secure the passage of that measure so they could get the terminal facilities here—the old Pioneer Square; that the city council was willing to donate the land, but there had been some objection raised to a title that the council might give, owing to the fact that the language of section 260 of the statute, defining the powers and duties of the city council, was not explicit with reference to granting municipal properties of that kind without remuneration to the city, and this was proposed to
4161 remove any possible question as to the title; and he stated that he thought the citizens here ought to cooperate in assisting the promotion of that road, as it meant an independent line to California in competition with the Southern Pacific, as we understood it.

Q. Did you have any conversation with Mr. Gibbon concerning that measure at which Mr. Love was present?

A. Yes, sir.

Mr. Lovett. Same objection.

Q. State what Mr. Gibbon said at that time with reference to the measure.

A. Mr. Gibbon was very persistent in his efforts to get a report out of the committee on this bill, and we granted an interview prior to the meeting of which I speak, where all those gentlemen attended, on a Sunday afternoon, in one of the committee rooms of the senate, and he there urged a favorable report on the measure without the proposed amendment. So far as his language was concerned, I don't recall it; simply that his arguments were all directed toward that end—that it was an independent road and meant a great deal for the city of Salt Lake and the people of Utah.

Q. Did you at that same session of the legislature meet Mr. Winslow S. Pierce, the attorney of the Union Pacific Railroad Company?

A. Yes, sir.

Q. What was he doing there, so far as you know?

A. I was asked to meet him at the hotel, to go over with him a measure that was pending or about to be introduced at that session of the legislature. This was early in January. He said that he wanted to interview, as he put it, some of the leading members of both branches, to familiarize them with the measure so that if there were any objections to it he could reconcile their objections or
4162 explain the object of the measure. He asked if I had any objections to it. I told him that on general principles I was opposed to acting upon legislation without proper time for consideration. That measure in common with a number of others were always hurried through both branches of the legislature without a proper amount of consideration, and he wanted us to act immediately upon this bill, but so far as the measure itself was concerned I didn't have any objections to offer to it at the time.

Q. Did he make any statement as to the reason why he desired the legislation?

Mr. LOVETT. Same objection to all this conversation.

A. I don't remember any specific remark of his, except that on the face of the measure it amplified the powers of railroad corporations organized under the laws of this State, and I pointed that out to him, and he said that was true; but I understood—whether from him or from others—that it was a part of their general reorganization plan, and it was for that purpose he wished it passed.

Q. Was anything said to you about certain fees that would accrue to the State?

A. Yes, sir; that was one argument that was used.

Q. What were those fees for, as you were advised?

A. Well, as I understood, for filing an amendment to the articles of incorporation of one of those roads—I don't remember whether it was the Union Pacific or the Short Line, increasing the capital stock, and we have a state fee of 25 cents on every thousand dollars' worth of capital stock.

Q. Now, Mr. Lawrence, there seems to be a bill here, chapter
4163 2 of the Laws of 1901; another one relating to railroad corporations as chapter 3 (chapter 2 was approved on the 18th of January and chapter 3 on the 4th of February); and a third law, chapter 26, which relates to railroad corporations, and was approved on the 7th of March, which, among other things, repeals the law approved on the 18th of January and the law approved on the 4th of February. Will you state the history of that legislation as you recall it?

Mr. LOVETT. Same objection as heretofore entered, to the history or purposes of any statutes enacted by the legislature of Utah.

A. I will say that the railroad law of this State, from 1897 practically, has undergone a very rapid evolution, as shown by the work of that session. The first two measures that were passed in the early part of the session were repealed by the third, under the pretence

of codifying the railroad law of the State; but in comparing the bill with the existing law at that time we found some changes and some new legislation in it. But these two earlier measures were passed at the urgent request of the representatives of the Oregon Short Line and the Union Pacific Railroad companies.

Q. What about the third one?

A. It is the same way.

Q. That is all I wanted to show. They were passed at their instance?

A. Yes, sir.

Cross-examination by Mr. LOVETT:

Q. What became of this Pioneer block that was referred to by Mr. Gibbon?

A. It is still a public park of the city.

Q. It was never gotten by the San Pedro?

4164 A. No; after the amendment they didn't make any attempt to submit it to a vote.

Q. After the statute to which you refer was passed, it was practically abandoned?

A. Yes, sir; as I understand it.

Q. The conversations with Mr. Pierce, about which you have testified, occurred, you say, early in January?

A. I think it was just prior to or at the beginning of the session of 1901; it was early in January.

4165 JOSEPH OGLESBY.

being duly sworn as a witness on behalf of the Complainant, testified as follows:

Direct examination by Mr. SEVERANCE:

Q. Where do you live, Mr. Oglesby?

A. Salt Lake City.

Q. How long have you lived here?

A. Since 1887.

Q. What has been your business?

A. Railroading.

Q. For how long?

A. For possibly 38 or 39 years.

Q. With what different roads?

A. Prior to my coming here I was with what used to be called the O. V. Line—part of the Big Four now—at Indianapolis. I was also with the Indianapolis & St. Louis at St. Louis—that is a part of the Big Four; with the Vandalia; with the Louisville & Nashville at Louisville; with the Kansas City, Fort Scott & Memphis, at Kansas City; and from there I came here with the Oregon Short Line—that

is, the Mountain Division of the Union Pacific, as it was called at that time—in 1887. In 1888, I think it was, I went with the Rock Island as their representative here, and remained with them until July, 1907.

Q. How long were you with the Union Pacific?

A. From November, 1887, until July, 1888, I think, when I terminated my service with them.

Q. While you were with the Union Pacific was anything done about a boat line from Portland to San Francisco?

A. Not to my recollection. I knew that we had that line, but so far as I know we didn't work it at all from here.

4166 Q. Well, did traffic move over that line from the east?

A. Not to any extent, so far as I know; I wouldn't know of it, anyway.

Q. You wouldn't know of it?

A. No, sir.

Q. You didn't have anything to do with anything except the local business?

A. That is all.

Q. You were working for the Union Pacific?

A. Certainly.

Q. And your business went over the Short Line?

A. Yes, sir; in fact I was working for the Short Line. It was called at that time the Mountain Division.

Q. Of course you would have no occasion to use that boat, then?

A. No, sir.

Q. Between here and Portland. And did you work for San Francisco business?

A. Did we from here?

Q. Yes.

A. Not to my knowledge.

Q. That moved by the Central Pacific?

A. Yes, sir.

Q. Do you remember when the Southern Pacific had a separate agency here from the Union Pacific?

A. Yes, sir; they had one when I came here.

Q. While you were with the Rock Island did they maintain these agencies—that is, for a portion of the time?

A. Yes, sir.

Q. Were they—each of them—working for seaboard business from the Atlantic seaboard?

A. The Southern Pacific?

Q. And the Union Pacific, when their agencies were separate?

A. According to my best knowledge they were; yes, sir; both of them.

Q. You ran across that?

A. Yes, sir; I did.

4167 Q. You knew Mr. McCarthy, didn't you, when he worked for them?

A. Yes, sir; quite well.

Q. He was working for the Union Pacific on that business?
A. He worked for the Union Pacific.
Q. And who was working for the Southern Pacific?
A. Mr. D. R. Gray.
Q. And how was the competition between them for that Atlantic Coast business? Was it active or——
A. Very active.
Q. Did you participate in that competition also for the Rock Island?
A. Yes, sir.
Q. If the Rock Island secured the business, where did you bring it to?
A. We brought it to Pueblo; we worked for the long haul. We took it to Pueblo and gave it to the D. & R. G., or to Denver, and delivered it there to the Union Pacific.
Q. What boat line in the east did you work in connection with?
A. We worked with any of them by which we could get the business—the Kanawha Despatch, the Mallory, or the Morgan.
Q. Both the Gulf routes and the——
A. Both the Gulf and the other line, by St. Louis or Chicago or Kansas City.
Q. Do you remember of any time when a fast-freight service was put on, on the Union Pacific, for a time?
A. They had it on for a time; I can't recall the exact date, but it was prior to the consolidation of the Union Pacific and the Southern Pacific.
Q. How long, if you remember, was that fast-freight service on?
A. Oh, possibly six or seven months, or eight months possibly.
Q. What did you know about the competition that existed, prior to 1901, for wool shipments to the east from this region?
4168 A. It was very active—very.
Q. How did the Southern Pacific endeavor to move the wool that they could secure?
A. The bulk of the wool on the line of our road moved by Sacramento, the Sunset Route and the Morgan line.
Q. How did the Union Pacific move it?
A. The Union Pacific took it straight east and delivered it to its friendly connections, who had secured the wool by their own personal solicitation.
Q. And were you after that wool too?
A. Yes, sir.
Q. In connection with what road?
A. You mean here?
Q. Yes, sir.
A. Any one of them that the shipper preferred. You see we could take any stand at all; we were sort of free lances.
Q. You were working to get your part of the haul?
A. That was all.

Q. But of course your interest was opposed to the Southern Pacific because they took it the other way?

A. Unquestionably.

Q. What methods were adopted, if you know, to secure wool shipments?

A. Well, we had a good many. The principal one was that we were able to furnish a man to assist the wool buyer in this way: He would notify me at my office and say, "I have some wool. If you can send a man to receive it, mark it, weigh it and load it, you can have it over your line." I would send the man there. That was one of the methods. And there were other methods.

Q. Were there methods adopted to secure the driving of the
4169 sheep from one line to the other for shearing?

A. Well, we took no part in that, you know. It was done by the different lines here. These other lines did it—the Southern Pacific and the Oregon Short Line and the Union Pacific and the Rio Grande Western: they all pursued that course.

Q. They endeavored to get the sheep driven to their line?

A. Over to their line, where they could shear: yes, sir.

Q. Was there a good deal of wool in this competitive territory where those methods were adopted?

A. Yes, sir: considerable.

Q. Did cattle and sheep move out of that same territory?

A. Yes, sir.

Q. Were they competed for too?

A. They were by the two lines running east—that is, the D. & R. G.——

Q. The Southern Pacific didn't attempt to move cattle and sheep to the west?

A. No, sir. They cared only for the wool: they cared nothing for the cattle or the sheep. The other two lines pursued that method, however.

Cross-examination by Mr. LOVETT:

Q. For what wool did the Southern Pacific compete? Where did it originate?

A. Well, it would originate in between the territory north of the line of the Southern Pacific and south of the Oregon Short Line. They would endeavor to get the sheep over to their own line—that is, the territory extending out possibly, we will say, 125 miles. Beyond
that it was so near to their own road that there would be no
4170 object whatsoever in driving over to the other—the distance would be too great.

Q. At that time the Southern Pacific track ran north of Salt Lake from Ogden, didn't it?

A. Yes, sir.

Q. And ran around the lake?

A. And ran around the lake: yes, sir.

Q. And is Corinne on that portion of the line of the Southern Pacific?

A. The old line: yes, sir.

Q. That was before the Southern Pacific had constructed the so-called cut-off across Salt Lake?

A. Yes, sir.

Q. The wool for which the Southern Pacific competed with the Union Pacific or Short Line was that which originated in the territory lying north of Salt Lake and the Southern Pacific and south of the Oregon Short Line?

A. Yes, sir; it didn't extend but a very little distance beyond that.

Q. Wool originating in that territory the Southern Pacific sought to move by way of Sacramento and the Sunset Route?

A. Yes, sir.

Q. And the Oregon Short Line sought to move it east over the Union Pacific?

A. Yes, sir.

Q. The competition which you say existed at one time between the Southern Pacific and the other lines for business from the Atlantic seaboard, when they had their separate agencies here, that was business, I presume, that moved by the Morgan line to New Orleans or Galveston and thence by some Southern Pacific line to the northern portion of Texas? Is that the way it was?

A. That is the way: yes, sir.

Q. Now, that same traffic was competed for by practically
4171 all the lines lying east and southeasterly from this territory?

A. Yes, sir.

Q. You were trying to get your share of the haul for the Rock Island?

A. Yes, sir.

Q. The Burlington the same?

A. Yes.

Q. The Chicago & Northwestern, the St. Paul, the Missouri Pacific, the lines east of the Missouri River and east of the Mississippi River, east of Chicago, such as the New York Central and the Pennsylvania, all the lines, were trying to get a haul out of it, weren't they?

A. They were, yes, but not by the Gulf lines. They were all after the business.

Q. But all lines leading towards the Gulf and the lower Atlantic ports were trying to get it, weren't they?

A. Yes, sir.

Q. That is, the lines leading from Newport News and from Savannah?

A. Yes.

Q. And what other Atlantic ports?

A. Well, they worked it by Savannah and by Newport News principally, and the Gulf lines.

Q. And the Gulf lines by way of New Orleans?

A. Yes.

Q. Did any of it come by way of Mobile, if you know?
A. Very little of it.
Q. The Gulf ports principally were New Orleans and Galveston?
A. Yes, sir.
Q. And these various lines were trying to get a share of the haul?
A. Surely.
Q. Now, the Southern Pacific would work that business into Salt Lake over the Denver & Rio Grande or the Union Pacific, either, wouldn't it?

4172 A. That would depend very largely upon how large the shipper was here and how much influence he exerted with the railroad. For instance, if he was a very heavy shipper and controlled a vast tonnage or a large tonnage he could dictate his own routing, as to how it should come after it had left the Morgan line, and it was done in some instances.

Q. Was the Southern Pacific indifferent whether it came in here over the Denver & Rio Grande or the Union Pacific?
A. Well, that I couldn't answer; I don't know. I know this—I can only answer of my own personal knowledge, things that I know—I know that they didn't raise any particular objection to my delivering some business that we received from the Morgan line to the Union Pacific at Denver.
Q. You know of no reason why the Southern Pacific at that time should have raised any objection to your line or any other connection?
A. No, sir; we were all friendly connections of theirs.
Q. There were a good many other agents in here besides yourself and the Southern Pacific agent, and the agents for these numerous lines east of here were all trying to get a share of the haul?
A. Yes, sir.

4173 FRED D. ULMER,

being duly sworn as a witness on behalf of the Complainant, testified as follows.

Direct examination by Mr. SEVERANCE:

Q. Mr. Ulmer, where do you live?
A. Salt Lake City.
Q. How long have you lived here?
A. 18 years.
Q. What is your business?
A. Civil engineer.
Q. And have you been practicing that profession all the time?
A. Indirectly; yes, sir.
Q. Were you employed on the survey of the San Pedro road?
A. Yes, sir.
Q. When?
A. March, 1901, to March, 1902.

Q. And where did you go to work?
A. At Uvada.
Q. You commenced at Uvada?
A. Commenced at Uvada.
Q. Which direction did you work from there?
A. Southwest toward Caliente.
Q. And how far did you go on that survey?
A. About 215 miles.
Q. Now, in March, 1901, when you started out of Uvada, did you see anything of surveying parties or other employees of the Oregon Short Line down there?
A. No, sir.
Q. Did you see them at any time when you were on that survey?
A. Later, in the summer.
Q. In the summer of 1901?
A. The summer of 1901.
Q. Where was that?
A. I saw a party at Kirnan's, and later along, in November, I saw a party at the same point.
Q. What were they doing?
A. One party stopped over night, going south; another party was on what they called a joint survey.
4174 Q. What was that joint survey?
A. The joint survey, so far as I knew it, was simply an order from the court instructing the Oregon Short Line and the San Pedro Railroad to make a survey down through the contested points of the Meadow Valley Wash at 20.2 feet distance apart. By court order, as I understand it.
Q. Did you participate in that survey?
A. I did, in portions of it.
Q. Were the Short Line people surveying alongside of you?
A. Yes, sir.
Q. When was that?
A. As I remember it, in the fall of 1901.
Q. Can you fix with any definiteness the time in the fall?
A. Somewhere along the first of December, 1901.
Q. Were you present at any of the scraps, so-called, that they had down there, between the contending parties?
A. No, sir.
Q. Up to the time you left the service of the San Pedro road, were the Short Line surveyors still at work?
A. The Short Line surveyors were still at work on the California end of the line.
Q. Separate from your force?
A. Yes, sir—not as joint surveyors.
Q. Not a joint survey?
A. No, sir.

Cross-examination by Mr. KELLY:

Q. Mr. Ulmer, by whom were you employed in March, 1901?

A. By H. M. McCartney.

4175 Q. He was engaged in locating a line down through the Meadow Valley Wash?

A. Yes, sir.

Q. When were the surveys commenced under McCartney?

A. The orders came to me to get a party together on March 22, 1901.

Q. And those orders reached you at Salt Lake City?

A. At Salt Lake City.

Q. And you got your party together at once?

A. I got my party together at once.

Q. And went to Uvada to begin work?

A. Yes, sir.

Q. What time did you arrive at Uvada with your force?

A. It was on the Monday following; I don't remember the exact date; it was just two or three days later.

Q. About the 25th or 26th?

A. About the 25th or 26th of March.

Q. And your party started to make a survey down from Uvada southwesterly along the old grade then on the ground?

A. Yes, sir.

Q. Had you worked with McCartney before that time?

A. Yes, sir.

Q. Had you worked on the survey of that line as it was originally surveyed in about 1890?

A. Yes, sir.

Q. The McCartney you knew had been on the old survey for the old line of road?

A. Yes, sir.

Q. As you surveyed southwardly from Uvada, you followed with your line and made your surveys, field notes and maps, adopting absolutely the old line of railroad grade that existed on the ground?

A. Nearly so.

Q. The only variation from the original line was of trifling

4176 importance?

A. Just simply a question of distances.

Q. And that in each case for short distances?

A. Yes.

Q. It was practically and to all intents and purposes an adoption of the pre-established grade as your line of road?

A. Yes.

Q. As you went along you found a considerable amount of road-bed already in fair condition?

A. Yes, sir.

Q. And you found some heavy embankments and some very heavy cuts?

A. Yes, sir.
Q. In good condition?
A. In good condition.
Q. And you found some tunnels that were timbered and lined?
A. Yes, sir.
Q. And that continued down almost to what was known then as Clover Valley Junction, did it not?
Mr. SEVERANCE. I didn't catch that question.
WITNESS. That is the old grade.
Q. The old grade. Did you do any work in the way of tracing or re-following the old grade or roadbed from Clover Valley Junction, now Caliente, up towards Pioche?
A. Yes, sir.
Q. In surveying from Caliente towards Pioche you followed the old grade substantially?
A. Substantially, yes, sir.
Q. And you found a roadbed with cuts but no tunnels on that line?
A. No tunnels.
Q. Just cuts and fills, some heavy work?
A. Some unfinished work.
Q. In fact the greater part of that grade from Caliente to Pioche was unfinished?
A. Yes, sir.
Q. It existed in sections here and there?
A. Yes.
4177 Q. How many men did you have in your party?
A. Five men, I believe.
Q. How long did it take you to make your surveys from Uvada to Caliente? When I say Caliente I am referring to what we knew then as Clover Valley Junction.
A. In the neighborhood of ten days.
Q. It is about 45 miles, isn't it?
A. 40 miles exactly.
Q. How much time did you spend on the line between Caliente and Pioche?
A. About the same time, as I remember it.
Q. The distance there is 32 miles?
A. About 32 miles.
Q. You then returned to Caliente?
A. Yes, sir.
Q. And started to work from there southwesterly?
A. Yes, sir.
Q. Did you have with you at that time a copy of the field notes of the old surveys for the line surveyed ten years before that time by the Oregon Short Line?
A. We had a copy of the blueprint.
Q. A copy of the blueprint?
A. In the possession of Mr. McCartney.

Q. Those blueprints showed the line as located, its relation to surveyed monuments and corners through the surveyed lands, and had field notes for other monuments through the unsurveyed lands, did they not?

A. On that portion north from Caliente only.

Q. To the portion north of Caliente only. And was that portion north of Caliente the only surveyed lands that you found westerly?

A. No; the surveyed lands for about seven miles southwesterly from Caliente.

4178 Q. Didn't the maps that you had with you show the tie-ups to the section corners along there?

A. We didn't have those maps.

Q. Did you have the old field notes?

A. No; no field notes.

Q. Did you find any stakes on the ground?

A. Occasionally.

Q. Did you find enough stakes on the ground so that the work you did there was a substantial adaptation of the old route formerly surveyed by the Oregon Short Line and the Utah Northern?

A. Yes, sir.

Q. Was there any graded work along on any part of the line southwest from Caliente?

A. I didn't catch your question.

Q. Was there any completed or uncompleted roadbed——

A. No, sir.

Q. —beyond Caliente at all?

A. Not that I remember.

Q. For how long a distance did you pursue the old line of the Short Line beyond Caliente?

A. Perhaps for the first fifteen miles we didn't follow it at all, and then we picked up more or less, followed the old line, but made revisions the entire way to the California and Nevada line; in no place did we make a business of following it closely.

Q. I have forgotten the names of those ranches down there. Kirnan's, did you say?

A. Kirnan's; yes.

Q. Is Kirnan's the one about eleven miles out?

A. No; it is about 25 miles from Caliente.

Q. Along about Kirnan's place there you followed the old survey, didn't you?

A. Very closely.

1479 Q. What is the name of the ranch about eleven miles out of Caliente, if you remember?

A. Bradshaw's.

Q. Along through the Bradshaw portion of the Wash there, you also followed the old survey very closely?

A. Well, it was almost the width of a right-of-way from the old line.

Q. You pursued your labors, going continuously along toward the California line?

A. Yes.

Q. Did you stop to make maps of your work?

A. Just such as were necessary to transmit to the head office.

Q. How frequently did you transmit the field notes and results of your labors to the head office?

A. We were supposed to do so every week, but it was often two weeks apart.

Q. You said you did not see any surveying party of the Short Line until along in the summer sometime, as I understood you.

A. Yes, sir.

Q. Can you tell about when that was?

A. It was in the early summer, I remember; along in May.

Q. Somewhere about the very first of May, wasn't it?

A. I believe so.

Q. They were making a reconnoissance of the ground at that time, and did they pass you or you pass them?

A. They passed us at Kirnan's.

Q. Then when did you see that party again?

A. I never saw them again.

Q. When did you next see a party of Short Line surveyors through there?

4180 A. I think it was in the latter part of July, when the R. K. Brown party went through to the Muddy River.

Q. And they were at that time engaged in surveying and laying out another line substantially upon the old first survey?

A. Yes.

Q. They stuck very close to the old line?

A. Yes.

Q. As you were going through the canyon and across that part of the country there, the old stakes and monuments set up by the first surveying party of the Short Line were on the ground and could easily be followed?

A. Not but in very few instances south of Caliente.

Q. How was it along near Elgin? I mean the place where the canyon is contracted down to a very narrow one, between high rocks on each side, kind of palisades?

A. In that portion of the canyon where it was on bench land we could find stakes; of course, no marks on them. It was very seldom we could find the points, but we could find stakes to identify the tangents by.

Q. But the stakes that marked the P. C. and P. T. were hard to find?

A. Yes, sir.

Q. Now, Mr. Ulmer, you engaged in surveys there with a joint surveying party?

A. Yes, sir.

Q. Who represented Mr. McCartney's force?

A. The party I was with was under the charge of Charles Trumbull.

Q. How many were in that party?

A. There were 14, I think.

Q. Who was in charge of the party that represented Mr. Ashton's force?

A. Mr. Carl Stradley.

Q. How many men were in that party?

A. About the same.

4181 Q. About what time and whereabouts in the canyon did that party commence work?

A. I can't answer that definitely.

Q. Waiving the time, can you tell the place?

A. We started in on our portion of the joint survey about four or five miles above Kirnan's, which would make it about 20 miles below Caliente.

Q. That is about the place where the canyon gets to be boxy?

A. Yes.

Q. Now, you said you understood that was under a court order. Your party were under instructions, but whether they came from the court or from the action of the parties interested you don't know?

A. No, sir.

Q. Do you know the tenor of the instructions you were working under?

A. Only in a general way.

Q. I would like to have you state them. I may help you out a little.

A. As I understood it, at all controlling points where the line would necessarily force one party or the other into heavy work, the lines were to be parallel on 20.2-foot centres, and other points where they might diverge as they saw fit.

Q. And at all places where practicable each party was so to diverge the line that each company might obtain a full right of way under the law of Congress of March 3, 1875?

A. Yes, sir.

Q. That was the understanding. In brief, it was that they were to locate two separate rights of way of full width where they could; and in coming together, where by the condition of the ground they were driven together, they were to locate a line for each com-

4182 pany with centres not nearer than 20.2 feet? That is about the substance of it?

A. That is my understanding.

Q. How far down the canyon did you work under those instructions?

A. We worked in two places. We worked at Kirnan's—we went in there in the latter part of November and worked in conjunction with Stradley's party for perhaps two or three weeks, and we were

transferred to the front again, because we were the only ones that had ever been on the desert.

Q. Do you know how far, how much in distance, the ground was covered by that joint party?

A. By that joint party, as I remember, it was about 125 miles.

Q. And they went over the canyon pretty thoroughly and made locations of a proposed line from a point about twenty miles south of Caliente for a distance of nearly 125 miles?

A. My impression is that they located right out of Caliente the same way.

Q. Yes; they did, I know.

A. I wasn't on that end of the work.

Q. But I was speaking of your knowledge of it.

A. Yes.

Q. That joint work was done so that the work of each party of surveyors was passed upon by the others; the work of each party was considered by the other?

A. Yes, sir.

(An adjournment was here taken until the morning of Thursday, April 29, 1909, at 10.30 o'clock.)

4183 U. S. Circuit Court Room,
Federal Bldg., Salt Lake City.
*Thursday, April 29, 1909, 10.30 a. m.*

The hearing was resumed before the Special Examiner, Hon. Sylvester G. Williams, at the above time and place.

Present: On behalf of the Complainant, Mr. C. A. Severance, Mr. Hiram E. Booth, United States District Attorney; Mr. William M. McCrae, Assistant United States District Attorney, and Mr. G. E. Husted.

On behalf of the Defendants, Mr. R. S. Lovett, Mr. W. R. Kelly, Mr. P. L. Williams, and Mr. Loomis.

## JOSEPH W. SUMMERHAYS,

being duly sworn as a witness on behalf of the Complainant, testified as follows:

Direct-examination by Mr. Severance:

Q. Mr. Summerhays, where do you live?
A. Forestdale.
Q. What is your business?
A. Hides, wool, furs, plaster hair, etc.
Q. And what is the name of your company?
A. Rowe, Morris, Summerhays Company.
Q. Where is your principal market?
A. In the eastern states.

Q. The Atlantic seaboard among others?

A. Yes, sir.

Q. Are you rather extensive shippers of hides and wool?

A. Well, we handle 45,000,000 pounds a year in and out.

4184 Q. How many years have you been in business?

A. Since 1883.

Q. At Salt Lake?

A. Yes, sir.

Q. Or vicinity of Salt Lake?

A. In Salt Lake City.

Q. And in what region do you secure your wool, and have you for a good many years?

A. We have bought all over this intermountain country—Nevada, Idaho, Wyoming.

Q. Montana?

A. Some little—very little.

Q. Do you remember when the Union Pacific and the Southern Pacific had separate agencies here?

A. Yes, sir.

Q. Was your business solicited by those agencies at that time?

A. Yes, sir.

Q. Separately?

A. Yes, sir.

Q. Which way did the Southern Pacific move the business that they secured from you, ordinarily?

A. Ordinarily, if it was far enough west, it would go around the other way.

Q. Go by California?

A. Yes, sir. But I understood at the time when the business was this way around Kelton and Terrace and Corinne, through that section of the country, that they would bill the stuff west, then re-bill it back east, without moving the car.

Q. How is that—bill it to San Francisco and then back east?

A. Yes.

Q. And let it go on that through billing?

A. Leave the car there, and at the appointed time take it east. They would get the advantage that way of the long haul instead of the short haul.

4185 But they would send it east over the Union Pacific instead of around?

A. Yes; when the wool was far enough east.

Q. How was it as to wool originating up north here, in the territory between the Short Line and the Southern Pacific? Was there any competition for that wool?

A. Well, up to the time that the Oregon Short Line was built, all the wools in western Utah and in Nevada along the Southern Pacific were loaded there. We used to load wool principally in western Utah from Terrace, Tecoma, and Kelton, and after the Short Line was built there was an effort made to run the sheep over on the Short Line to Kimama and Minidoka, and that got to be quite a shipping point.

Q. And the Short Line people were trying to get the sheep run over there?

A. Yes, sir.

Q. And the Southern Pacific——

A. Still trying to keep the wool business on the other road.

Q. Now, when you shipped hides to the east, how were they shipped in those days?

A. Why, we have to consolidate them here in Salt Lake; then we have to bale them and ship them in the car, putting 20,000 pounds in a 36-foot car.

Q. You bring them in from the country?

A. Yes, sir.

Q. Now, in the old days was there any competition for that business?

A. Sir?

Q. In the old days was there competitive solicitation for that business—the hide business?

A. Oh, yes.

Q. And how did that move if the Southern Pacific secured it? How did it move to the seaboard?

A. Well, we had several ways of moving it. I have known of
4186 some cars going to San Francisco and being billed back because the rate was less.

Q. How else did it move?

A. And then it went over the Union Pacific direct.

Q. Did any of it ever go over the Morgan Line, the Gulf Line?

A. That I couldn't say.

Q. You don't know?

A. No.

Q. Where do you buy your plaster hair that you handle?

A. At Venecia, California.

Q. Did you ever have commodity rates from Montana common points on hides to Salt Lake, so you could assemble them here?

A. Yes, sir.

Q. Have you those rates now?

A. No, sir.

Q. When were they taken out?

A. I can't remember just when they were taken out. I had a talk with Mr. Plaisted about it sometime ago, but I can't remember just when they were taken out.

Q. Have they commodity rates from Montana to Los Angeles by the San Pedro?

A. Yes, sir.

Q. What is that rate?

A. According to my best recollection it is $2.

Mr. LOVETT. On what—hides?

Mr. SEVERANCE. On hides from Montana common points to Los Angeles.

WITNESS. To Los Angeles.

Q. What is the effect on the business here, locally, of taking out that commodity rate from Montana on hides to Salt Lake and putting in the commodity rate from Montana common points to Los Angeles?

A. Well, of course, we don't get any of the Montana business any more.

4187 Q. What are the total rates that affect that business? How can they afford to take them down to Los Angeles and ship them out from there, being in the opposite direction to the east from Montana? What is the adjustment of rates which enables them to do that?

A. Well, I understand that the commodity rate is $2 from Montana common points to Los Angeles and $1.20 to the Atlantic seaboard, making a total of $3.20; but in that event they have two markets—they have the California market and the eastern market.

Q. What is your rate to Los Angeles?

A. We can ship stuff, less than carload, to Los Angeles for $1.20, but we don't want to do it.

Q. Do hides have to be baled going east?

A. Yes, sir.

Q. Do they have to be baled on the San Pedro going to Los Angeles?

A. No, sir.

Q. How about wool originating on the Short Line? How does that move to the east now?

A. It goes direct.

Q. By the Union Pacific?

A. Yes, sir.

Q. Can you ship that wool by the D. & R. G.

A. No, sir.

Q. No divisions?

A. No, sir, not that I know anything about.

Mr. LOVETT. From where?

Mr. SEVERANCE. Originating on the Oregon Short Line, he can't ship by the D. & R. G.

Cross-examination by Mr. LOVETT:

Q. You have no occasion to ship from points on the Oregon Short Line to points on the D. & R. G., have you, Mr. Summer-

4188 hays?

A. No, sir.

Q. You are not particularly inconvenienced then by the fact that there is no rate that way?

A. No, sir.

Q. Do I understand you to say that there was a commodity rate of $2 on hides from Montana to Los Angeles?

A. Yes, sir, that is my understanding of it.

Q. You don't know, do you, that no hides ever moved that way under that rate?

A. No, sir.

Q. You have no information on that subject?

A. No, sir. I only know that there has been an effort made to get that business by the people going up into that country, but other than that I don't know. I don't know whether they secured any or not.

Q. You said that the rate was $2 to Los Angeles and the rate from Los Angeles to the east was $1.10, making a $3.10 rate.

A. I understand it is $1.20.

Q. $1.20, making $3.20 from Montana?

A. That is my understanding of it.

Q. You say you have a less than carload rate from Salt Lake to Los Angeles of $1.20?

A. Yes, sir.

Q. But you don't want to use that rate?

A. Well, I don't want to move my business down there.

Q. You spoke of the shipment of hides over the Southern Pacific, in what Mr. Severance termed the old days. Where did those shipments originate?

A. The hides?

Q. Yes.

A. Right here in Salt Lake City.

Q. And you would send them over the Southern Pacific how, to Ogden? How would you get them to Ogden?

A. In the old days?

4189 Q. Yes.

A. Over the Utah Central.

Q. Over the Utah Central?

A. Yes, sir, afterwards the Oregon Short Line.

Q. To Ogden and then over the Southern Pacific?

A. Yes, sir.

Q. You don't know, I believe you testified, whether or not any of those shipments ever moved by the Sunset Route, but your understanding was that the Southern Pacific would haul them through to San Francisco or bill them from San Francisco east over the Union Pacific?

A. Well, Judge, I know this: That after the—let me say in passing that I have no official knowledge when this so-called merger took place. I understand however that it was in 1901, and shortly after that the rate on hides went away up. As I remember it now, the rate from Salt Lake City to the seaboard was around $2.30, somewhere there. As I remember, it was $2.36; it may not have been that high. That is the rate they quoted us, and we couldn't stand it, and I took the matter up, and I found that I could ship the stuff to San Francisco and pay the drayage there for about 97 cents, and then I could ship it to New York by water for 70 cents. I laid those facts before the railroad people here, and they dropped the rate, making me a rate of the California through rate plus the rate from Salt Lake City to California, which remained in effect until right

lately. As I remember, the combination rate was $1.94, and lately it has been raised 2 cents—$1.96 as I understand it, to-day. Now, I know that from my personal correspondence. But outside, by any movement of freight, I don't know.

4190 Q. Which do you mean there—green or dry hides?

A. Dry hides, sir.

Q. How with reference to green hides?

A. I didn't take up the green hides question, because it simply couldn't be done; it would be inadvisable or unadvisable to ship green hides that way. They would spoil in transit.

Q. You never tried to ship them that way?

A. No, sir, but I did try to ship my dry hides; I can poison my dry hides and keep them from moth and worms and destructive insects.

Q. The basis you have just stated, that is, the water rate from San Francisco to the East——

A. To New York.

Q. —— plus the local rate from Salt Lake City through to San Francisco, has for many years been the basis for making rates to the east from this territory, hasn't it?

A. Oh, no.

Q. Hasn't it?

A. Oh, no, sir. It is not the basis of making the rate except that they charge us the arbitrary from Salt Lake City to San Francisco. As I understand the basis, the basis ought to be whatever you can ship the stuff for from the Pacific to the Atlantic coast, then you get a proportionate rate from Salt Lake City, but we have never been favored that way. We have always had to pay the arbitrary to San Francisco.

Q. I wasn't using the word "basis" in a technical sense.

A. Excuse me.

Q. What I meant was whether the rates to the East were not arrived at in that way.

4191 A. I understand that the basis of the rate has always been made that way; we have paid the arbitrary to San Francisco and then the rate back.

Q. What you mean by the arbitrary is the local rate to San Francisco?

A. No, I mean the through rate from Salt Lake to San Francisco, and then the carload rate back.

Q. Well, I think you mean the same thing. You paid the rate from Salt Lake City to San Francisco?

A. Yes, sir.

Q. And then the rate from San Francisco to the East?

A. Yes. Whatever that rate was, we would pay it directly east from Salt Lake City.

Q. Well, as a general rule that has been the rate for many, many years, hasn't it?

A. Ever since this period that I speak to you about—well, for many years; it is quite a few years. It must be seven or eight years since this question came up of charging us $2.36, as I remember it now, after this so-called merger took place.

Q. Well, before that the rates were arrived at and made in the same way, weren't they?

A. Oh, not necessarily; we get all kinds of rates. I shipped stuff to the Atlantic seaboard for $1.50.

Q. Regular rates?

A. Well, I couldn't say that they were regular. We got any old thing that we could get.

Mr. SEVERANCE. So did the railroads, didn't they?

WITNESS. For instance, the railroads do things that we have to submit to. Mr. Lovett—or Judge—pardon me.

Q. You were correct in the first instance.

A. The railroads do things for us, and we have to submit to it. Now Mr. Manderfield is here, and he will correct me if I am
4192 not correct in my figures. For instance, to-day if I ship stuff from Modena to Boston (by stuff I mean wool)—if I ship wool from Modena to Boston to-day in bags, I have to pay $2.38, as I remember it. Is that the correct rate?

Mr. MANDERFIELD. That is the carload rate.

WITNESS. I ship the same stuff 80 miles nearer for $1.13. So they charge me——

Q. $2.13 you mean.

A. $2.13, thank you. They charge me the difference between $2.13 and $2.38 as an arbitrary for hauling that stuff less than 80 miles. Now I will tell you what I can do to save that. I can take my stuff to-day and ship it to Los Angeles for 80 cents, and then I can bale it, which will cost me 15 cents, and then I can ship it back for $1.10.

Mr. SEVERANCE. Ship it back over the same route?

WITNESS. Yes, sir. And on that basis I will be saving say $50 or $60 a car, or $70 a car. Now I can do that. The inconvenience to me is, that I am waiting on my wool getting to the market. I have to send my stuff down there and have it hauled back and have it baled, and all that sort of thing. But it is a good thing for the railroads and it is a good thing for the San Pedro. The San Pedro gets the haul down there and they get the haul back, and the inconvenience to me is that I am out the time. Now, that we have to submit to. Can I jog my memory by some figures?

Q. Oh, yes.

A. If you will permit me. That I have to submit to, and of course I am willing to submit to it, because, while I am out some time, I save $50 or $60 a car, and in shipping a big lot of stuff of course it
4193 is an advantage. Now, we did that same sort of thing in the early day. A fellow would come in and say, "Do you want a little water in it?"—meaning a little water haul, you know. I would say, "Yes, I will take a little water in it," and they would give me a lake route, or they would give me a Gulf route, or Savannah route, or

any other old route, and I could get a big cut in the freight. But that has not been done since the so-called merger. For instance, the rate from Milford to Boston is $2.13, and the rate to Boston on wool to-day is $2.13, on 20,000-pound cars.

Mr. SEVERANCE. That is from Milford?

WITNESS. That is from Milford. From Lund, which is 35 miles farther south, it is $2.28. From Modena, which is 32 miles farther south, it is $2.38. If I ship my stuff from Modena my car costs me landed in Boston $476. Now, if I am at Modena I ship my stuff to Los Angeles or to a certain place down there, and I ship it there for 80 cents a hundred, which is $160. It costs me $30 to bale it. Then I ship it back on a $1.10 rate, which is $2.20, making a total of $410—and I save $66 a car. Now, of course as long as the railroads are willing to do that and I am willing to sacrifice the time, it is a good thing for the railroads and a good thing for me. That is an illustration of what was done in the early days. The fellows would come in, when they were rustling for business, all of them, and they would say, "Here, what do you want?" "Well, what have you got?" "Oh, I can haul that on the lake from Cleveland to Buffalo." I would say, "All right, give us your water rate." They would
4194 give me the water rate, and then my st..f would go through all-rail, as a matter of fact.

Q. That was one of the things you had to submit to, wasn't it?

A. Pardon me for taking up your time, Judge, with that little illustration.

Q. All right; I am very much interested. This wool is carried to Los Angeles to be compressed, isn't it?

A. Why, I am not prepared to say. The railroads do that for us.

Q. How is that?

A. The railroads will attend to that for us.

Q. Well, that is the purpose?

A. Yes, sir.

Q. I don't know that I quite understood your answer.

A. I understood that if I billed my stuff to Los Angeles, that my wool can be baled without my going down there and attending to it.

Q. I don't understand much about the wool business; I know something about the cotton; but isn't wool pressed for shipment?

A. It takes a lower rate of freight in bales than it does in bags.

Q. How is this shipped at first?

A. If I were down to Modena shipping direct, I would ship in bags; but if it went down to Los Angeles and was baled, of course it would be compressed wool.

Q. Now, when you ship to Los Angeles in the way you do, to whom do you ship there?

A. I didn't ship wool; I have not availed myself of that privilege yet.

Q. Weren't you speaking of wool rates just now?

A. Yes; but I haven't done any of it.

4195 Q. Oh, you haven't done any of it?

A. No: but I can do it. My competitors are doing it and I can do it.

Q. But you haven't done it?

A. I haven't done it: no, sir.

Q. You haven't availed of the opportunity, then, to save this $66 a car?

A. No, sir.

Q. Then, had you personal knowledge of that situation, or is that your general understanding of it?

A. No, sir: I have personal knowledge of it.

Q. Although you haven't done it yourself?

A. Yes, sir.

Q. I believe you say the rate on hides was put up in 1901, after the time of the so-called merger. They were raised to what, you say?

A. As I remember it—now, I am not right certain about this, Judge, but as I remember, it was around $2.30.

Q. From what?

A. From $1.94.

Q. To $2.30?

A. Yes. My impression is it was $2.36, but of that I wouldn't be certain.

Q. When was that increase made?

A. That was when everything tightened down, after this so-called merger took place.

Q. What do you mean by "tightening down?"

A. Well, Judge, what we mean by "tightening down" is this: We don't see anybody around soliciting freight any more. I believe the Union Pacific people, for instance, have been in my office twice this year, but not for soliciting business at all. I think Mr. Manderfield has been in once or twice. That was on some rates we were discussing. And Mr. Starkweather, of the Great Northern,
4196 has been in a time or two, and I think that is about the history of the visits I have had from these people.

Q. How long? Since the first of the year?

A. Formerly they would be in quite frequently, every other day or so.

Q. The duration of these periods and the time is quite important in this connection, Mr. Summerhays. What do you mean by "formerly?" Do you mean that the solicitation of your business ceased in 1901, or do you mean that it has been less active in the last two years?

A. What I mean by "formerly:" As I remember it now—I cannot give you the names altogether—but as I remember it now there were Mr. Choate and Mr. Fordy Eccles; as I remember it now, Mr. McCarthy, who was on the stand here yesterday; he used to solicit for the Union Pacific. These people all solicited for the Union Pacific prior to the time that it was understood that all these railroads were under one management. And Mr. Gray solicited for the Southern Pacific. Well, after this so-called merger took place, and

it was generally understood that the railroads were all under one management and the business was being conducted from one office, and that sort of thing, this kind of dropped off. We had a fixed rate and we knew that we couldn't do anything about it, and we just simply shipped our stuff and took our bills of lading, and that is all there was to it. If there were any overcharges, why, we would put in our claims, and then if the stuff was delayed we would go and see the proper parties about it. Now, that is about the way the busi-
4197 ness has been done since.

Q. Aren't you rather mistaken in your dates? Don't you mean the condition you speak of now commenced in 1906 rather than in 1901?

A. In regard to the Union Pacific?

Q. I am not speaking about the union of the agencies of the Union Pacific and Southern Pacific, but about this coldness of the soliciting agents.

A. No, sir.

Q. Of all soliciting agents.

A. No, sir; I don't remember it that way, Judge Lovett.

Q. You think it commenced in 1901?

A. Yes, sir; I think it commenced to get—that is, there was a change that was brought about gradually. They did not seem to be so anxious to solicit freight and the rates were set and you couldn't change them. To illustrate, if I am permitted——

Q. Yes.

A. We have tried to do something with this $1.20 rate to Los Angeles on hides. In consequence of the rate to Los Angeles on hides, which I have mentioned—what I am going to tell you now, sir, I have told to but two in this room, because I don't believe in giving my private business away; but that rate cost me seventeen carloads of hides last year, and the proposition seemed to be to take the stuff to Los Angeles and then rebill it over that road east again.

Q. That wasn't in 1901, though, Mr. Summerhays.

A. No; pardon me; I am getting to the point here. The hide men had a meeting about this and they appointed Mr. Runyon and myself to wait on the Oregon Short Line officials, to see what we could do, and we waited on Mr. Plaisted. And I want to say for Mr.
4198 Plaisted that I believe he did all he could to change that and put the rate back where it ought to be, which was $1.54.

Q. From where to where?

A. From Salt Lake to Los Angeles. And right to-day, if Los Angeles was getting a fair deal to-day the rate to-day on dry hides from Salt Lake to Los Angeles, instead of being $1.20, would be $1.54. But they got that rate reduced, and the Short Line and the Southern Pacific and the Union Pacific acquiesced in it, and when we saw the effect that it was having on our business here, we went and waited on Mr. Plaisted and Mr. Reeves to see what could be done. Both of those gentlemen acknowledged it was not a square deal, but they

have been unable to do a thing for us, and I believe they have tried hard.

Q. You think it ought to be $1.54, then, instead of $1.20?

A. I think this: That there is a so-called Missouri River rate that governs the California business or the Salt Lake business to California. That is to say, to illustrate, dry hides, less than carload lots, to the Missouri River, as I have the figures in my mind now, are $2.04; the rate to Los Angeles or San Francisco, less than carload lots, should be $1.54, which is 75 per cent of that rate; instead of the rate being as it ought to be, $1.54 to Los Angeles, they made a flat rate of $1.20. They charge 3 cents more on green hides, as I remember the figures now; they charge 3 cents more on green hides and they charge 34 cents less on dry hides. Now, that we tried to get changed, but we were unable to change it. In things like that, such episodes as that, of course we try to get as near the railroads
4199 as we can, but we have not been able to change the fixed rate to the east.

Q. I have no desire to restrict you at all in any statement you may desire to make, but the question I was addressing myself at the time particularly to was this: Your statement about things tightening down after this merger in 1901. Now, I want to ask you to refresh your memory about that and see if you were not mistaken about the dates. You have proceeded to speak of the condition that existed last year, and it certainly was not possible prior to 1905, when the Los Angeles line was opened. The point that I am particularly interested in now is whether you are not mistaken as to the time when you say these things tightened down and the rates became inflexible. Wasn't that in 1906 rather than in 1901?

A. It is true, what you say, Judge, that the Los Angeles Railroad was not built, but so far as the Union Pacific or Southern Pacific was concerned, they ceased to compete for business prior to that time.

Q. Yes. One of the questions I want to get at, or expect to come to later, is the extent to which they were competing, even prior to 1901. But you spoke of things tightening down in 1901 and——

A. After that time.

Q. ——all soliciting agents becoming indifferent. You spoke of the Great Northern agent.

A. Excuse me; I didn't say anything about the Great Northern, Judge.

Q. You said the Great Northern.

A. Chicago &——

Mr. SEVERANCE. Northwestern?

4200 WITNESS. No; Chicago & Great Western.

Q. You said Great Northern.

A. Pardon me; it was my mistake.

Q. The Chicago-Great Western agent; when did he cease to be interested in your business?

A. Well, he has not ceased, and I will give you the reason. I find it very advantageous, instead of scattering my business, to give my

business to one man and let him look after it; and Mr. Starkweather has given us good service in that regard. He has not cut any rates, but anything he could do he has done, and we find it advantageous here to give our business to one man, and we give the heft of our business to Mr. Starkweather.

Q. And he represents what line?

A. The Chicago & Great Western.

Q. Well, perhaps that is the reason that other agents failed to call—because they thought it was useless.

A. No; this thing has got into a groove and it is an understood thing. For instance, take our business. Here is Mr. Guslin, of the Utah Live Stock Company; he is on the D. & R. G.; he does his business over the D. & R. G. It is recognized that is their share of the business. We do our business over the Union Pacific. It is recognized that we are Union Pacific people; we do our business that way. The business has been divided up in that way until quite recently. Right recently there has been more aggressive competition here, and we have been hardly getting a new dollar for an old one, and business has been changed.

Q. Between what lines?

4201 A. Between the D. & R. G. and the Union Pacific.

Q. They have been a little more active recently?

A. No. I misunderstood you: that is, I didn't get your last question.

Q. I understood you to say that there had been a little more active competition between the——

A. The San Pedro, this last two or three years; that is, the Los Angeles people, have come in here and there is quite a good deal of stuff goes over the Salt Lake route to Los Angeles.

Q. Now, at the time you say, following the so-called merger in 1901, when the rates on hides were increased, you seem to attribute that in some way to the changed relations between the Union Pacific and the Southern Pacific. What about the Denver & Rio Grande? It was doing business here, wasn't it?

A. Oh, when you speak of any railroad, wherever there is a pool, why, you have got to put up with whatever they pool; you have got to put up with the pool.

Q. Your idea, then, is that there was a pool in 1901?

A. We couldn't get our stuff to San Francisco over the D. & R. G. But the D. & R. G. joined in the through rate from San Francisco to the east. For instance, I took the question up with Mr. Warren, the Santa Fe man, and wanted to know if he could take my stuff around there, and he said no, he couldn't do it.

Q. He didn't have any line in here, did he?

A. Well, I could have taken it down to Pueblo, or down where they connect, and taken it around. He said he couldn't do it.

4202 Q. At the time the rates were advanced in 1901, after the so-called merger——

A. Oh, pardon me, Judge. Now I don't say it was 1901. It was after this period. It was about the time that the agencies were together and there seemed to be a feeling of straightening things up, doing away with this rate cutting and all this sort of thing, and fixing rates permanently, and that was the time. It may have been 1901 or 1902 or 1903, but as my memory serves me now it was right soon after the agencies were consolidated.

Q. I am rather pressing this because I think, with the very best of intention, you are entirely mistaken as to your dates, and I wanted to see if I couldn't assist you in checking up a little on that.

A. If I have, Judge, I will be free to acknowledge it, but if I am not I shall certainly stick to it.

Q. There was no rate cutting here after 1901, 1902, or 1903? You say that the rate cutting ceased?

A. So far as hides were concerned. When we showed the railroad people what we could do, by taking our hides to San Francisco and sending them by water to New York, and the rate was fixed at $1.94, I can't remember that that ever was cut a cent.

Q. Well, I am just asking as to the tightening up.

A. That was done before ever the San Pedro road was built.

Q. When was that rate adjustment made, that you speak of?

A. Why, it was soon after the two businesses, that is, the two roads, consolidated here and had their offices all in one, and I recognized Mr. Gray and the other officials here as working for the same roads, when they came in.

4203 Q. What about the Denver & Rio Grande; did it join in the raise, too, at that time?

A. Whatever the rate is from Salt Lake to the seaboard over the Union Pacific, it is the same over the D. & R. G.

Q. That is what I supposed.

A. Yes.

Q. So that when this rate was made, it could not have been made by the Union Pacific and Southern Pacific alone; it must have been made also by the Denver & Rio Grande?

A. Oh, I think it was a pool rate, yes.

Q. You think it was a pool rate?

A. I think it was a pool rate.

Q. You think that the pool as well as the so-called merger had something to do with it?

A. I do not think the merger was alone to blame. I think the whole push needs renovating, if you will permit that expression.

Q. How is that?

A. I think the whole push needs renovating.

Q. There is no doubt of that——

A. Of course this is all good feeling.

Q. —if we only knew how to renovate them.

A. Oh, I think we will get there after a while.

Q. When the rate was reduced after this temporary increase, the Denver & Rio Grande also reduced, didn't they?

A. They acquiesced; yes, sir. I got the same rate over there.

Q. Well, you don't mean, do you, to attribute this changed condition to the so-called merger between the Union Pacific and the Southern Pacific?

A. Oh, I think so, yes, sir.

Q. You think that is responsible for it?

4204 A. I think that is responsible.

Q. You think that affected the Denver & Rio Grande too?

A. Why, the Denver & Rio Grande, so far as westbound business was concerned, never had very much to say about it except to acquiesce in whatever pool was made.

Q. What do you mean by westbound business?

A. I mean business through the Ogden gateway.

Q. To the Pacific?

A. To the Pacific.

Q. The market for your hides is east, isn't it?

A. Not altogether.

Q. The great bulk of them go east, don't they?

A. Yes, sir.

Q. As I understand, all the rates you have been talking about are the water rates from San Francisco or the rail rates east; I don't understand you have been discussing any local rates from Salt Lake to San Francisco, because I understand you do not ship in there finally but simply that way to the east. Did I understand you correctly?

A. Let me explain, Judge, so your mind will be clear upon it. The bulk of our business goes east. We sell occasionally in San Francisco and we sell occasionally in Los Angeles.

Q. What percentage goes east? Let's get at it that way.

A. Oh, 85 per cent.

Q. 85 per cent. Now, let us deal with that 85 per cent for the time being. I supposed that was what you had been dealing with. That moves generally all rail, doesn't it?

A. No.

4205 Q. You still ship by water?

A. Some.

Q. But what portion of your 85 per cent goes east from here all-rail?

A. All-rail?

Q. Yes.

A. That depends on when navigation closes.

Q. Let's get at it in another way. What percentage of the 85 per cent which goes east goes around by ocean through San Francisco now? Very small, isn't it?

A. You are asking me now, if I get your question right, what percentage of the 85 per cent goes by way of San Francisco to the east?

Q. Yes.

A. None at all.

Q. That is what I supposed, or very little of it.

A. None at all.

Q. Now, the entire 85 per cent goes east by rail?

A. Yes, sir.

Q. The D. & R. G. has rates in on that business, hasn't it?

A. Yes, sir.

Q. And it has the connections east; that is, the various lines at Pueblo and Denver that join in the rates east?

A. Yes, sir.

Q. Now, do not a great many of your shipments go that way?

A. No, sir—for one very good reason.

Q. Why? What is that?

A. Well, we are on the Oregon Short Line track. The Union Pacific and the Oregon Short Line can give us just as good service, in fact a little better, than the D. & R. G. When we order a car we can get a car immediately from the Oregon Short Line, and if we order a car from the D. & R. G., it takes us four or five days
4206 to get it. They simply switch the car out there into the north yard, at the Transfer, and there it lies and we don't seem to be able to get it into our switch, and therefore while I may have been anxious to give the D. & R. G. some business, because they bring lots of stuff that way for us, I have been unable to do it because I cannot afford to wait for cars, and therefore practically all the business they have got is when I have sold a carload of stuff to some fellow who wants it shipped that way, and then they have got it, and we have waited for the car.

Q. What do you mean—that your warehouse is located on the tracks.

A. My warehouse is located on the tracks of the Oregon Short Line.

Q. There is no reason, that you can see, why the Denver & Rio Grande, with its connections, all joining in the rates, should not make any rates to the east it sees proper, without reference to the Union Pacific or the Southern Pacific?

A. You are asking my opinion about that?

Q. I just asked you whether there is any reason they should not do it or why they should not make any rates they see proper, as far as you can see.

A. I can't give any reason, but there must be some reason, because they don't do it.

Q. They don't do it?

A. And there must be some reason.

Q. The Denver & Rio Grande and it agents, you say, have not been soliciting your business?

A. No, sir.

Q. Don't the Rock Island and the Missouri Pacific?

A. No, sir.

Q. And the Burlington?

A. It has all quit.

Q. When did it quit?

A. Oh, long back: I can't tell you: seven or eight years, six or seven years.

4207 Q. So, after 1901, if I understand you, after the Union Pacific and Southern Pacific so-called merger occurred, and the Union Pacific and Southern Pacific agencies were consolidated here, all the other lines practically retired from the field?

A. Yes, sir.

Q. That is to say, the Denver & Rio Grande and the Chicago, Burlington & Quincy——

A. No.

Q. —— and the Rock Island?

A. No, pardon me, Judge: pardon my breaking in.

Q. Yes.

A. I am willing to except the Denver & Rio Grande. The Denver & Rio Grande has always been willing and anxious—that is, they seemed willing at least—perhaps "anxious" would be too strong, but they seemed willing to have part of our business. I would approach Mr. Darragh several times about it, and Mr. Dewey about it, because they haul lots of stuff in here for us, from their main line, and from their Sand Creek branch, and I thought it was proper to give them part of our business. They have been very nice and pleasant about it. But I can't afford to be waiting a week for a car to load my stuff to go over the Denver & Rio Grande, when I don't get any better service—not as good, as I do over the Short Line and the Union Pacific.

Q. Now, why do you have to wait a week for a car?

A. Because the Denver & Rio Grande takes that car out to the Salt Lake Transfer, at the north yards, and the Oregon Short Line people apparently leave it there.

Q. The Oregon Short Line people won't switch it?

A. No: I don't say that, but apparently they leave it there.

4208 What their motive is I don't know.

Q. I suggest now that if you ever find a case where the Oregon Short Line is neglecting your business that way, that you speak to Mr. Bancroft about it.

A. I want to say to you, Judge—pardon me for breaking in again—I want to say to you that within three months for five days I saw all the local people here and the yard people—I didn't go to Mr. Bancroft, but I saw the D. & R. G. people try to get a car in there for a lot of stuff I had sold to a man who wanted to ship over the D. & R. G., and my stuff was shrinking while I was waiting for that car, and I finally had to put up the cigars to the yard boys to go and get the car.

Q. What yard boys—the Denver & Rio Grande or the Oregon Short Line?

A. The Oregon Short Line.

Q. Where was the Denver & Rio Grande car? Had they tendered the car, do you know?

A. Yes, sir, so they claimed. I was not there, but Mr. Dewey told me that the car was out at the Transfer and that is all he could do.

Of course that doesn't happen very often, but that is the reason I don't do business with them—one of the reasons.

Q. Whom do you mean by "all the local people?" You say you complained to all the local people. To whom did you complain about that situation, Mr. Summerhays?

A. The first local people were people up here at the local freight house.

Q. Well, who are they?

A. Then the next local people are the people up here in the Deseret News Building, and when we went——

Q. Now, before you leave that subject, do you mind saying who they are?

4209 A. Mr. Craig was one, Mr. Flandreau was one—two that I can remember. Mr. Craig was the Salt Lake agent here for the Oregon Short Line and the Union Pacific and the San Pedro road down here at the depot, as I understand it, and Mr. Flandreau is one of his chief men down there; and Mr. —— his chief clerk—his name has slipped from my memory, but he is a chief clerk down there—I appealed to him.

Q. Any others?

A. Then I appealed to Mr. Dewey of the Rio Grande.

Q. Well, I am speaking of the Oregon Short Line people.

A. Well, Judge, three or four of them. There is enough for a car. I don't want to see the whole push for a car.

Q. Well, it would seem so.

A. Yes, ordinarily it would, Judge, it would seem so.

Q. And we want to know if there are any others.

A. No, I don't think there are any others.

Q. So those are the only ones you have spoken to about the car?

A. Except the D. & R. G. people.

Q. Now coming back to the question of soliciting. You say the Denver & Rio Grande would be willing apparently; there was no unwillingness to take your business. How about these eastern lines? Did their solicitors discontinue soliciting your business in 1901 and 1902? I mean now the Burlington, the Rock Island, the Missouri Pacific——

A. The lines east of the river?

Q. Yes, the lines east of the river.

A. No, they came in, but this last year or two, two or three years, three or four years, I want to say to you that the agents of

4210 some of those roads have never darkened my door that I know anything about.

Q. For the last three or four years?

A. For the last three or four or five or six maybe; they never came in at all.

Q. I don't mean merely the lines east of the river, but the connections of the Denver & Rio Grande at Denver and Pueblo, such

as the Rock Island and the Missouri Pacific and the Burlington; that is, the immediate connections of the Denver & Rio Grande; they discontinued soliciting, too, did they?

A. Yes, sir; I don't remember of seeing them around my place for years.

Q. About when did they discontinue?

A. Well, I couldn't give you the exact date in regard to that. If you will permit the word, Judge, it was a gradual evolution.

Q. Evolution?

A. Yes, sir—evolved, until to-day you don't see those men around. Now, pardon me, and I will explain something else here which I think is a reason. In shipping wool from the main-line points of the Union Pacific and points on the Oregon Short Line, for some reason or other, I don't know why, you can't get your bills of lading—not always. For instance, I remember two cases now. I was loading wool at Evanston. When I got my bills of lading ready I said to Mr. Dickey (I believe that is his name), the agent there, "I want my bills of lading." He said, "You can't get them." I said, "Why?" He said, "Because I have got to telegraph Salt Lake for routes of these cars." The same thing occurred at Fossil, and I came
4211 away from Fossil and left my bills of lading there, and my bills of lading were issued from the Salt Lake office for stuff that I had shipped from Fossil.

Q. How long did you have to wait?

A. Now, if you will pardon me, Judge——

Q. Yes.

A. Now, I understood in connection with this, that this wool was routed by the railroad over the lines that the cars belonged to. If you loaded in a Chicago & Northwestern car it went over the Chicago & Northwestern route. If you loaded in a Rock Island car it went over the Rock Island route. The same with the Burlington. And when I would undertake to give cars to Mr. Starkweather, when I would undertake to give him merchandise that was not loaded in these cars, he used to come to me very frequently and say, "They stole the car from me."

Q. That is to say——

A. When it got to the river they would steal the car from him.

Q. They would send the car over the line that owned it?

A. So, Judge—if you will pardon me again——

Q. Yes.

A. So, Judge, it appeared that there was a general understanding, has been for years, that these roads don't need to solicit the business, because it was kind of whacked up, you know, and they each got their share, and there was no need of having a lot of men soliciting in the field. The most active man that has been out here has been Mr. Curtice of the Nickle Plate, and Mr. Curtice of the Nickle Plate has really called to see me several times.

Q. And this condition of evolution has been——

A. Yes, that is the word.

Q. Has been going on for how long?

4212 A. Oh, it has been going on—it has been gradually going on ever since Mr. Gray and Mr. Choate and the rest of those men ceased to be competitors in the field.

Q. You didn't have anything of this sort prior to 1901?

A. Which sort?

Q. That you have just been describing.

A. Oh, we could get any old thing we wanted prior to 1901.

Q. Prior to 1901?

A. I have seen wool, Judge, down for less than $1.50 a hundred prior to 1901, and you could send it any way you wanted to, and I have had my wool go all-rail when there was supposed to be some water in it.

Q. That has not occurred since 1901?

A. No, sir, not to my knowledge.

Q. Now as to this business that was in competition——

A. Now, pardon me. I want to correct myself there. I have, since 1901, shipped some wool rail-and-lake, at the reduced rate, which is 5 cents off, and when the bill of lading came back it would show it would go all-rail, and I have put in my claim for it as per contract, and I have got my claim.

Q. The consolidation of the agencies of the Union Pacific and the Southern Pacific had a pretty far-reaching effect, then, as you see it?

A. It certainly had. I am candid with you. I think so, yes.

Q. And it seemed to have affected the Denver & Rio Grande, the Burlington, the Missouri Pacific, and all of these lines?

A. So far as the east-bound business is concerned over the Rio Grande, why, they seem to acquiesce in what was done by the other two roads.

4213 Q. And their connections the same way?

A. Yes, sir.

Q. They all, gradually, following out this process of evolution, retired from the field?

A. Yes. (Plaisted, you don't want to strike me too hard now.)

Q. As to the business that was in competition between the Union Pacific and the Southern Pacific, Mr. Summerhays, the wool business, you spoke of business that originated at certain stations that you named; I don't recall the names. Corinne was one.

A. Corinne and Kelton and Terrace, and through there.

Q. Those are stations on the Southern Pacific west of Ogden on the old line, running north of Salt Lake?

A. Yes, sir.

Q. And your understanding is that wool which originated there and, I think probably—I don't know whether you spoke of hides there or not. No, I think wool.

A. No, just wool.

Q. That formerly the Southern Pacific would bill that wool from San Francisco (whether it hauled it to San Francisco or not, I

didn't understand you to say) and back eastward over the Southern Pacific?

A. Yes, that was my understanding of it.

Q. Whether they actually hauled it to San Francisco and then back over the same line, you don't know, do you?

A. I don't know, but I will tell you why I come to the conclusion, Judge, that they didn't. I had a car——

Q. If you don't know, I don't care anything about it.

A. Well, I will tell you why I don't.

Q. All right; go ahead.

4214 A. I had one of my cars delayed for a long time, and in tracing that car I found it was on a sidetrack on the Southern Pacific there for two weeks—a little over two weeks, between two and three weeks—which led me to the conclusion, as I stated here, that they didn't touch that car at all in hauling it west; but they did haul it direct from the sidetrack east over the Union Pacific and joined in the long haul.

Q. That is to say, they made the rate to San Francisco and then from San Francisco back east over the Union Pacific?

A. No; I don't think they made a rate to San Francisco; that is, they didn't collect any rate off me. I simply think they billed it into San Francisco and then made the rate from San Francisco to the east.

Q. That is your opinion as to why it was done, the car in the meantime not going to San Francisco?

A. Yes, sir.

Q. And when was that?

A. That was along in the eighties.

Q. How has it been since then? Has it been handled the same way?

A. No, sir. What wool I have bought lately, what wool I have bought this last—oh, I don't know, six or seven years—has gone direct.

Q. Direct how? Over the Union Pacific?

A. Over the Union Pacific.

Q. From point of origin to Ogden and then over the Union Pacific?

A. Yes, sir; through the Ogden gateway of the Union Pacific.

Q. That has been handled that way for a good many years, has it?

A. It has been handled that way for several years; yes, sir.

Q. Now, that is the wool that the Southern Pacific handled,

4215 isn't it?

A. The wool that originated on that line west of Ogden.

Q. That is the wool that you say was formerly in competition between the Union Pacific and the Southern Pacific?

A. That wasn't all the wool.

Q. Where was the other?

A. The Oregon Short Line were competing for a portion of it from that section.

Q. I meant the Oregon Short Line and the Union Pacific as the same thing.

A. Yes, that is true.

Q. That is the wool that was in competition between the Union Pacific and Southern Pacific?

A. Yes, sir.

Q. That was all the wool in competition between them as far as you know, wasn't it?

A. Between the Union Pacific and the Southern Pacific?

Q. Yes.

A. So far as I know, yes, sir.

Q. Now, the hides that were in competition between them, where did they originate? They were shipped east from Salt Lake City, weren't they?

A. They were shipped east from Salt Lake City; we have to assemble our stuff here in Salt Lake City and bale it.

Q. And then assembling it at Salt Lake City, you could ship it east over the Oregon Short Line and Union Pacific or west over the Oregon Short Line and Southern Pacific, in either event going to Ogden over the Short Line?

A. Yes, sir.

Q. Or you could send it east over the Denver & Rio Grande if you could get the cars?

A. Yes, sir.

Q. That is about the situation?

A. That is about the situation. Of course if it went to Port-
4216 land and Seattle, it would go over the Short Line and the Navigation Company.

Q. Did you ever ship any there?

A. Yes, sir.

Q. And that always went over the Oregon Short Line and the O. R. & N.?

A. Yes, sir.

Redirect examination by Mr. SEVERANCE:

Q. Judge Lovett was asking you a little while ago about the reason, in your opinion, why the Denver & Rio Grande did not make rates to the east lower than the Union Pacific. You said you were satisfied there must be some reason, but you did not know what it was, as I understood you.

A. Yes, sir.

Q. The Denver & Rio Grande exchanges business at Ogden with the Southern Pacific, doesn't it?

A. I don't know as to that, sir.

Q. The business that is moving to the coast over the Denver & Rio Grande goes by the Southern Pacific?

A. I don't know what condition the Ogden gateway is in. I understood it was open at one time and they closed it down again; I don't know anything about that.

Q. You don't know anything about that?
A. No, I don't.
Q. You said something about an interview with Mr. Wann.
A. Mr. who?
Q. Mr. Wann, didn't you, or who was it you spoke of interviewing?
A. About what?
Q. About wool rates.
Mr. KELLY. Mr. Warren, of the Atchison.

Q. What was that interview?
4217 A. That was not in regard to wool rates.
Q. What was it in regard to?

A. That was in regard to hides. I wanted to know if he could not make the same rate to San Francisco around by the Denver & Rio Grande that I could get this other way, and he said he could not.
Q. By "this other way" you mean by the Southern Pacific?
A. I mean by the Oregon Short Line and the Southern Pacific; yes, sir.
Q. That is the route that you had in mind, was it, by the Denver & Rio Grande and then down south to a connection with the Santa Fe?
A. Yes, sir.
Q. He said they had no rates in that way?
A. He said they had no rates in; yes, sir.
Q. Had they ever had them in?
A. I don't know as to that.
Q. One witness here, I believe, testified about some business that had been handled by that route.
A. Well, I don't know.
Mr. LOVETT. I didn't so understand.
Mr. SEVERANCE. At one time.
Mr. LOVETT. One witness said that was when the Santa Fe was operating the Colorado Midland.
Mr. SEVERANCE. That is right. They handled it Rio Grande Western, Colorado Midland, and thence south.
Mr. LOVETT. What he was speaking about was to Pueblo over the Denver & Rio Grande.
Mr. SEVERANCE. I think that is true; you are right.

Q. You also, in answer to Judge Lovett, in discussing the
4218 relation of rates from here to Los Angeles as compared with the rates from here to the Missouri River, said that the Los Angeles rate or the rate to San Francisco should be 75 per cent of the Missouri River rate, as I understood you.
A. Yes, sir.
Q. Why did you say that, Mr. Summerhays?
A. Why, I understand that the west-bound business from Utah common points, that is, the rate charged on west-bound business from Utah common points, is based on the Missouri River rate and whatever the Missouri River rate is on the commodity being shipped, then if it is shipped west it takes 75 per cent of the Missouri River rate.

Therefore, the less than carload rate to the Missouri River being $2.05, the rate to Los Angeles would be $1.54, and instead of that it is $1.20.

Q. Is there any reason that occurs to you why the Union Pacific cannot reduce their rate to the Missouri River so as to make it 1⅓ times that of the Los Angeles rate? That would straighten it out, wouldn't it, just the same as increasing the Los Angeles rate?

A. No. In speaking on this matter, when Mr. Runyon and myself waited on Mr. Plaisted, Mr. Plaisted made this remark, if I quote him correctly: "What good would it do for us to reduce? If we reduced our rate, the San Pedro people would reduce their rate. You would be in just the same fix you are now." Of course that argument is unanswerable—we would.

Q. Well, would you be? You would save freight rates, wouldn't you?

A. Why, we might save freight rates, but the competition would be just the same.

4219 Q. But your saving on freight rates would be something of an item, wouldn't it?

A. If they could reduce the rate there so as to put us on a parity with the Los Angeles people, of course it would be to our advantage.

Q. What is Mr. Plaisted's position?

A. His official title, I believe, is assistant general freight agent—isn't it, Mr. Plaisted?

Q. Mr. Plaisted gave you to understand that if they reduced the rate to the Missouri River, the San Pedro people would reduce their rate too?

A. Yes; we wouldn't be in any better position.

Q. You wouldn't be in any better relative position?

A. In any better relative position.

Q. Did Mr. Plaisted tell you that he had taken up with any of his superior officers the question of reducing the Missouri River rate?

A. He didn't say that; no, sir.

Q. Did he say he had ever discussed the reducing of the Missouri River rate with anybody?

A. Not to my knowledge.

Q. Do you know whether the matter ever got beyond Mr. Plaisted himself——

A. Yes, sir.

Q. —— from anything he said?

A. Yes, sir.

Q. Whom did he talk to about it, did he say?

A. Mr. Reeves.

Q. Who is Mr. Reeves?

A. I believe Mr. Reeves is the general freight agent—I think that is his title, I am not certain—assistant general freight agent or general freight agent.

Q. What is Mr. Plaisted—an assistant to an assistant, or what?

A. Mr. Plaisted, as I understand it, is Mr. Reeves'
4220 assistant.

Q. And Mr. Reeves is an assistant to somebody else; is that right?

A. As I understand it, Mr. Reeves is assistant to Mr. Monroe, if I get it right. Now, I don't know, Mr. Severance.

Mr. SEVERANCE. What is correct, Judge Lovett? I want to get it right.

Mr. LOVETT. Mr. Reeves is general freight agent of the Oregon Short Line, and Mr. Plaisted is assistant general freight agent.

Q. Did you have any talk with Mr. Reeves about this?

A. I think we wrote him; I am not positive.

Q. The only gentleman you interviewed was Mr. Plaisted?

A. No, I think I had an interview with Mr. Reeves, too, but I am not certain: I wouldn't swear to that.

Q. And that was the argument they made against their taking any action?

A. In regard to reducing their rate. But they did take it up, if you will permit me an explanation there, Mr. Severance.

Q. Yes, go ahead. Let's have it.

A. It appeared that the San Pedro people—these gentlemen of the other lines will pardon me, but it appears that the San Pedro people perpetrated a little sharp business upon them. They said, "Why the rate on green hides is $1.17; on dry hides it is $2.54. Green hides weigh heavier. Now, let's give them a blanket rate of $1.20"—and they acquiesced in it. As a matter of fact, there are no green hides down there, because they can't ship them less than carload, but by that hocus-pocus arrangement they got 35 cents off their dry hides.

4221 Well, after it was done, these gentlemen of the Oregon Short Line and the Union Pacific and others took it up and tried to get that rate put back, but not on your life, they wouldn't put it back—they had too good a thing.

Q. Now, when these hides that my friend Mr. Wann carries down to Los Angeles under that rate, that he got in by this "hocus-pocus," as you call it—when those hides go down to Los Angeles and are baled, or whatever you call it there, put together——

A. Yes.

Q. ——and sent back east, they go east over the Union Pacific and Oregon Short Line, don't they?

A. Not altogether. The men that do business in Los Angeles have two markets. That is the disadvantage we are at. We have either got to move our business to Los Angeles to compete with them thoroughly, or else we have not got a market. They take them down there and they sell those hides, what they want to, in the California market, and the balance of them they send east. Now, those hides may come back over this road or they may go over the Southern road.

Q. You mean the Southern Pacific?

Mr. LOVETT. Or the Atchison?

A. Or the Atchison; go either way.

Q. But if they move back through Salt Lake, you stated in answer to Judge Lovett——

A. There is a per cent of them comes back.

Q. ——they come back over the same route?

A. Yes, they do.

Q. And if they come back here, they go east over the Union
4222 Pacific and the Short Line?

A. Yes, sir, as I understand it.

By Mr. LOVETT:

Q. You spoke of the rate from the Pacific coast being 75 per cent of the Missouri River rate. That has been true always, has it?

A. From Salt Lake, as I understand it, yes, sir; it has been a permanent thing.

Q. For many years?

A. Yes, sir.

Q. How long have you known it to be true—20 years?

A. Well, I can't remember. I have been in business, you know, nearly 30 years, and I can't remember how long, but that has been the basis. Whatever the Missouri River rate was, why, 75 per cent of that would be the rate—except when we would get a cut.

Q. And always has been, so far as you know?

A. So far as I know, yes, sir.

By Mr. KELLY:

Q. Mr. Summerhays, there is a rate from here to the hide market—which is in the New England States, isn't it?

A. Yes, sir.

Q. How far west from Salt Lake or north from Salt Lake is that same blanket rate carried?

A. I couldn't give you that. I don't know what the Pocatello rate is, I am sure; but south it doesn't extend beyond Salt Lake.

Q. Isn't there some blanket rate from Milford?

A. No, sir.

Q. What is the rate from Milford to Boston?

A. On dry hides?

Q. Yes.

4223 A. If you will permit me to refresh my memory. I don't know whether I have that or not. It is a little higher—not very much. [After referring to memorandum.] I have got that; it is a little higher, but not very much.

Q. What is the rate from Lynn?

A. There is a line goes down from a station called Pines, down on the D. & R. G., and there is a geometrical, a visionary line goes across to Goshen, and north of that line the same rate prevails which prevails from Salt Lake, but south of that line you pay a little more, but it isn't very much.

Q. That town is south of Provo, isn't it?

A. Yes, sir; I can't locate Pines; I don't know where it is; it is down there some place; it is a small affair.

By Mr. SEVERANCE:

Q. Just one other question about that Los Angeles business. What is the rate from Salt Lake to Boston on hides?

A. On hides?

Q. Yes. On wool, I mean.

A. $2.13.

Q. Now, this matter of shipments to Los Angeles applies on both wool and hides, does it?

A. No, sir.

Q. Only on what?

A. Only on wool.

Q. Only on wool; yes.

A. Now, pardon me. What rate have you reference to?

Q. I am speaking of the rate you were complaining of being put in that carries the traffic down to Los Angeles.

A. That has nothing to do with wool.

Q. That has nothing to do with wool?

A. Just on hides.

Q. Isn't there a similar rate in on wool?

A. Not from Salt Lake, but down the line there is.

4224 Q. That is what I mean—down the line.

A. Yes.

Q. Now, you gave us the figures a little while ago as to that rate from down the line, didn't you?

A. Yes, sir.

Q. Did I misunderstand you? Were you talking of hides? I thought you were speaking of wool then.

A. Do you want to get the hide rate?

Q. No; I want the wool rate.

A. All right. The wool rate from points south of Tooele is 80 cents to Los Angeles.

Q. Now, what does that cost to——

A. 15 cents to bale and $1.10 back to Boston.

Q. Now, we will add those up. We get $2.05, is that right?

A. I believe that is right.

Q. That makes $2.05?

A. Yes, sir.

Q. That is where the commodity is carried from a point down the line here over the Salt Lake route, so-called, down to Los Angeles, baled there, and then from there it takes the New England rate, which is $1.10?

A. Yes, sir.

Q. Now, what is the rate from Salt Lake on wool to Boston—$2.13?

A. $2.13. Pardon me, now; let me explain. The rate to Boston from Salt Lake on bagged wool is $2.13, but when this stuff gets down to Los Angeles it is baled, which takes a lower rate.

Q. I understand that, sir.

A. Pardon me.

Q. That is, as I understand you, the wool that was picked up on the line and taken down on that 80-cent rate was baled after it reached Los Angeles?

A. Yes, sir.

Q. What is the rate on baled wool from Salt Lake to Boston?

A. I don't think there is a rate in existence.

4225 Q. There isn't?

A. I don't think there is.

Q. Is it shipped from here without being baled?

A. Yes, sir; it is all in bags.

Q. All in bags?

A. Yes, sir.

Q. Now, if that wool goes to Los Angeles, then the San Pedro road would get 80 cents, in the first instance, for the haul there?

A. Yes, sir.

Q. Then, if it moved back over the San Pedro route, the Short Line and the Union Pacific, those lines would get their proportion of the $1.10?

A. Yes, sir.

Q. And if it originated here, if the wool was shipped out of here on this $2.13 rate, the Union Pacific and Short Line (if they got the haul) would get their proportion of the through rate from here to Boston, whatever that may be under established divisions?

A. Yes, sir.

Mr. SEVERANCE. That is what I wanted to know.

By Mr. LOVETT:

Q. You deal only in wool and hides, do you, Mr. Summerhays?

A. I deal in hides and wool and tallow and plaster hair and furs, and that sort of stuff.

Q. Your shipments east, that is, to points east of the Missouri River or from points east of the Missouri River, consist of what—wool and hides?

A. Hides, dry and green; wool, furs, sheepskins.

Q. Those are the only articles that you——

A. And there is tallow; or once in a while there is some tallow goes to Chicago, but very little.

4226 Q. And that has been your business for a great many years, has it?

A. Since 1883.

Q. You have not dealt in any general merchandise?

A. Oh, I have got some other connections, but not actively.

4227 THOMAS KEARNS,

being duly sworn as a witness on behalf of the Complainant, testified as follows:

Direct examination by Mr. SEVERANCE:

Q. Where is your home, Senator?
A. Salt Lake City.
Q. How long have you lived in Salt Lake?
A. About twelve years.
Q. And what has been your business, chiefly?
A. A working man, and some business connections.
Q. Aside from your duties as a laboring man, what have you done?
A. Well, that would be a long story.
Q. You are a mining man largely, aren't you?
A. To some extent, yes.
Q. Are you acquainted with Senator W. A. Clark?
A. Yes, sir.
Q. And with Mr. J. Ross Clark?
A. Yes, sir.
Q. And Mr. R. C. Kerens, of St. Louis?
A. Yes, sir.
Q. How long have you known those gentlemen?
A. Oh, on and off for ten years.
Q. Have you had more or less business relations with them?
A. Yes, sir.
Q. Do you remember the fact that Senator Clark and certain of his associates projected what is now the San Pedro road?
A. Yes, sir.
Q. Were you interested in that project with them?
A. Yes, sir.
Q. Who were the gentlemen that were Senator Clark's associates?
A. Mr. R. C. Kerens, Mr. David Keith, and myself.
4228 Q. Do you know Mr. T. E. Gibbon, of Los Angeles?
A. Yes, sir.
Q. What was his relation to the company in its formative stage?
A. The general solicitor, I believe.
Q. And was he acting for Senator Clark and his associates before the corporation was organized?
A. More for Mr. Kerens, I believe, before Mr. Clark became associated with him.
Q. You remember the time that Senator Clark came here and a dinner was given him at the Alta Club, at which the building of this road was discussed? I think you presided at the dinner, according to the newspaper accounts.
A. I remember joining at such a dinner, and I think there was more than one; I have been present at most of those functions; yes, sir.

Q. Do you remember the dinner where Senator Clark made an address which he had prepared on the question of the construction of this road?

A. Yes, sir.

Q. At the time an application was made for the granting of the Pioneer Square here for depot grounds?

A. Yes, sir.

Q. Were you at that time interested with these gentlemen in this proposed line of road?

A. Verbally only.

Q. Well, your word is good. So if you were verbally interested, you were associated with them in the matter.

A. Yes, sir.

Q. Expected to become associated, anyway?

A. Yes, sir.

Q. When that road was projected by Senator Clark and his
4229 associates, and when this corporation was organized, was it the intention of you gentlemen who were associated together to build it as an independent line of road?

A. That was my understanding, yes, sir.

Q. What did you personally, Mr. Kearns, have to do, if anything, with the procuring of the old surveys, if any, of this proposed route?

A. I negotiated with some people here in Salt Lake jointly with Mr. Kerens of St. Louis, and Mr. C. O. Whittemore, for the profiles of a line that had been run before by Salt Lake people.

Q. How many years before, do you remember?

A. I don't just remember how many years before they were made. I remember the price that they set on those maps and profiles, and I was authorized to purchase them at that money, which I did.

Q. Did you get them from a man by the name of Church, or had the surveys been made by a man by the name of Church?

A. As to just who made the surveys now I couldn't state.

Q. Do you recall where the surveys ran? In a general way where did they begin?

A. They began at Salt Lake City.

Q. And went in a southwesterly direction towards Los Angeles?

A. Yes, sir.

Q. After you organized the company what steps were taken toward laying out a line or constructing a line?

A. Engineers immediately were put to work. I didn't have charge of that division, however. We employed competent engineers to run a profile through.

Q. Who were the engineers put in charge of the matter?

A. There were several, but McCartney was the gentleman
4230 with whom I came in contact most—a gentleman by the name of McCartney.

Q. He was the principal man, wasn't he?

A. Yes, sir, at that time.

Q. And where did those engineers go to work?

A. First at Los Angeles, I believe. I was not in the field at that time, I was engaged in other business.

Q. You were not here?

A. No.

Q. At least you were not there?

A. No, I was not there. I was in and out of the city and in the office, but not in the field, no, sir.

Q. You learned some time afterwards, did you not, that the Oregon Short Line interest had concluded to build a line of road to Los Angeles?

A. Yes, sir.

Q. Up to the time of the organization of your company and the time the surveyors went to work, had any move been made, so far as you know, by the Oregon Short Line toward building that line to Los Angeles?

A. I couldn't say as to that.

Q. Had anything of that kind come to your knowledge, I say?

A. No, I was not connected with the Oregon Short Line's business in any way, and I hadn't discussed that part of it.

Q. It hadn't become public if they had any such idea?

A. We hadn't conflicted with them at that time in any way.

Q. I say they hadn't made any move, they hadn't appeared in the field doing any work up to that time?

A. Well, there was a long open space in there that I was not in. I don't know what they were doing. I couldn't say anything about that. I don't know anything about that.

4231 Q. At the time you procured this survey, Senator Kearns, had you any knowledge that the Oregon Short Line were contemplating building a line down there? Had they done anything publicly to indicate it?

A. At that time my attention was not called to it, and I didn't know anything to that effect, no.

Q. You didn't know of anything of the kind, if they had any such intention?

A. No, sir.

Q. That is what I mean. Did you ever build any line at this end—your company?

A. No, sir.

Q. Where did you build at the other end?

A. My predecessors owned a small line from San Pedro Harbor into Los Angeles, which was amalgamated into this system, and they built from there through to some point in near Vegas and afterwards started construction jointly from this end, I believe, down from Caliente to where they joined. I don't know just the point.

Q. The San Pedro line (I am speaking now of your company, before you joined hands with the Short Line) were building a line from Riverside to Los Angeles, were they not?

A. Yes, sir.

Q. Previous to the time of the amalgamation of interests had you run a survey across the desert?

A. Yes, sir.

Q. And over the Cajon Pass?

A. I can't state just what that survey contained.

Q. What?

A. I am not familiar with the surveys. There was an arrangement made with the Santa Fe road.

Mr. LOVETT. There are several deserts there; which one do you mean?

4232 Mr. SEVERANCE. I mean down below Uvada, below Caliente.

WITNESS. Speaking of the Cajon Pass, we now run on a part of the Santa Fe Railroad and contemplate building our own in the near future.

Q. Do you remember the time when the Short Line commenced to show signs of life in the direction of Los Angeles? I am not asking you to fix the date, but do you remember the fact?

A. I remember about the time they came together at Caliente.

Q. Were you down there yourself?

A. No, sir.

Q. Never there at all?

A. We had shipped supplies in from this end and had men at work there. We had daily reports as to what was going on. That is all I know.

Q. You were not personally present, but you did hear what actually happened?

A. I think I was on one occasion, but I didn't see any work going on. I just went in on a car and out again in a few hours.

Q. How far down did you get, Senator?

A. I think I went to Caliente, close to there.

Q. Was that before the union of interests was effected?

A. Yes.

Q. At that time when you were down there——

A. I went down to the end of the road, yes.

Q. How is that?

A. I went down to the end of the rails.

Q. At that time did both companies—the Short Line people and the San Pedro people—have gangs of men down there at work?

A. Yes, sir.

Q. What were they doing?

A. Building a railroad.

Q. How much line was there built, each paralleling the other?

4233 A. There was considerable grading. I don't know just how much. It is visible there below Caliente now, in the Meadow Valley Wash.

Q. Can you give an idea of how many miles long?

A. No, sir. I didn't go down to the end of where the grading was, where the men were working; I just went to the end of the rails.

Q. How long, Senator, were the two gangs at work down there, building parallel to each other?

A. I couldn't state the exact time now from memory.

Q. Couldn't you give it approximately?

A. No, I couldn't just tell. I know they continued there until after the decision of the court in Nevada and the ruling of the Interior Department in regard to the right-of-way.

Q. That was in regard to the right-of-way through the canyon, the Meadow Valley Wash?

A. No, it was through the tunnels and that right-of-way.

Q. Yes, that is what I understood. And that ruling was adverse to you in the Land Office at Washington, wasn't it?

A. Adverse to our interests, yes, sir.

Q. It appears by the testimony of Mr. Gibbon, which is in the record here, that certain negotiations looking to a union of the interests grew out of a talk between himself and Judge Kelly, who represented at that time the Union Pacific-Short Line interests; that gradually grew into what terminated finally in the settlement that took place. Were you present at any of the negotiations with the Short Line people looking to an amalgamation of the interests in the
4234 construction of a single line?

A. I believe on one occasion I was, with Mr. Kelly, Mr. Gibbon, and some others, at a dinner in New York, if I remember right about that time—and Mr. Bancroft.

Q. Who represented your interests? That is, I don't mean your personal interests, but the interests of yourself and your associates in the negotiations for the combination of the two interests?

A. Mr. A. W. Clark, I expect, through the general solicitor, Mr. Gibbon. I had most of my conferences regarding it with Mr. Clark.

Q. With Mr. Clark and also with Mr. Gibbon?

A. And Mr. Kerens.

Q. And Mr. Gibbon?

A. No, Mr. Kerens.

Q. Did you also have conferences with Mr. Gibbon?

A. Yes, from time to time.

Q. Over how long a period were the negotiations, Senator Kearns, that culminated in the contract made between Senator Clark and Mr. Harriman?

A. I couldn't say as to that; some months.

Q. Some months?

A. Yes.

Q. And during those months, when that was under discussion, were the various features of the matter brought to your attention from time to time?

A. When the first negotiations were opened, I approached Mr. Clark myself to urge him to make those terms after the decision of the Department was against us and we didn't have that right-of-way; and of course then there were many conferences between the owners and their attorneys on different occasions and at different places.

Q. What was Senator Clark's attitude when you approached
4235 him and urged him to make the deal?

A. He was not at all anxious at that time.

Q. How long before he became anxious, or did he ever become anxious?

A. He said he wanted to go along a while yet. I told him that he had a good deal more money than his associates, or at least I thought he had, and there was no room in there for two roads, and from a financial standpoint I would like to see one successful road, and I urged him to open negotiations through his solicitors, to see what terms could be made. We were in that box canyon and there was no way out of it except by an air-ship. This other line was some two hundred miles longer—it was not practicable. From a financial standpoint it didn't appear to me that there was anything left to be done, only to put one——

Q. You felt satisfied, did you, that if two lines were built through to Los Angeles, they could not be financially successful?

A. I didn't care to put any more of my finances into it—my small pile.

Q. I appreciate that, but just give me a direct answer, Senator. That was your feeling, that two lines paralleling each other to Los Angeles could not be a success financially?

A. I know that—I knew it.

Q. You knew it?

A. Yes.

Q. You remember the joint survey that was made through the canyon, don't you?

A. Yes, sir, to a certain extent.

Q. Two lines were surveyed through?

A. Yes, sir. I mind our people making the proposition to have a line surveyed. As to the two surveys themselves, I had no access to their survey.

4236 Q. It appeared by the testimony of a witness here yesterday that a joint survey was made, that is, two lines were surveyed through. How much did the San Pedro road pay the Short Line interest for the lines acquired here in Utah and Nevada in the adjustment of the matter, where all the lines that the Short Line interests had went into the deal?

A. Well, now, that I could not give clearly. The solicitors of the road and Mr. Kelly and others could give that more clearly. It was an amalgamation of both interests, and I understood that this appendix of the Short Line was bonded the same as the rest of the system and an arrangement to take care of those bonds that were already on there and place them in the San Pedro line, with new securities. As to those details, I could not explain them.

Q. Now, wasn't there a lot of track that was taken into that deal from the Short Line, which was not necessary or even desirable to the San Pedro road for the purpose for which it was organized?

A. I wouldn't state that. I wanted to take in a little more.

Q. You wanted to take in more. How much more?

A. Oh, from Sandy into the city, and part of the switches into the main depot here, which I understood the Short Line controlled.

Mr. LOVETT. I didn't get that question.

Mr. SEVERANCE. I asked him if there wasn't a lot of that track taken into this deal which was not necessary for the San Pedro line, as projected.

4237 Q. You felt it was a good thing for the San Pedro to acquire all the track that it did acquire from the Southern Utah, did you?

A. And a little more; everything south of Salt Lake City.

Q. That was your view, that that was a good thing for the road?

A. Yes, sir.

Q. Did you know anything about the physical condition of the property that you took over?

A. I am not a railroad man—no more than traveling over it.

Q. You had traveled over it?

A. Yes.

Q. But you didn't know whether it was a good road or a poor road?

A. I know the rails were light; it was not a first-class road, but it was a fair western road.

Q. You re-built a lot of it, didn't you?

A. Yes, sir, and some of the grades need re-building yet.

Q. And you put down heavier rail?

A. Yes, sir.

Q. Strengthened it and widened the fills?

A. Improved the road in many ways, yes.

Q. Your projected line to Los Angeles was for a first-class road, wasn't it?

A. That was the intention, yes, sir.

Q. You finally built a high-grade road, didn't you—a high-class road?

A. Well, we think we did; that was the intention.

Q. When you went into this enterprise with Mr. Clark and others, you did not share in the feeling that you afterward had, that the line would not be profitable, did you?

A. No, sir; I wouldn't have gone into it if I had.

Q. No; that is what I thought. You didn't do it for your health?

A. No, not exactly.

Q. You were feeling well?

A. Yes.

4238 Q. Did you see the contract of settlement between Mr. Harriman and Senator Clark before it was executed?

A. Yes, sir.

Q. Was that satisfactory to you?

A. Yes, sir, it was at that time.

Q. And to Mr. R. C. Kerens—satisfactory to him?

A. I didn't hear him object in any way. It was read to us both and gone through fully.

Q. Who prepared the contract on behalf of your interests?
A. Mr. Gibbon and others.
Q. Mr. Gibbon principally, wasn't it?
A. He was the general solicitor, yes, sir.
Q. And who prepared it on behalf of the Short Line interests?
A. As to that I don't know.

Cross-examination by Mr. KELLY.

Q. Mr. Kearns, the surveys, maps and profiles for which you negotiated were made by a local Utah company, weren't they?
A. I understand so, yes, sir.
Q. Do you remember the name—Utah & California Railroad (or Railway) Company?
A. I think that was the name, yes, sir.
Q. It was the company in which George Q. Cannon and some others had had an interest?
A. I believe so, yes, sir.
Q. It was a company organized to construct a railroad upon the old Oregon Short Line grade from Milford or thereabouts westward?
A. Yes, sir.
Q. The maps and profiles which you secured from that company extended westerly from about the state line through and into
4239 Nevada or into Nevada as far as what was then known as Clover Valley Junction and covered a partially completed grade extending from Clover Valley Junction up towards Pioche?
A. I wouldn't be accurate about those points just now, but that was the country—from there southwesterly.
Q. It covered the old grade made in 1890 or thereabouts?
A. Yes, sir.
Q. Those maps and surveys and profiles which you thus obtained related to the maps and profiles of an already constructed railroad grade for a considerable distance?
A. As to that I wouldn't be sure.
Q. What relation to your plans and purposes did the existence of that grade from the state line westward and to Pioche have?
A. Nothing more than to see what kind of a line could be gotten through there, and Mr. George Q. Cannon informed me that these maps were in existence, and that they were of no use to the present company because they did not intend to construct, and he expected our people could get them reasonably. I mentioned it to our people in the state here. At that time there were no provisions made for funds, they hadn't paid in any here, and we got together and guaranteed it ourselves and paid the money for the maps and profiles and turned them over to our engineer's office.
Q. Now, those maps and profiles for which you negotiated, you understood related to and embraced that old line built by the Short Line as far as it was built about 1890, and embraced the tunnels and cuts and fills down to what is now Caliente?

A. As to that I wouldn't be absolutely sure.

4240 Q. You knew of the existence of such a line?

A. Oh, yes, sir.

Q. Did your associates at that time have any purpose in respect to getting that line?

A. Yes, sir.

Q. What was that purpose?

A. To build a road through in here.

Q. I know, but in respect to your grades, tunnels, cuts and fills, and all that?

A. Well, to see if it was as good a line as their engineers would find in one of their profiles, and to enlighten them on just what the line was down through there.

Q. The purpose was to examine that line, and if it were approved as part of your through line, then it was your purpose to secure it and adopt it and build your line there?

A. Yes, sir.

Q. In pursuance to that purchase you did have the line examined?

A. Yes, sir.

Q. And was the line in your councils determined upon as one that you would want?

A. I expect it was, yes, sir, until——

Q. Now, I am not at present inquiring anything about the survey from Salt Lake to Pioche and down that way. I am only referring to the line between Uvada and Caliente.

A. Well, now, sir, I was not familiar enough with that at that time to give the particulars.

Q. One of the lines of survey or reconnoissance of the country included a line running from Salt Lake in a more or less direct way to the upper end of the Meadow Valley Wash and down by

4241 Pioche to or near Clover Valley Junction, did it not?

A. I believe so, yes, sir.

Q. Now, compared with the present line of the San Pedro Company, which was the long line?

A. That line was: the present line was the short line.

Q. This is the short line—the one constructed?

A. Yes, sir.

Q. What was the fact about the difficulties of construction of the other line that was not adopted?

A. As I remember now, the grades were higher and the distance longer.

Q. Heavy construction work?

A. Yes, sir.

Q. It went across two or three summits, didn't it?

A. I believe so, yes, sir: it was not as desirable as this line: at least it was not thought so.

Q. And because of that comparison of the two lines as they were made, your company preferred the line extending from Caliente this way, on the present line of construction?

A. Yes, sir.

Q. Was your company advised, as a matter of law, that by appropriating that line and adopting the surveys of the Utah and California Company, that you could appropriate that to your purposes and to the uses of the new company?

Mr. SEVERANCE. I object to that as incompetent, immaterial, and not cross-examination.

A. I think they were; yes, sir.

Q. Were the works between Uvada and Caliente regarded by your company as of substantial value? The works, I mean, including the tunnels and roadbed as it existed.

A. The right-of-way and privilege to run through there;
4242 yes, sir.

Q. Now, the attempt to secure that old roadbed and right-of-way resulted in a controversy with the Short Line Company and its agents?

A. Yes.

Q. That controversy was carried through the land office of the United States for Nevada and to the Department of the Interior at Washington?

A. Yes, sir.

Q. That is right, isn't it?

A. Yes, sir.

Q. Is it not true that on about the 24th of April, 1901, the matter was decided in the Department of the Interior at Washington in favor of the Short Line road?

A. Yes, sir, I so understand it.

Q. Up to the time of that decision the Short Line Company had been pushing the work of laying ties and iron and constructing a railroad from Uvada toward Caliente, on the old grade?

A. That I don't know.

Mr. SEVERANCE. When did they begin? You say they had been proceeding. From that they might have commenced ten years before. I don't think you mean that, from your question. You say up to that time they had been proceeding.

Mr. KELLY. Well, up to that time——

Mr. SEVERANCE. Well, he says he doesn't know, so it doesn't make any difference.

WITNESS. They were at that time; leading up to that time I couldn't cover that space, but at that time they were; yes, sir.

Q. Do you know how far down the old grade from Uvada toward Caliente they had proceeded at the time of that decision in
4243 Washington, laying track and building——

A. If I remember right, I think they were doing some grading below there.

Q. Now, about the time of that decision in Washington, the situation had become strained as between the men on the ground, hadn't it?

A. Yes.

Mr. SEVERANCE. He says he wasn't there.

Mr. KELLY. He knows it from the daily reports, he says.

WITNESS. It was so reported to me; yes, sir.

Q. Thereupon the matter was taken into court and a decision obtained later on?

A. Yes, sir.

Q. Now, at the time you went down to the end of the line, you went down over the Oregon Short Line, in an Oregon Short Line train, to the end of the track at Caliente?

A. Yes, sir.

Q. That must have been, was it not, along about the middle of June, 1901?

A. I couldn't fix the exact date.

Q. Was it before or after the case had been submitted to the court at Carson?

A. It was about that time; it was after the scramble for possession of the grade.

Q. At the end of the rails at Caliente, as it existed then, you found that there were two forces of men proceeding down the canyon?

A. Yes, sir.

Q. Some men on behalf of the San Pedro Company were constructing a grade and a roadbed, and near to them the Short Line forces were also constructing a grade and a roadbed?

A. Yes, sir.

Q. Those two grades were close together?

A. Yes, sir.

Q. Sometimes crossed each other?

A. As to that point I would not be sure.

4244 Q. You couldn't say?

A. No.

Q. But, at any rate, beyond that point there was a force of men continued at work by both roads?

A. Yes, sir.

Q. Now, your company had made a preliminary survey of a line extending from Caliente up toward Pioche and from there to Salt Lake, and that is the line we speak of as the longer than the other line?

A. Yes, sir.

Q. That line connected with your projected line, extending across Nevada from Caliente?

A. I so understand; yes.

Q. Now, Senator, at the time you first negotiated here with the Utah people for the maps, profiles, and surveys, the San Pedro Company had not, in fact, been organized, had it? Your California propositions were all as owners of a little road out there known then as the Los Angeles Terminal Railroad Company?

A. The organization had not been perfected.

Q. The organization had not been perfected, and, in fact, was not perfected until the 21st of March, 1901?

A. Well, until some time after that; I couldn't fix the date.

Q. The road of the Los Angeles Terminal Railroad Company extended at that time from San Pedro on the bay, through Long Beach, up to Los Angeles?

A. Yes, sir.

Q. With a line extending out to Pasadena and a branch line extending from that line up through Glendale to Verdugo?

A. I so understand it.

Q. It had not commenced the construction of a line, had it, from Los Angeles toward Riverside until about the time of the incorporation of the San Pedro Company?

A. No, sir.

Q. The purpose of the owners of the Terminal Company was
4245 to organize the San Pedro Company and afterwards to secure right-of-way and construct a line?

A. Yes, sir.

Q. But that California construction had not in fact commenced, had it, until about the latter part of March or first of April, 1901?

A. About that time; I would have to refresh my memory on the date.

Q. Now, did the decision in favor of the Short Line Company as against the San Pedro Company and its auxiliaries have any effect upon your views as a promoter of the new company in respect to building that line?

A. Yes, sir; considerable.

Q. Will you just state why the loss of that line influenced you to take the steps which you say you took with Senator Clark?

A. Well, we considered it was the only practicable line out of the canyon. We were led to believe, through our solicitors and other influences, that of course we could get possession of that right-of-way, and the decision rendered prospective two lines being built. I had considerable money for a man of my means invested in it, and I knew the only thing to do was to consolidate and build one line.

Q. The mere roadbed and tunnels themselves were not controlling, were they?

A. No, sir.

Q. The physical condition of the country was such that the use of the Meadow Valley Wash and the canyons approaching it were of great value in constructing a practical operating road?

A. Yes, sir.

Q. You felt that two lines through there would be not only expensive to construct but also to maintain and operate?

A. Well, I didn't want it with my money.

4246 Q. Thereupon you began considering with your associates, including Senator Clark, the expediency of making some sort of an arrangement by which one line should go through there?

A. Yes, sir.

Q. Up to that time, or at the time the Short Line had won that controversy, and by the time it had won that controversy, you had

become satisfied that it was the intention of the Short Line Company to build their line anyhow?

A. How is that?

Q. By the time of the controversy——

A. By the time: yes, sir.

Q. —— you had become satisfied that the Short Line intended to go through there?

A. At that time: yes, sir.

Q. Mr. Kearns, when that became apparent to you, that the Short Line was going through at any rate, it had already a line 326 miles on the way to Los Angeles, clear to Caliente?

A. Yes, sir.

Q. And you became satisfied that it was going on with the remainder of the line, about 580 or 590 miles more?

A. It looked that way to me at that time.

Q. Then it became necessary for you to consider whether you wanted to build a line of railroad practically from Los Angeles through to Salt Lake, practically parallel, and certainly parallel and competitive as to every bit of business it would carry?

A. At that stage in the proceedings, when they began to parallel each other, I knew what it meant from a financial standpoint, yes; and I considered, with many of them, selfishly, that it was
4247 ruination to me if I continued, or with the interest I had in there, not to me personally, and I so prevailed on my associates.

Q. Now, Mr. Kearns, when the matter of considering the situation was taken up, immediately after that decision at Carson, your associates and Mr. Harriman's representatives, the Short Line representatives, appointed a committee to make an examination through the canyon, didn't they—a joint lay-out?

A. That is as I understand it; yes, sir.

Q. Now, the purpose of that was to determine the feasibility of building and maintaining and operating two lines through that canyon?

A. That was the idea.

Q. In fact, the canyon extended about 125 miles?

A. That was the impression given out, but I don't think anybody on either side was very anxious for it.

Q. What they did was, they made a study of the canyon?

A. Yes, sir.

Q. The canyon extended from Caliente about 125 miles southwesterly, didn't it, more or less?

A. Something like that; I am not familiar with the distance.

Q. And about to the top of the hill, this side of Caliente, up to Clover Valley Wash, it was some 25 miles more. The whole line of 125 to 150 miles having relation to the Meadow Valley Wash was necessary for one line, that is to say, one good line could be put through there, but there wasn't room for two?

A. Well, as to what lines could be put through there I couldn't state, but I don't think any more than one line through there would pay the fixed charges.

Q. Do you not remember, as a matter of general information about it, that from Caliente down to the end of the canyon the
4248 two proposed lines, as they were then surveyed and laid out by the respective corps of engineers, crossed each other twenty-six times?

A. Yes; I know I put up part of the money.

Q. Do you know how much right-of-way or construction work had been done, say, up until the time of the decision, this side of Los Angeles, by the San Pedro Company?

A. No, sir; I couldn't state.

Q. There had been no track laid this side of Los Angeles, had there?

A. I couldn't just state that. I was in the east a good portion of this time and was not in the field, and I couldn't fix the dates.

Q. If there was any, it was but very little anyway?

Mr. SEVERANCE. Well, the witness says he does not know, Judge, and you can prove that by somebody who does know.

Mr. KELLY. Yes; I can prove that by somebody who does know.

Mr. SEVERANCE. If it is important.

4249 Mr. LOVETT. If your honor please, I forgot to ask Mr. Oglesby, one question yesterday when he was on the stand. I want to recall him just to ask him one or two questions.

## JOSEPH OGLESBY,

recalled for further cross-examination, testified:

By Mr. LOVETT:

Q. Mr. Oglesby, when you were on the stand yesterday, on your direct-examination, you testified that some years ago the Union Pacific ran some fast freight trains from Council Bluffs to Ogden.

A. Yes, sir.

Q. I intended (but forgot) to ask you on cross-examination about when that was, if you know, and about how long those trains were operated on that schedule.

A. I can't recall the exact date, Judge; it lasted for about eight months, as I remember.

Q. About eight months?

A. Yes, sir; I don't recall the year.

Q. Was it prior to 1900? Was it about 1897?

A. About that.

Q. Was that the 54-hour train?

A. 54-hour train, is my understanding of it.

Q. Did you hear Mr. McCarthy's testimony here two or three days ago?

A. Yes, sir, a portion of it.
Q. You refer to the trains that he referred to in his testimony?
A. Yes, sir.
Q. As being advertised by them at that time?
A. Yes, sir.
Q. 54 hours. Your recollection is that continued about——
A. About eight months.

4250 By Mr. SEVERANCE:

Q. Wasn't there one time, for a short time, that the Union Pacific ran a 32-hour freight train?
A. Not to my knowledge; I don't remember it.
Q. You don't know about that?
A. I have no recollection of it.
Q. Are you clear in your mind, sir, that the 54-hour schedule was only in force eight months?
A. That is my impression, as nearly as I can recollect; just about eight months.
Q. And what was the time made before and after that eight months' period?
A. Oh, possibly 75 or 80 hours, something like that.
Q. Still, a good deal faster than the present slow schedule of 100 hours?
A. Yes, sir.
Q. How long have they been giving this particularly poor service that they give now—100-hour trains?
A. That I can't answer; I have been out of the business for the past two years.
Q. Had those slow trains gone on the line at the time you were in business?
A. Well, yes. I wouldn't call them a slow train.
Q. What would you call the 100-hour train? I won't characterize it except by the train.
A. Well, I don't remember the 100-hour train. That is since I ceased to be in the business. I have no recollection of any time being so slow as 100 hours.
Q. In the old days, when competition was active, it would not have been possible, would it, to do very much business if
4251 the best inducement you could offer in the way of service was 100 hours to the Missouri River from Ogden?
A. You mean now so far as the Union Pacific is concerned?
Q. Yes.
A. It would compare quite favorably with the other route, yes, sir.
Q. I say in the old days, when there was lots of competition for business, a 100-hour train would not have been a very attractive thing to offer, would it?
A. Not very, if you had competition against you.

By Mr. LOVETT:

Q. Mr. Severance referred to the old days when competition was active?

A. Yes, sir.

Q. Do you understand what he referred to—what competition?

A. I presume he meant the competition between the D. & R. G. on the one hand, and the Union Pacific on the other.

Q. That is the competition you understand he referred to?

A. That is the competition that I understand.

4252 CHARLES D. MOORE,

being duly sworn as a witness on behalf of the Complainant, testified as follows:

Direct-examination by Mr. SEVERANCE:

Q. Mr. Moore, where do you live?

A. Salt Lake City.

Q. What is your business?

A. Civil engineer.

Q. How long have you been living in Salt Lake?

A. Seventeen years.

Q. Been practicing your profession all that time?

A. Yes, sir.

Q. In connection with what classes of construction work?

A. Principally railroading.

Q. For what lines of road have you worked?

A. The San Pedro and other minor lines.

Q. I didn't hear you, sir.

A. The San Pedro was my principal work here in Utah. I also built the Salt Lake & Merker road.

Q. When were you engaged by the San Pedro road or the gentlemen who projected the San Pedro road?

A. Early in 1901.

Q. Who was the gentleman that engaged you, who employed you?

A. Mr. H. M. McCartney, and Mr. Hogwood, who was chief engineer.

Q. What was Mr. McCartney's position?

A. Assistant chief engineer.

Q. Was he in immediate charge of the work down the line?

A. At this end of the work.

Q. What was your position?

4253 A. I was locating engineer of the road.

Q. You located the line?

A. Yes, sir.

Q. Will you state just what you did in the way of locating the line, where it started and where it ended, and when you commenced work?

A. We first began our work at the state-line for engineering, and worked south through Meadow Valley Wash.

Q. You first commenced where?

A. Began at Uvada, the state line, and worked south through the canyons, Meadow Valley Wash, and towards the California state-line. Then we returned to Salt Lake and conducted a series of surveys from this city to Modena and the state-line.

Q. Where did those surveys connect up with the survey from Uvada down?

A. Practically at Modena.

Q. How far is Modena from Salt Lake?

A. About 276 miles.

Q. Did you finally adopt one of the routes? You say you surveyed a number of routes. Did you finally adopt one as the best route to Modena?

A. From this point?

Q. Yes, sir.

A. I don't think there was ever any line adopted.

Q. How many lines did you survey?

A. A portion of the way there was only one line: farther on there were two or three experimental lines.

Q. How long did it take you to make those surveys? What time did you finish your surveys to Modena from Salt Lake?

A. The latter part of 1901.

Q. Now you say you surveyed from Uvada down through the canyon out toward California?

A. Yes, sir.

4254 Q. Was there any other surveying party in the field beyond you toward California or coming this way from California?

A. We were conducting three parties on our part through the country there. There were three parties of engineers doing the work.

Q. Under your charge?

A. Under my charge: yes, sir.

Q. And where were these three parties working?

A. At the time the Short Line track was pushed forward, one party was working on what was known as the Pioche branch from Caliente towards Pioche: other parties farther down the canyon known as the Meadow Valley Wash.

Q. Was there any party working this way from California?

A. Yes, sir, there were parties in the field.

Q. That is what I wanted to get at. And when did they begin their work—about the same time you began on this end?

A. That work was underway when I came on to the road in 1901. I don't know when they began it.

Q. Did they in coming this way reach a point of connection with the surveys being made under your direction?

A. Yes, sir.

Q. So that there was surveyed a complete line through?
A. A complete line, yes, sir.
Q. And that was finished about when?
A. Some time in 1903.
Q. 1903?
A. Yes, sir. 1902.
Q. 1902, yes.
A. Yes, sir.
Q. You began in the spring of 1901?
A. Yes, sir.
Q. And the work at the other end had already begun?
A. Yes, sir.
4255 Q. You had your end finished in the fall did you say,—that is, the survey from here out and down through the canyon, out on to the desert, in the fall of 1901?
A. Well, during the winter.
Q. During the winter?
A. Yes, sir.
Q. And was it during that winter that the other party connected up with you—in the winter or spring of 1902?
A. It was, yes, sir.
Q. Now, did you locate any of your line on some right-of-way that Senator Clark had bought at tax sale?
A. I did.
Q. Where there had been some grading. Where was that located?
A. From Uvada, the state-line, through to Caliente, through what is known as Clover Valley Wash.
Q. Now, Mr. Moore, had there been any track laid at any time on that grade which was afterward taken up?
A. Not on that portion of it.
Q. Had there been on any of the line that you adopted?
A. A track had been laid from Milford down very near Uvada, which was taken up, but at the time we commenced our work the track had been re-laid and was already at Uvada and a little past there.
Q. Now, when you were at work down there below Uvada, when did you first see anything of the Oregon Short Line surveying parties or construction parties?
A. They were there very soon after we got there; that is, the construction parties, track-laying parties.
Q. Did the San Pedro interests—by that I mean the Clark interests, the original San Pedro interests you were working
4256 for—have any grading outfits down in that country?
A. Yes, sir.
Q. How soon after you got there did those grading outfits reach there?
A. They arrived there about in unison.
Q. About together?
A. About together, yes, sir.

Q. Could you give an idea of about how many men those people had at work in those grading outfits?

A. I couldn't tell. All the men we could get.

Q. As many as you could get?

A. Yes, sir.

Q. And you would not be able to make an estimate of how many you had?

A. I wouldn't undertake to say.

Q. The other people were there with gangs too?

A. Yes, sir.

Q. Now state just what happened, that you observed there. What was done by these respective gangs, that is, your construction gang and the Short Line construction gang? Just state in substance what transpired there as far as you observed it, Mr. Moore.

A. So far as I observed, the Oregon Short Line were pushing their track forward and we were doing what we could to prevent their coming on, and were gradually falling back until the track reached Caliente.

Q. What were your graders doing?

A. We were working farther down, on new work.

Q. Oh, on new work?

A. On new work, yes, sir.

Q. And it was merely a question of resisting this invasion on the upper end, was it?

A. Yes, sir, that was all.

Q. What methods were adopted by your people in resisting this advance, and what methods were employed by the Short Line
4257 in conducting the advance?

A. Why, I don't recall. There were barricades put in, tunnels and wire fences erected.

Q. And taken down?

A. And they were taken down, and the track moved on.

Q. Any gun play?

A. There was some firing.

Q. Was it in the air or at each other?

A. I don't think it was—no one was hurt; I don't think there was any intention of that.

Q. Was that confined to one party, or did it extend to both parties?

A. I guess both parties were mixed in it.

Q. Any sheriffs there?

A. Yes, the sheriffs of the two States were at Uvada, Millette County and Lincoln County, and I think the county attorneys; I am not sure about that.

Q. How long did trouble of that character last?

A. A matter of a couple of months, I would say.

Q. Who was there in command of the Short Line forces on the ground?

A. Mr. Young was there most of the time.

Q. What is his first name?

A. Joseph Young.

Q. Who was in command of the San Pedro forces on the ground?

A. Their attorney, Mr. King, who was acting under Mr. Whittemore, I believe.

Q. Mr. King and Mr. Whittemore. Was Mr. Whittemore down there?

A. I didn't see him there.

Q. Was Mr. Ashton down there, on the Short Line side?

A. I don't remember of seeing Mr. Ashton there until later; still, he might have been.

Q. Now, while this work was going on, what was your party of surveyors doing? That is, while these wire fences were being
4258 put up and barricades made and taken down and the Short Line pressing on, what were your surveyors doing?

A. Our work was mostly ahead of all this trouble, projecting new lines down the Meadow Valley Wash. As I say, we had one party on the Pioche branch, and two parties farther down the canyon.

Q. Now, do you remember when a truce was fixed up between the two sides and a joint survey was made down through the canyon?

A. I do; yes, sir.

Q. What was done, and what was the arrangement under which that was done, if you know?

A. Well, we received instructions to go on jointly and locate a line under certain conditions which were fixed in an order from Carson City. The old surveys crossed and re-crossed a good many times, but the survey which was conducted jointly was at no point nearer than twenty feet from centre to centre of the track, and did not cross in any case.

Q. Did not cross?

A. No, sir.

Q. That is what I wanted to get at. There had been independent surveys made which had crossed each other about 26 times, hadn't they?

A. I believe about that number of times.

Q. Well, a few more or less don't make much difference when you get up to such figures. And when this survey that you speak of was made, two lines were surveyed through the canyon, were there?

A. Yes; one parallel with the other.

Q. And they didn't cross at all?

A. No, sir.

Q. Were those two lines that were run feasible routes through the canyon?

A. They were feasible, but very expensive.

Q. Yes, but they could have been built through?

4259 A. They could have been constructed; yes, sir.

Q. You know where the single line was finally located, don't you?

A. Yes, sir.

Q. Did that follow either one of these two routes?

A. Not in whole.

Q. Did it follow any original survey that had been made?

A. It followed the original survey in a general way, but there were points where a double track necessitated very heavy work, which we corrected to reduce that work, as over the joint survey.

Q. How long is this canyon and Wash?

A. The Meadow Valley Wash?

Q. Yes.

A. 110 miles.

Q. How long did you continue with the San Pedro road?

A. Till nearly its completion.

Q. Until its completion?

A. Yes, sir.

Q. Did you have anything to do with the work of building over the lines that were taken over from the Short Line?

A. I re-located some portions of it.

Q. How much of it?

A. Probably 75 miles all-told.

Q. Was that re-built?

A. It was re-built; yes, sir. I say that 75 miles was re-built. I think in all, with the changes we made, it would cover——

Q. And where were those changes? I suppose they are all between here and Uvada, but——

A. Between here and Uvada. Some were below Milford and some this side.

Q. What is the distance from here to Uvada?

A. About 296 miles.

4260 Q. Of this 296 miles, about 75 miles in the aggregate were re-built and re-located?

A. There was that amount re-located, and at that time I left the employ of the road. What was actually done in the way of reconstruction there I couldn't say—it passed out of my jurisdiction wholly and was conducted by the maintenance of way department.

Q. While you were re-locating this portion of the line did you observe any improvements being made to the existing line—any changes?

A. The rails were being re-laid and the bank widened.

Q. Was the road, at the time it was taken over by the San Pedro, in fit condition to become part of a through line of road from Los Angeles to Salt Lake, over which heavy traffic could move?

A. The physical condition of the road was very good. The rails were lighter than those we were using.

Q. How heavy were the rails?

A. I think, as a rule, 52 pounds.

Q. And what weight was put in?

A. 75.

Q. 75 or 80, do you remember which?

A. 75, as I remember.

Q. You say they broadened the grades.
A. The embankments have been widened.
Q. What was the object of that, if the road was in good condition?
A. Well, the old roadbed was not in condition to haul ballast as we wished to put it on; there wasn't breadth enough.
Q. That is what I was getting at. So that to put the road up in first-class shape they had to broaden the grade?
A. Yes, sir.

Q. Do you happen to know how much it cost per mile to
4261 put that line in condition for use as a good road?
A. No, I do not. It would be a matter of guesswork.

Q. You don't know about that?
A. I don't know about that.
Q. What was it ballasted with before you took hold of it?
A. The natural earth along the line.
Q. What was it re-ballasted with?
A. For the most part with rock ballast.

Cross-examination by Mr. KELLY:

Q. Mr. Moore, you went to work for the company early in 1901?
A. Yes, sir.
Q. Did you do some office work before you went out into the field?
A. No, sir.
Q. When your employment began you went to the field directly?
A. I went directly to the field.
Q. And that was about the latter part of March, was it not?
A. I would think so.
Q. Mr. Ulmer was one of your party?
A. Yes, sir.
Q. And you began your work at Uvada?
A. Yes, sir.
Q. You were supplied and furnished with field notes, blueprints and maps of a survey of the line made from Uvada westward by the Utah & California Company, or in its name?
A. I was, yes, sir.
Q. Those maps, field notes and blueprints were for a line coincident with the line already built on the ground?
A. That is, already graded.

Q. And which embraced cuts and fills and tunnels, practi-
4262 cally completed almost down to Caliente?
A. Yes, sir.

Q. Or what is Caliente now?
A. Yes, sir.
Q. It also was coincident with and embraced a partially completed line of roadbed extending from Caliente toward Pioche?
A. It was; yes, sir.
Q. That, however, was not so nearly completed as the other line?

A. It was not in as good condition, no, sir.

Q. Now, when you went down there, what did your men commence to do? Absolutely survey a line on the old grade?

A. Yes, sir; we picked up the line on the old grades and ran them out.

Q. That is to say, you used your field notes and you verified the old lines and set stakes for the purpose of making maps for your company?

A. Yes; checking up the work, as we term it.

Q. It was not location in the sense of a new location, from an engineer's standpoint?

A. No, sir.

Q. It was the checking up of an already located line?

A. Yes, sir.

Q. Now, your men did not stay out there very long, around Uvada, did they?

A. No; we got out as quickly as possible.

Q. You proceeded to the front with your work?

A. Yes, sir.

Q. And when the Short Line people arrived there it was with a construction train and with construction material?

A. They were there before I got there.

Q. Oh, yes. And they were proceeding to carry forward ties and railroad material and scattering it on the ground as best they could?

A. Yes, sir.

4263 Q. They found some obstructions in their way?

A. They found opposition: yes, sir.

Q. They found a barbed wire fence barricade?

A. Several of them.

Q. They found some cuts filled with rocks and boulders and such obstacles as might be hastily gathered together, did they not?

A. That was the condition: yes, sir.

Q. And in part at least those obstructions were removed by your own people, were they not?

A. In part: yes, sir.

Q. Part of them the Short Line people pushed forward and threw out of the way and laid their tracks, and when Sheriff Johnson came your people then removed the barbed wire obstruction fences, did they not?

A. Yes, sir: acting under their attorney's advice.

Q Well, there wasn't anything very serious happened up there?

A. No, sir; nothing at all.

Q. And in fact the obstruction work actually ceased about the time the injunction was served in Carson?

A. At that time.

Q. There was a nominal resistance maintained up to that time, and after that everything was peaceable, wasn't it?

A. Everything was peaceable.

Q. That is what I thought. Now, when you went down to Caliente, the surveying parties that you were with proceeded on down the Meadow Valley Wash?

A. Yes, sir.

Q. Which extends about 110 miles southwesterly from Caliente?

A. Well, not quite that far from Caliente; the entire Wash is 110 miles.

Q. The track, however, between Caliente and Uvada is not in
4264 the Meadow Valley Wash?

A. No, sir.

Q. That is the Clover Valley?

A. That is the Clover Valley.

Q. Your parties surveyed on toward Los Angeles?

A Yes, sir.

Q. And met a party coming from Los Angeles?

A. Yes, sir.

Q. At what time?

A. That was something like a year later, that we joined our surveys.

Q. Do you know whether or not at the time you went to Caliente to commence work there, there were any surveying parties at work in California?

A. Only by hearsay. I did not see them. I was told so by Mr. Hogwood.

Q. Now, the line that you surveyed between here and Modena—what distance was it from Salt Lake to Modena by the line you surveyed?

A. The line we surveyed was about the same distance as the present.

Q. About 276 miles?

A. Yes.

Q. Have you made any other survey than that one from Salt Lake toward Pioche?

A. Only in detached short sections.

Q. There was a line surveyed, or at least reconnoissance made for a line extending from Salt Lake to Caliente via Pioche, wasn't there?

A. Yes, sir.

Q. Did you make that reconnoissance?

A. I did.

Q. What was the distance to Caliente that way?

A. 12 miles shorter.

Q. And what was the character of the road, that is to say, the grade and the work?

A. We had a greater rise and fall in grade, but no tunnels.

4265 Q. What would have been your maximum grades that way?

A. One per cent we located on.

Q. About what time did you commence work on the joint survey? To refresh your recollection I will ask you if that was not along about the last of October, 1901, or September?

A. Probably in that neighborhood. I can only fix that by an agreement on that injunction, when we ceased hostilities; the joint survey commenced very soon after that.

Q. After the joint survey and arrangement had been made between the two companies by which a party was to go through and two lines were to be laid through the canyon to the west, until they got out of the Meadow Valley Wash?

A. Yes, sir.

Q. How long did that work continue—the work of the two parties? How long did they work together?

A. Some eight months.

Q. It was a close and careful survey of the canyon for the purpose of establishing two lines, with centres no nearer than 20 feet?

A. Yes, sir.

Q. The instructions were also that where practicable the line should diverge so as to give each line its complement of right-of-way under the act of 1875?

A. Yes, sir.

Q. The lines converged pretty closely together most of the way through, did they not?

A They did, yes, sir.

Q. It was a close proposition to get two lines through at all and take care of the water?

A. Quite so.

Q. With two lines through there, would it have been practicable, with reasonable expense, to take care of the water?

4266 A. I hardly think it would: I hardly think it is practicable to carry the water with one line.

Q. It is a pretty bad proposition, that whole canyon, isn't it?

A. It is a pretty bad proposition, that whole canyon.

Mr. SEVERANCE. It shows you ought to have gone around it, on the other line.

Mr. KELLY. No, it shows we have got to spend a lot of money there to do good work.

Q. As a civil engineer, although you made the joint survey, which you pronounced feasible, it was not one which as a civil engineer you would care to recommend?

A. No, sir, I should not.

Q. Now in respect of line changes: since the Short Line took the property over, one of those line changes extends westerly from Modena?

A. Yes, sir.

Q. East of Modena, or west?

A. East, or northeast.

Q. That was a place where, by making a new line for a distance of eleven miles, you avoided some heavy grades?

A. Heavy grades.

Q. And got a better grade and a better line?

A. Yes, sir.

Q. And that was about eleven miles long, wasn't it?
A. I think something like that.
Q. Then, there was one near Goss?
A. Yes.
Q. Now, I don't know just where Goss is. Do you remember that cut-off?
A. Yes, sir.
Q. And that was for the same purpose?
A. All of those changes were for betterment of grades, not for betterment of alignment.
4267 Q. That was about four miles?
A. Something like four miles.
Q. There was another one of similar character at the Severer River?
A. Yes, sir.
Q. And that was about six or seven miles long?
A. We made a change there of a greater distance than that; I don't know how it was constructed, I am sure; I never noticed.
Q. Those three are all that you know of, are they not?
A. They don't cover all the changes that I made. I think they cover all that was reconstructed.
Q. Oh, yes; that was all that was reconstructed?
A. Yes, sir.
Q. That was what I wanted to get at.
A. But we made many changes.
Mr. LOVETT. I would like to get into the record a table of distances of the principal points on that line. I imagine this witness knows it as well as anybody else.
Mr. SEVERANCE. Have you got a time table that shows it?

By Mr. LOVETT:

Q. I hand you what purports to be a list of stations on the San Pedro, Los Angeles & Salt Lake Railroad between Salt Lake City and Los Angeles, with the distances from Salt Lake and from Los Angeles. I will ask you to examine it and state whether or not you are familiar with the line and if the distances given there are substantially correct.
4268 The EXAMINER. Perhaps counsel will consent to that; will you not, Mr. Severance?
Mr. SEVERANCE. I have no doubt it is right.
WITNESS. Unless there should be a misprint here those are all correct, for I have been over them before.
Q. You understand they are correct?
A. There may be a typographical error or something.
Q. But you have been over these distances before?
A. Yes, sir.
Q. And unless there is some typographical error in printing they are correct?

A. They are correct.

Q. And you don't observe anything there now which leads you to suppose that it is incorrect?

A. I do not.

Mr. SEVERANCE. You may put it in, Judge, subject to correction.

Q. What are those distances?

A.—

4269

| Miles from Salt Lake. | Stations. | Miles from Los Angeles. |
|---|---|---|
| 0 | Salt Lake City.....Utah.. | 781 |
| 5 | Buena Vista..... " .. | 776 |
| 11 | Riter..... " .. | 770 |
| 15 | Garfield..... " .. | 766 |
| 17 | Smelter..... " .. | 764 |
| 19 | Lake Point..... " .. | 762 |
| 23 | Morris..... " .. | 758 |
| 27 | Erda..... " .. | 754 |
| 31 | Shields..... " .. | 749 |
| 35 | Tooele..... " .. | 745 |
| 41 | Stockton..... " .. | 740 |
| 47 | St. John..... " .. | 733 |
| 55 | Ajax..... " .. | 726 |
| 60 | Faust..... " .. | 721 |
| 67 | Vernon..... " .. | 714 |
| 70 | Dunbar..... " .. | 711 |
| 74 | Lofgreen..... " .. | 707 |
| 79 | Boulter..... " .. | 702 |
| 85 | Tintic..... " .. | 696 |
| 92 | McIntyre..... " .. | 689 |
| 98 | Jericho..... " .. | 683 |
| 104 | Dyer..... " .. | 677 |
| 109 | Champlin..... " .. | 672 |
| 113 | Adams..... " .. | 668 |
| 118 | Lynn..... " .. | 663 |
| 123 | Cline..... " .. | 652 |
| 134 | Akin..... " .. | 647 |
| 139 | Oasis..... " .. | 642 |
| 144 | Van..... " .. | 637 |
| 148 | Jerome..... " .. | 633 |
| 153 | Clear Lake..... " .. | 629 |
| 158 | Neels..... " .. | 623 |
| 163 | Borden..... " .. | 619 |
| 169 | Goss..... " .. | 612 |
| 174 | Cruz..... " .. | 607 |
| 179 | Pumice..... " .. | 602 |
| 184 | Black Rock..... " .. | 597 |
| 189 | Malone..... " .. | 592 |

| Miles from Salt Lake. | Stations. | | Miles from Los Angeles. |
|---|---|---|---|
| 194 | Read | Utah | 587 |
| 199 | Zenda | " | 583 |
| 203 | Opal | " | 579 |
| 207 | Milford | " | 574 |
| 212 | Upton | " | 569 |
| 217 | Laho | " | 564 |
| 222 | Thermo | " | 559 |
| 229 | Nada | " | 553 |
| 233 | Latimer | " | 548 |
| 238 | Kerr | " | 543 |
| 242 | Lund | " | 539 |
| 247 | Ford | " | 534 |
| 252 | Sahara | " | 529 |
| 257 | Beryl | " | 524 |
| 263 | Morton | " | 519 |
| 268 | Escalante | " | 513 |
| 273 | Modena | " | 507 |
| 278 | Tomas | " | 503 |
| 283 | Uvada | " | 499 |
| 286 | Lien | Nevada | 495 |
| 290 | Crestline | " | 491 |
| 294 | Brown | " | 487 |
| 299 | Acoma | " | 482 |
| 305 | Barclay | " | 476 |
| 308 | Islen | " | 473 |
| 314 | Minto | " | 468 |
| 319 | Eccles | " | 463 |
| 324 | Caliente | " | 457 |
| 328 | Etna | " | 453 |
| 333 | Stine | " | 448 |
| 338 | Boyd | " | 443 |
| 343 | Elgin | " | 438 |
| 348 | Kyle | " | 433 |
| 353 | Leith | " | 428 |
| 358 | St. George | " | 423 |
| 363 | Carp | " | 418 |
| 368 | Vigo | " | 413 |
| 373 | Galt | " | 408 |
| 378 | Hoya | " | 403 |
| 383 | Rox | " | 398 |
| 388 | Guelph | " | 393 |
| 393 | Acton | " | 388 |
| 398 | Moapa | " | 383 |
| 403 | Byron | " | 378 |
| 408 | Ute | " | 374 |
| 413 | Crystal | " | 369 |
| 418 | Dry Lake | " | 363 |
| 424 | Garnett | " | 358 |
| 429 | Apex | " | 352 |
| 434 | Dike | " | 347 |
| 439 | Valley | " | 343 |
| 443 | Stewart | " | 339 |
| 447 | Las Vegas | " | 334 |

| | Miles from Salt Lake. | Stations. | | Miles from Los Angeles. |
|---|---|---|---|---|
| 4272 | 452 | Bracken | Nevada | 330 |
| | 457 | Arden | " | 325 |
| | 461 | Bard | " | 321 |
| | 466 | Sloan | | 315 |
| | 473 | Erie | | 309 |
| | 476 | Sutor | | 306 |
| | 480 | Jean | " | 301 |
| | 485 | Borax | " | 297 |
| | 490 | Roach | " | 292 |
| | 494 | Calada | California | 287 |
| | 499 | Lyons | " | 283 |
| | 504 | Nipton | " | 278 |
| | 509 | Moore | " | 272 |
| | 514 | Leastalk | " | 267 |
| | 518 | Brant | " | 263 |
| | 523 | Hanlon | " | 258 |
| | 527 | Cima | " | 254 |
| | 531 | Chase | " | 250 |
| | 534 | Elora | " | 247 |
| | 538 | Ames | " | 244 |
| | 542 | Hayden | " | 239 |
| | 546 | Kelso | " | 236 |
| | 551 | Flynn | " | 231 |
| | 555 | Kerens | " | 226 |
| | 559 | Glasgow | " | 222 |
| | 564 | Sands | " | 217 |
| | 569 | Balch | " | 212 |
| | 574 | Epsom | " | 207 |
| 4273 | 577 | Crucero | " | 204 |
| | 579 | King | " | 202 |
| | 584 | Scott | " | 197 |
| | 590 | Afton | " | 192 |
| | 594 | Dunn | " | 188 |
| | 599 | Field | " | 183 |
| | 603 | Manix | " | 178 |
| | 608 | Blyth | " | 174 |
| | 613 | Kouns | " | 169 |
| | 618 | Otis | " | 163 |
| | 623 | Daggett | " | 159 |
| | 632 | Barstow | " | 149 |
| | 663 | Oro Grande | " | 118 |
| | 669 | Victorville | " | 113 |
| | 677 | Hesperia | " | 104 |
| | 688 | Summit | " | 93 |
| | 696 | Cajon | " | 87 |
| | 699 | Keenbrook | " | 83 |
| | 703 | Devore | " | 79 |
| | 705 | Verdemont | " | 76 |
| | 713 | San Bernardino | " | 68 |
| | 717 | Colton | " | 65 |
| | 720 | Highgrove | " | 61 |
| | 724 | Riverside | " | 58 |
| | 726 | Brockton ave | " | 55 |
| | 728 | Jurupa ave | " | 53 |

4274

| Miles from Salt Lake. | Stations. | | Miles from Los Angeles. |
|---|---|---|---|
| 731 | Pedley | California.. | 50 |
| 736 | Wineville | " .. | 46 |
| 739 | Collins | " .. | 42 |
| 743 | Ontario | " .. | 38 |
| 746 | Narod | " .. | 35 |
| 749 | Pomona | " .. | 32 |
| 752 | Spadra | " .. | 29 |
| 757 | Walnut | " .. | 24 |
| 760 | Fallon | " .. | 22 |
| 761 | Rowland | " .. | 20 |
| 763 | Hudson | " .. | 18 |
| 769 | Bartolo | " .. | 13 |
| 771 | Pico | " .. | 10 |
| 773 | Newmark | " .. | 9 |
| 780 | 4th St., Los Angeles | " .. | 1 |
| 781 | Los Angeles | " .. | 0 |
| 791 | Pasadena | " .. | 10 |

By Mr. SEVERANCE:

Q. You said with reference to the difficulty of carrying the water away down there in the canyon that you didn't think it could be done with one line through. You think it is a very difficult place through which to build a railroad, don't you?

A. It is without doubt, sir.

4275 Q. On account of water?

A. On account of flood water.

Q. That is what I mean—flood water.

A. Yes, sir.

(A recess was here taken until 2 o'clock p. m.)

4276 WILLIAM W. RITER,

being duly sworn as a witness on behalf of the Complainant, testified as follows:

Direct examination by Mr. SEVERANCE:

Q. Mr. Riter, where do you live?

A. Salt Lake City.

Q. What is your business?

A. Engaged in banking, principally.

Q. You are president of the Deseret Savings Bank?

A. Yes, sir.

Q. Have you ever been engaged in building and operating railroads?

A. Yes, to a limited extent.

Q. Whereabouts?

A. I built 13 miles of this road out west that was called in its day the Utah Western.

Q. Where does that run?

A. It ran from Salt Lake to a place called Terminus. It is not in existence now.

Q. What other lines have you built?

A. I built the Salt Lake & Western.

Q. Where does that line run?

A. That ran from a place called Lehigh Junction, 29 miles south of the city here, and was completed to a place called Tintic Station, in the Tintic Valley.

Q. What was the length of that line?

A. That was 54 miles, I think.

Q. When was that line built?

A. We commenced to make the surveys in 1880, I think it was.

Q. What became of that road?

A. It was finally merged into the Oregon Short Line.

Q. Is that part of the road that was turned over to the San Pedro?

A. I presume so. I am not posted on that.

4277 Q. What became of this other road from Salt Lake to Terminus?

A. That belonged to the Union Pacific, and they turned it in to the Oregon Short Line on the consolidation of the interests out here, and it was still in the possession of the Short Line when I quit the service.

Q. Was that turned over to the San Pedro road?

A. Well, they didn't use it. The only part that was available to them was the right-of-way. It was a small narrow-gauge road. Its principal value was in its right-of-way.

Q. Did they use the right-of-way?

A. Part of the way.

Q. Who did—the San Pedro?

A. I believe so, yes, sir.

Mr. LOVETT. Where did that road run from?

Mr. SEVERANCE. Ran out of Salt Lake.

Q. Were you familiar with this line of road in southern Utah?

A. Yes, sir.

Q. The line from here to Uvada?

A. No—when I quit the service Milford was the southern terminus.

Q. What kind of construction was that road from here to Milford?

A. Now?

Q. No, then.

A. When I was on it, most of it (that is, speaking of the old Utah Southern) was pretty poor.

Q. What kind of rail, what weight of rail?

A. I believe the first 22 miles had been laid with new steel, and the rest of it, if I remember correctly, was rails of different weight; it was not uniform.

Q. Heavy or light rails?

A. It was the average rail in those days, but would be considered a very light rail now.

4278 Q. How were the grades—easy or otherwise?

A. The grades were easy.
Q. Rather flat country that it runs over?
A. Oh, yes.
Q. How were the banks—wide or narrow?
A. Oh, there was but very little cut necessary.
Q. Was the Salt Lake & Western run as an independent road for a while?
A. Yes; it had its independent organization. It belonged to the Union Pacific. It had an independent existence under the laws of Utah.
Q. That afterwards went into the Short Line?
A. Yes, sir.
Q. Do you remember the time it was publicly announced by Senator Clark and his associates that he was about to enter upon the construction of what is now the San Pedro road?
A. No, sir; that was after my day.
Q. I say do you remember as a citizen here of the public announcement?
A. No, I think not. Perhaps I read of it as an ordinary newspaper account.
Q. You paid no attention to it?
A. No.

Cross-examination by Mr. KELLY:

Q. How many years is it since you left the service?
A. In 1891.
Q. That was prior to the time of the receivership of the Union Pacific and the Short Line?
A. Yes.

4279 JAMES G. McDONALD,

being duly sworn as a witness on behalf of the Complainant, testified as follows:

Direct-examination by Mr. SEVERANCE:

Q. Mr. McDonald, where do you live?
A. Salt Lake City.
Q. What is your business?
A. Chocolate manufacturer.
Q. How long have you been in that business?
A. About 25 years.
Q. Where do you get your raw material?
A. South America.
Q. And how does it come to this country?
A. Through New York City.
Q. How does it come west from New York City?
A. By various routes, water-and-rail.

Q. How many years have you been importing material of that kind from South America by way of New York?

A. Not long; about a year.

Q. Previous to that time where did you get your raw material?

A. We had been buying the finished product from Milton, Massachusetts, before that time.

Q. And how was that shipped to Salt Lake?

A. All-rail from Milton, Massachusetts.

Q. All-rail?

A. Yes, sir.

Q. What particular product are you speaking of now?

A. The chocolate, the confectioners' chocolate called coating.

Q. Have you also been shipping cocoa-beans from the east?

A. Yes.

4280 Q. How many years have you been——

A. We have been shipping cocoa-beans here for about one year.

Q. Only for one year?

A. Yes, sir.

Q. How do they move?

A. By water and rail—Morgan, Kanawha Despatch, Union Pacific, Missouri Pacific—different lines.

Q. What were you importing from the east previous to 1901 say? What kind of material?

A. The chocolate finished product, confectionery.

Q. Have you done a general confectionery business?

A. Yes, sir.

Q. In addition to this manufacture of chocolate?

A. Yes; for twenty-five years.

Q. Wholesale or retail?

A. Wholesale exclusively.

Q. Into what part of the west do you ship your product?

A. All over this western country—California, Oregon, Washington, Colorado—all the western states.

Q. Do you remember when the Union Pacific and Southern Pacific had separate agencies here?

A. Yes, sir.

Q. Was your business solicited by both those agencies?

A. Yes, sir.

Q. Do you know Mr. Gray?

A. Yes, sir

Q. Does he solicit your business now?

A. His representatives do, yes.

Q. By what route from the east?

A. Morgan Line, I think, and Union Pacific.

Q. What is your rate to San Francisco on your manufactured product?

A. $1.61.

Q. What is the San Francisco manufacturers' rate here?

4281 A. 90 cents.

Q. On the same product?

A. Yes, sir.

Q. What is your rate on your raw material from the east that enters into this finished product?

A. $2.26.

Q. That is all-rail?

A. That is all-rail; yes, sir; $2.03 water-and-rail.

Q. What is the through rate to the coast?

A. 85 cents.

Q. Then, the net rate paid by the manufacturers on the coast would be: 85 cents on the raw material and 90 cents more to Salt Lake, making a total of $1.75?

A. Yes, sir.

Q. And you pay $2.03 water-and-rail to Salt Lake and $1.85 more to San Francisco?

A. $1.61, Mr. Severance.

Q. $1.61 to San Francisco?

A. Yes.

Q. Which would make $3.64?

A. That is about right.

Q. Do you put up your product in pasteboard boxes?

A. Yes, sir.

Q. Where do you get them?

A. From the east—from Detroit and different points, Chicago, New York.

Q. How does your rate on those boxes compare with the rate to San Francisco?

A. I am not posted, Mr. Severance, as to the rate. All I know is that our boxes move to San Francisco and are sent back to us from San Francisco or Los Angeles. I don't know much about the rates.

Q. They are taken over there and sent back?

A. Yes, sir.

Q. Over what road?

A. Oregon Short Line, the Union Pacific and the San Pedro as well. They are sometimes shipped to Los Angeles and back to Salt Lake.

4282 Q. Do you mean that in shipping them from Detroit they will be shipped through Salt Lake down to Los Angeles and then shipped back here?

A. Yes, sir.

Q. What is the reason for that, if you know?

A. Lower rate.

Q. That is, the sum of the two rates, the rate from Detroit to Los Angeles plus the rate from Los Angeles here, is less than the rate from Detroit here?

A. That is the story.

Q. How much less, cheaper?

A. I don't know. I have a traffic manager. I don't know much about it.

Q. What is that?

A. I have a traffic manager. I don't know much about the rates myself.

Q. You know that from him?

A. I know that is the case, yes, sir.

Q. What is the effect upon your business of this combination of rates that the San Francisco manufacturers have as against your combination of rates into the territory in which you sell?

A. For your information I might state to you that we have been in the confectionery business here for 25 years. A year ago we went into chocolate manufacturing, manufacturing our own coatings for our own product, selling cocoa and chocolate to the jobbing trade. We did not know at that time that the rate was so much in favor of San Francisco manufacturers. The conditions are these: that we are trying to manufacture cocoa and chocolate in Salt Lake under the rate you have mentioned, $2.26, with a rate on their territory of $1.61, which makes $3.87 or such a matter. Their rate is 85 cents from New York City, with 90 cents back on our territory. It makes it impossible of course for us to reach out, in fact almost im-
4283 possible to do business.

Q. They can get the raw material to San Francisco and ship the finished product in here for less money than you can get the raw material to Salt Lake?

A. Yes, sir.

Q. By about 50 cents a hundred?

A. Yes, 54 cents.

Q. Now, the product that they ship out there, this cocoa that is shipped to San Francisco, that is used in this manufacture, moves how—all-rail or water-and-rail?

A. All rail as a rule.

Q. Will the cocoa that you buy in Massachusetts stand water shipment?

A. The cocoa, you say—the cocoa-beans?

Q. Yes.

A. You mean chocolate?

Q. Yes, the chocolate that you buy.

A. No, sir, that will not stand water.

Q. It will not?

A. No, sir.

Q. Then, there is no water competition to make that rate to San Francisco on that product?

A. None whatever. Walter Baker used to insist on our signing a release on his goods when they were shipped by water. They would not be responsible for them if shipped by water. We were obliged to ship all the finished chocolate all-rail.

Q. And is the rate that you have spoken of, the rate that applies on this product that has to be shipped all-rail?

A. You are speaking now of the finished product?

Q. Yes, sir. You are speaking of the product that you buy from Walter Baker & Company?

A. Yes.

Q. And that you say has to move all-rail?

A. Yes.

Q. What is the rate to San Francisco on that?

4284 A. $1.25 a hundred, on the finished product.

Q. It is not the same on the other material?

A. No, sir.

Q. What is the rate back to Los Angeles on that?

A. I don't know. We have been for a number of years shipping that chocolate direct, consigned to the Johnson-Locke Mercantile Company, San Francisco, and back to Salt Lake, saving $1.05 a hundred. Whether the railroad paid the $1.05 or Walter Baker I don't know. I know Walter Baker always allowed $1.05 where the goods were consigned to his agent in San Francisco, through Salt Lake City or through Ogden.

Q. What is the rate to Salt Lake direct?

A. $2.30.

Q. That is the direct rate?

A. Yes, sir.

Q. And the direct rate to San Francisco $1.25?

A. Possibly going into effect the first of this month, they have reduced the rate on chocolate to $1.85, the finished product, but have not touched beans.

Cross-examination by Mr. LOVETT:

Q. Do you know why the 90-cent rate on chocolate from San Francisco to Utah was put in?

A. I have no idea at all.

Q. Don't you know that that was put in at the request of the Utah candy manufacturers—Sweet and others?

A. That may be, possibly. I imagine it was put in on account of competition here.

Q. What competition?

A. The competition of ourselves. There had not been a chocolate manufacturer here up till the last year. The rates hold good

4285 up to the present time. This is on cocoa, too. Mr. Sweet doesn't handle cocoa. He handles sugar coatings for his chocolate, not cocoa. This rate is on cocoa and chocolate. There is no reason why the rate should be made on cocoa, when those people don't handle cocoa.

Q. But on chocolate?

A. On chocolate—I grant you that may be so. They may have applied for the rate, as we have applied for the rate on beans, and never got it.

Q. Did you raise any question at any time with the railroad people about this 90-cent rate from San Francisco?

A. No, I didn't. I wasn't notified of it at all. They were notified of it, but I wasn't notified at all.

Q. When you knew of it didn't you call attention to it?

A. No, sir.

Q. The movement of chocolate is from San Francisco this way, isn't it, and not from here to San Francisco? That has always been so, hasn't it?

A. No, Judge, it is not so. Ghirardelli is not a very large manufacturer in San Francisco, and the supplies have been coming principally from Walter Baker, of Milton, Massachusetts, who have a rate to the coast, across the continent, of $1.25. I have always believed that rate was put in simply to meet the competition of Ghirardelli, but the supplies have been coming from Massachusetts.

Q. But if the supplies were coming from San Francisco, then the 90-cent rate would be beneficial, but you understand the supply has not been coming from San Francisco?

A. Has not been coming from San Francisco; no.

Q. With reference to the rate on cocoa-beans, you gave the figures from San Francisco. Will you state that again?

4286 A. On cocoa-beans from New York?

Q. Yes.

A. $2.26 all-rail, $2.03 water-and-rail.

Q. That is to Salt Lake?

A. That is to Salt Lake.

Q. What is it to San Francisco?

A. 85 cents.

Q. And from San Francisco to Salt Lake how much?

A. I don't know that, I am sure. Our beans have been moving this way. We have had a $2 rate in the last two or three weeks—the rate to Los Angeles, plus the rate back to Salt Lake. We have been making three cents a hundred by billing it to Los Angeles the last three or four weeks. They made us a rate of $2 by billing to Los Angeles and back to Salt Lake. The rate to Los Angeles is 85 cents, plus the rate of $1.15, Los Angeles to Salt Lake, giving me a rate of $2.

Q. Don't you know they have been publishing a rate of $1.74 for some time from New York to Salt Lake?

A. No, sir.

Q. Then I am mistaken about that. I understand it is being published. It has not been put into effect yet.

A. I have not been advised of it at all.

Q. Now, with reference to this higher rate, higher in the aggregate, from the East to San Francisco, and then the local rate back to Salt Lake, the combination being lower than the straight rate to Salt Lake; don't you understand that it is due to the difficulty in reference to the publication of tariffs? Isn't it true that formerly

tariffs provided in effect (I don't pretend to state the exact language) that wherever the rate to the coast from original point of origin, plus the rate from the coast back to the interior, exceeded the
4287 direct rate to the point in the interior, the direct rate should be brought up to the sum of other rates?

A. I quite understand it; yes, sir.

Q. That was formerly true, wasn't it?

A. Yes, sir.

Q. Don't you understand that the Interstate Commerce Commission has ruled that rates could not be published any more that way, and that each tariff itself would have to show just what the rate was?

A. Yes, I understand.

Q. Don't you understand that the railroads have been making some effort with the commission to adjust that, so as to remove the inequality of which you speak?

A. No, I didn't know they were. We have been insisting that something be done here for a long time, Judge, a very long time, but we have not gotten it yet. That is all I know.

Q. You don't know what effort has been made by the railroad people to adjust it?

A. No; we have not been advised. That is news—your proposed rate of $1.74.

Q. Hadn't you heard of that before?

A. No, I hadn't heard of that before.

Q. Mr. Plaisted tells me that some one at your office was advised of it.

A. Is that so?

Q. Yes. Prior to the acquisition of the Southern Pacific stock, or rather the so-called merger of 1901, I believe you stated on your direct examination that both the Union Pacific and the Southern Pacific had separate agencies here?

A. I remember.

Q. From the East, which way were they seeking to have the traffic move?

A. That has been some years ago, Judge. I don't remember that.

Q. The Denver & Rio Grande also had an agency?

A. Yes, sir.

Q. And the Southern Pacific tried to get its business in
4288 here either over the Union Pacific or the Denver & Rio Grande, didn't it?

A. Yes.

Q. You understood bringing it by the Morgan Line to New Orleans or Galveston?

A. Yes.

Q. And thence over any of the rail lines up here; that is true, isn't it?

A. Yes; that is true.

Mr. SEVERANCE. Mr. Love has got that statement you asked him to make up. Do you want him to go on the stand?

Mr. LOVETT. I didn't ask him to make up any statement that I know of. He brought in a statement here, after lunch yesterday, and that was the end. That is the only statement I asked him for, as far as I recall.

Mr. SEVERANCE. Well, I will recall him. Take the stand again, Mr. Love.

4289 STEPHEN H. LOVE,

recalled on behalf of the Complainant, testified as follows:

By Mr. SEVERANCE:

Paper marked Complainant's Exhibit 159 (Love).

Q. I show you Complainant's Exhibit 159. Was that made up by you?

A. Yes, sir.

Q. What is it?

A. Judge Lovett asked me yesterday to prepare a statement showing the rates for 100 miles out of Salt Lake City as compared with 100 miles out of Denver. I had to make up the statement in a hurry and I used Ogden on a couple of items, which he seemed to object to, and he asked me to give him the authority for those rates, which I have done. It shows an average rate, for 106 miles out of Salt Lake, using the Denver & Rio Grande, the Salt Lake Route, the Union Pacific, the Oregon Short Line, the Southern Pacific, and the Western Pacific, of 39 and a fraction cents per hundred, or $7.93 cents per ton; and out of Denver, using the Denver & Rio Grande, the Chicago, Burlington and Quincy, the Colorado & Southern, the Union Pacific (the Union Pacific both ways, one towards Julesburg and the other towards Cheyenne), and the Colorado Midland, a distance of 109 miles, 26 cents a hundred, or $5.20 per ton.

Mr. SEVERANCE. I offer Complainant's Exhibit 159 in evidence.

Complainant's Exhibit 159 (Love) is as follows:

## COMPLAINANT'S EXHIBIT 159.

| Road. | From— | To— | Mileage. | 4th-class rate. | Tariff authority. |
|---|---|---|---|---|---|
| Denver and Rio Grande. | Salt Lake... | Castle Gate.... | 111 | 45 | D. & R. G. Local Frieght Tariff No. 85. |
| Salt Lake Route..... | Salt Lake... | Juab, Utah.... | 102 | 37 | S. P., L. A. & S. L. Local Freight Tariff No. 199. |
| Union Pacific..... | Salt Lake... | Wahsatch..... | 113 | 30 | Oregon Short Line Joint Freight Tariff No. 2300-B. |
| Oregon Short Line..... | Salt Lake... | Cornish..... | 99 | 26 | Oregon Short Line Joint Freight Tariff No. 2024-A. |
| Southern Pacific..... | Salt Lake... | Newfoundland | 112 | 45 | Oregon Short Line Joint Freight Tariff No. 2235-A. |
| Western Pacific..... | Salt Lake... | Arinosa, Utah | 102 | 55 | Western Pacific Freight Tariff No. 1. |
| Average..... | | | 639<br>106 miles. | 238<br>.294 cwt., or $7.93 per ton. | |
| Denver and Rio Grande | Denver..... | Pueblo..... | 119 | 30 | Denver and Rio Grande Freight Tariff No. 4658. |
| Chicago, Burlington & Quincy. | Denver..... | Akron..... | 112 | 25 | C., B. & Q. Local and Joint Freight Tariff G. F. O. No. 869-A. |
| Colorado and Southern.. | Denver..... | Greeley..... | 99 | 15 | Colo. & Sou. Local, Joint, and Propor. Freight Tariff G. F. O. No. 84-G. |
| Union Pacific..... | Denver..... | Cheyenne..... | 107 | 30 | Union Pacific G. F. O. No. 9185. |
| Union Pacific..... | Denver..... | Hugo, Colorado. | 115 | 22 | Union Pacific G. F. O. No. 11130. |
| Colorado Midland..... | Denver..... | Divide..... | 102 | 34 | Colorado Midland Joint Freight Tariff 1938-C. |
| Average..... | | | 654<br>109 miles. | 156<br>.26 cwt., or $5.20 per ton. | |

(4-29-09)

Q. In addition to that, have you made up some further comparisons of rates?

A. Yes, sir.

Paper marked Complainant's Exhibit 160 (Love).

4290 Q. I show you Complainant's Exhibit 160. What is that exhibit?

A. It is an exhibit on a number of commodities, consisting of goods that are distributed on 4th class rate, such goods as coffee, salt, iron, cereals, canned goods, sugar, soap, syrup, nails, and wire. Yesterday, on cross-examination, I was asked the question whether or not I had made any figures showing the rates out of Salt Lake as compared with rates out of other cities, and I stated that some time ago I made some comparisons for my own satisfaction, which showed the rates to be relatively between $15 and $16 a ton out of Salt Lake, as against $9.75 or $9.80 out of Denver. I was asked for the authority for those rates, which seemed to be questioned, and I have used the Denver & Rio Grande out of Salt Lake, the Western Pacific, the Oregon Short Line, and the Union Pacific, and it shows an average rate per ton of $16.55 on the commodities mentioned as for the 200-mile haul, as against $11 a ton out of Denver for the 200-mile haul.

Mr. SEVERANCE. I offer Complainant's Exhibit 160 in evidence.

Complainant's Exhibit 160 (Love) is as follows:

## COMPLAINANT'S EXHIBIT 160.

| Mileage. | From— | To— | Coffee, roasted, in tin cans, boxed or crated. | Salt, in sacks, boxes, or barrels. | Iron, viz: Bar, band, or rod. | Cereals, N O S, in boxes, kegs, or barrels. | Canned fish, canned fruit, canned meats, boxed. | Tariff authority. |
|---|---|---|---|---|---|---|---|---|
| 186 | (Denver and Rio Grande Western) Salt Lake. | Green River, Utah | 75 | 75 | 75 | 75 | 75 | D. & R. G. Local Freight Tariff No. 85. |
| 206 | (Denver and Rio Grande) Denver | El Moro, Colorado | 40 | 40 | 40 | 40 | 40 | D. & R. G. Freight Tariff G. F. D. No. 4658. |
| 207 | (Salt Lake Route) Salt Lake | Milford, Utah | 62 | 62 | 62 | 62 | 62 | S. P. L. A. & S. L. Local Freight Tariff No. 100. |
| 203 | (Chicago, Burlington and Quincy) Denver. | Benkelman, Nebr | 45 | 45 | 45 | 45 | 45 | C. B. & Q. Local & Joint Freight Tariff G. F. O. No. 869-A. |
| 207 | (Oregon Short Line and Southern Pacific) Salt Lake. | Wells, Nevada | 73 | 73 | 73 | 73 | 73 | O. S. L. Joint Freight Tariff No 2235-A. |
| 203 | (Union Pacific) Denver | Rock River, Wyo | 57 | 57 | 57 | 57 | 57 | Union Pacific, G. F. D. No. 9185. |
| 195 | (Oregon Short Line) Salt Lake | American Falls, Idaho | 40 | 40 | 40 | 40 | 40 | Oregon Short Line Joint Freight Tariff No. 2024-A. |
| 208 | (Colorado & Southern) Denver | Bowen, Colorado | 40 | 40 | 40 | 40 | 40 | Colo. & Sou. Local, Joint and Propor. Freight Tariff G. F. O. 84-G. |
| 205 | (Western Pacific and Nevada Northern) Salt Lake. | Curries, Nevada | 81 | 81 | 81 | 81 | 81 | Western Pacific Joint Freight Tariff No. 8-A. |
| 175 | (Union Pacific) Denver | Cheyenne Wells, Colo | 38 | 38 | 38 | 38 | 38 | Union Pacific G. F. O. No. 11130. |

(4-29-09)

## COMPLAINANT'S EXHIBIT 160—Continued.

| Mileage. | From— | To— | Sugar, N O S, in boxes, barrels, or sacks. | Soap, in boxes or barrels. | Syrup, N O S, in cans, boxed, or in barrels or kits. | Nails, iron or steel, in kegs. | Wire, barbed or fence, in rolls. | Tariff authority. |
|---|---|---|---|---|---|---|---|---|
| 186 | (Denver and Rio Grande Western) Salt Lake. | Green River, Utah | 75 | 75 | 75 | 75 | 75 | D. & R. G. Local Freight Tariff No. 85. |
| 206 | (Denver and Rio Grande) Denver | El Moro, Colorado | 40 | 40 | 40 | 40 | 40 | D. & R. G. Local Freight G. F. D. No. 4658. |
| 207 | (Salt Lake Route) Salt Lake | Milford, Utah | 62 | 62 | 62 | 62 | 62 | S. P. L. A. & S. L. Local Freight Trf. No. 100. |
| 203 | (Chicago, Burlington & Quincy) Denver. | Benkelman, Nebr | 45 | 45 | 45 | 45 | 45 | C. B. & Q. Local & Joint Frt. Trf. G. F. O. No. 869–A. |
| 207 | (Oregon Short Line and Sou. Pacific) Salt Lake. | Wells, Nevada | 73 | 73 | 73 | 73 | 73 | O. S. L. Joint Freight Tariff No. 2235–A. |
| 203 | (Union Pacific) Denver | Rock River, Wyo | 57 | 57 | 57 | 57 | 57 | Union Pacific G. F. D. No. 9185. |
| 195 | (Oregon Short Line) Salt Lake | American Falls, Idaho | 40 | 40 | 40 | 40 | 40 | O. S. L. Joint Freight Tariff No. 2024–A. |
| 208 | (Colorado & Southern) Denver | Bowen, Colorado | 40 | 40 | 40 | 40 | 40 | Colo. & Sou. Local, Joint & Prop'r Freight Trf. G. F. O. 84–G. |
| 205 | (Western Pacific and Nevada Northern) Salt Lake. | Curries, Nevada | 81 | 81 | 81 | 81 | 81 | Western Pacific Joint Freight Tariff No. 8–A. |
| 175 | (Union Pacific) Denver | Cheyenne Wells, Colorado | 38 | 38 | 38 | 38 | 38 | Union Pacific G. F. O. No. 11130. |

(4-29-09)

Average ton (2,000 lbs.) rate out of Salt Lake ..... ~~$16.55~~ $13.24
Average ton (2,000 lbs.) rate out of Denver ..... ~~$11.00~~ 8.80

The figures in red are correct.

S. H. LOVE.

Q. I will ask you if Exhibit 160 is a copy of the statement which you said you had prepared some time ago?

A. It is not exactly a copy of the statement, because I don't recall exactly the commodities that I used.

Q. In each case here, I observe, on Exhibits 159 and 160, that under the head of "Tariff Authority" you have a reference
4291 to certain tariffs.

A. Yes, sir.

Q. Are those the published tariffs?

A. The current tariffs.

Q. I mean the regular published tariffs.

A. The regular published tariffs of these companies, yes, sir.

Q. And these exhibits show the number of those tariffs?

A. Show the number, yes, sir.

Cross-examination by Mr. LOVETT:

Q. In Complainant's Exhibit 160, the last one about which you testified, as I understand you selected various points. What governed in the selection of those points, Mr. Love?

A. I tried to get 200 miles out of Salt Lake and 200 miles out of Denver.

Q. Did you take on every line the nearest station 200 miles in distance?

A. We tried to average up the mileage, so the total mileage would aggregate about 200 miles.

Q. My question is whether in dealing with Salt Lake you took every line out of Salt Lake and selected in every instance the station nearest 200 miles from Salt Lake?

A. No, I didn't do that. I tried to average it up so as to make a fair average.

Q. But if you are going to prepare a statement showing rates for 200 miles——

A. Well, you can't get exactly 200 miles.

Q. But you can get the nearest station to 200 miles distant, can't you?

4292 A. I think it would average up the nearest station to 200 miles.

Q. I am not speaking about the average. That is just the question I raise—the average that you made. What I want to know is whether you took the station nearest the 200-mile point?

A. What I mean by that, Judge, is this——

Q. I am talking about one statement and you are talking about another. I am speaking now about Exhibit 160. Let's stick to that until we finish. Now, the question is whether, in preparing Exhibit 160 and selecting the points out of Salt Lake and out of Denver, respectively, you took every line of railroad, for instance, leading out of Salt Lake and selected on that line the station exactly 200 miles or nearest 200 miles (if not exactly 200 miles) from Salt Lake, in every instance?

A. No, I didn't do that.

Q. You selected some other station?

A. I tried to average it up so that it would make the mileage balance in both cases as nearly as possible.

Q. You did the same thing with reference to Exhibit 159, didn't you?

A. Yes, sir.

Q. When you were on the stand yesterday, after lunch, when you brought in the statement that was prepared during the noon recess, and when you say I raised some question about the selection of Ogden instead of Salt Lake for comparison on the Southern Pacific, and I asked you why you took Ogden instead of Salt Lake, you testified that it was because you didn't have the tariff of Salt Lake, didn't you?

A. I said in the hurry I couldn't find them, and you asked me whether or not I didn't have all the tariffs here. I said
4293 that I had if I had time to look thoroughly for them, but I had very short time to prepare the statement.

Q. But the reason you gave for selecting Ogden in that case instead of Salt Lake City was that in the hurry you could not find the tariff from Salt Lake. Is that true?

A. That was true.

Q. Now, Mr. Love, don't you know that the rate from Salt Lake to Tecoma, which is the point you selected on the Southern Pacific, is shown in the same tariff and on the same page as the rate from Ogden to Tecoma, which you took?

A. The rates which I have were some paper rates that were gotten out some time ago, when the line was first opened out there, and I got the figures myself from the Oregon Short Line office, and that was the only tariff I had in my office at the time. I had to go and get the tariffs to-day in the Bureau office.

Q. Is that the tariff you took in making the statement you brought in yesterday?

A. Yes. I used some pencil rates—the only thing I had in my office at the time.

Q. Then, you did not use a tariff at all—you used a memorandum?

A. It is a tariff. It is a copy of the tariff. It is authentic.

Q. Who made it?

A. I did myself. I copied it from some figures.

Q. Isn't it a little singular that you would make on your own memorandum the rate from Ogden to Tecoma and not the rate from Salt Lake to Tecoma?

A. Why, no; I knew the rate. They had some rates pub-
4294 lished; the rates used to be published from Ogden and not from Salt Lake.

Q. If you knew the rate, why didn't you put it down on the statement yesterday—the rate from Salt Lake instead of the rate from Ogden?

A. Well, I gave you my reasons for it, and the result is exactly the same as I told Mr. Plaisted yesterday when I got through. That wouldn't change the result.

Q. I am not speaking of the result; I am speaking of the fact—that you brought in here, in response to a request for a statement of the rates from Salt Lake, a statement of the rates from Ogden, and you gave as a reason that you couldn't find the tariff from Salt Lake to Tacoma. Now, if I understand your statement, you say that you made your statement yesterday from some pencil memorandum that you had?

A. Well, it is a copy of the tariff that I made myself, or a copy of the rates that I got from the Oregon Short Line Railroad some time ago.

Q. And you say it is not singular that you should have made this pencil memorandum of the rate from Ogden to Tecoma but not from Salt Lake to Tecoma, when you do business at Salt Lake?

A. The rates from Ogden and Salt Lake are exactly the same to these points.

Q. Why didn't you say that in your statement yesterday?

A. I did say that in answer to your question.

Q. Why didn't you bring in a statement that showed the rates from Salt Lake when you were asked for the rates from Salt Lake and not from Ogden?

A. Because we always regard Salt Lake and Ogden as common, and we never differentiate between them. When we say rates
4295 out of Salt Lake or Ogden, a traffic man knows the rates are the same.

Q. And yet you brought in yesterday a statement of rates from Ogden to Tecoma and gave as a reason for that, instead of bringing in a statement of rates from Salt Lake to Tecoma, that you didn't have a tariff and you didn't know what the rate was?

A. Another reason was that the mileage was shown. I had to get the mileage from the Guide. The mileage is not shown in the tariff, and the mileage out of Ogden was taken from the Railway Guide.

Q. You brought in a statement that showed a 59-cent rate for 113 miles out of Ogden, whereas, if you had brought in what you were asked to bring in, you would have shown a rate of 59 cents for 150 miles out of Salt Lake.

A. Well, the rate from Salt Lake to a point 100 miles, there is little difference in the two rates.

Mr. LOVETT. That is all.

By Mr. SEVERANCE:

Q. Now, just a moment; that is not quite all. I want to ask about this, you are criticised so much about the way you made this up. This statement, Complainant's Exhibit 159, shows that over the Oregon Short Line (counsel's road) from Salt Lake to Cornish, a distance of 99 miles, the 4th class rate is 26 cents?

A. Yes.

Q. That on the Colorado & Southern from Denver to Greeley, exactly the same number of miles, 99, the rate is 15 cents?

A. Yes, sir.

Q. Now, are those the actual rates and the actual mileage?

A. According to the tariffs and according to the Guide.

4296 Q. So that the Short Line charge you 26 cents for the same haul that the Colorado & Southern makes out of Denver on the same class for 15 cents?

A. Yes, sir.

Q. I see by this also that the Union Pacific rate to Wahsatch, which is a station on the Union Pacific—of course a combined rate—the Short Line and the Union Pacific, I assume, isn't it, from Salt Lake to Wahsatch?

A. Yes, sir.

Q. For 113 miles they charge you 30 cents?

A. Yes, sir.

Q. The Chicago, Burlington & Quincy from Denver to Akron, 112 miles (one mile shorter) only charge 25 cents?

A. Yes, sir.

Q. And the Union Pacific itself for 115 miles from Denver to Hugo, Colorado, that is two miles longer than from Salt Lake to Wahsatch, charge 22 cents, or 8 cents less than the rate to Wahsatch, which is two miles shorter out of Salt Lake. That is correct, is it?

A. According to tariffs, yes, sir.

Q. I also see that the rate from Salt Lake to Newfoundland, on the Southern Pacific, for 112 miles, is 45 cents; that the rate on the Chicago, Burlington & Quincy from Denver to Akron, 112 miles, is 25 cents——

A. Yes, sir.

Q. Or 20 cents less?

A. Yes, sir.

Q. In each case is that actual mileage and actual tariff rate?

A. According to the tariff and according to the Railway Guide.

By Mr. LOVETT:

Q. What did you say that those rates out of Salt Lake City averaged?

A. Out of Salt Lake for what points?

Q. For the points on your Exhibit 160, 200 miles.

4297 A. $16.55.

Q. How much is that a hundred?

A. It is eighty odd cents a hundred—82½ cents a hundred.

Q. That is an average of over 80 cents a hundred?

A. Yes.

Q. How do you make that? For instance, taking this Exhibit 160, the first rate from Salt Lake to Green River runs right through at 75; the second rate from Salt Lake to Milford runs all the way

through at 62. I will get you to take these figures down, Mr. Love. I would like to see how you make your calculation on that. (Handing witness a piece of paper.) The first, I say, from Salt Lake to Green River runs all the way through at 75; from Salt Lake to Milford runs all the way through at 62; Salt Lake to Wells, Nevada, all the way through at 73; Salt Lake to American Falls, Idaho, all the way through at 40, and Salt Lake to Curries, Nevada, all the way through at 81. What does that average?

A. $16.05.

Q. The average per hundred?

A. Oh, the average per hundred?

Q. That is the way you averaged it, isn't it?

A. Yes. 66 cents.

Q. Averages 66 cents?

A. A little over 66.

Q. Well, how do you get an average of over 80 cents in this statement Exhibit 160?

A. Have you given me all the figures there are in the statement?

Q. I have given you all the figures, as I understand it.

A. (After looking at the exhibit.) It looks like there is
4298 a mistake there.

Q. There is a mistake in your statement?

A. It appears that way.

Q. And according to the average now, instead of being over 80, you said it is 66 cents a hundred?

A. Yes. There appears to be a mistake there, Judge.

Q. And it is not even 66, is it? It is 65⅓, isn't it?

A. Approximately.

Q. How much is that a ton—65⅓ a hundred?

A. I think you will find a difference in the others, too.

Q. Well, let's deal with this one first. How much is 65⅓ a hundred?

A. Well, it is over 12 dollars and something.

Mr. SEVERANCE. It figures $13.40.

Mr. LOVETT. You and your witness don't agree; he says 12 dollars and something.

Q. 65⅓ a hundred is how much a ton?

A. A little over $13.

Mr. SEVERANCE. I gave it to you straight.

Mr. LOVETT. Yes: you were better than the witness.

Q. Then, according to your present calculation your statement Exhibit 160 is wrong by over 20 cents a hundred, isn't it?

A. Yes; unless the stenographer has made a mistake in copying these figures off.

Q. Then another question. I notice on that statement that in comparing on the Southern Pacific you take Curries, Nevada. Where is Curries, Nevada?

A. On the Western Pacific, isn't it?

Q. On the Western Pacific, yes.

4299 A. It is on the Nevada & Northern road.

Q. It is on the branch line, isn't it?

A. Yes, sir.

Q. Where the combination of locals is used?

A. Yes, sir.

Q. And that is not a fair representative for that distance, is it?

A. It is the only access we have to that town.

Q. I know, but there is a main line of the Western Pacific, isn't there?

A. It doesn't run there.

Q. No; but why didn't you take a point 200 miles distant on the Western Pacific?

A. The Western Pacific has no tariff 200 miles out of Salt Lake at present.

Q. So you took this station, Curries, where there is a combination of locals over the Western Pacific?

A. I took the only thing I had.

Q. And that is very much higher than any of the others, isn't it?

A. Yes, sir.

Q. And that raises the general average?

A. It does; yes, sir.

Q. Do you ever ship anything to Curries?

A. Yes, sir; lots of stuff.

Q. Now, if you had taken the Union Pacific and the Short Line and the Southern Pacific, instead of all the roads out of Salt Lake, the average would be very much lower than even 66 cents a hundred?

A. Yes, sir. Of course there are reasons for the low rate on the Oregon Short Line, on the Union Pacific, and on the Southern Pacific, especially on the Oregon Short Line and on the Union Pacific.

4300 Q. What are those reasons?

A. The reasons are that those rates were put in under pressure, in 1892. When we had a hearing of the Interstate Commerce Commission scheduled for Salt Lake, the railroad people and the business men got together, and under an agreement we were given rates out of Salt Lake to points on the Oregon Short Line and on the Union Pacific. Those rates have never been changed, with the exception of a few instances, from 1892 up to the present time; in a few instances they have been raised.

Q. That was in 1892?

A. Yes, sir.

Q. And was that also on the Southern Pacific?

A. No; the Southern Pacific didn't reduce their rates at that time.

Q. You testified yesterday that the Southern Pacific had reduced its rates——

A. Yes, sir.

Q. Within the last two or three years.

A. Since the Ely country opened up and the smelter was put in there, the rates out of that country have been reduced very materially.

Q. That is, Southern Pacific points in Utah and Nevada?

A. Yes, sir.

Q. And when was that reduction made?

A. I think there have been some reductions made in the last few years.

Q. Haven't these rates been reduced since 1892? Weren't they reduced in 1908 on the Union Pacific?

A. East-bound?

Q. Out of Salt Lake; I don't care which bound it was—out of Salt Lake to these points that you have mentioned.

4301 A. I don't recall that they were; there may have been some slight changes made. They were immaterial. I believe they were reduced east of Evanston; I think the rates were reduced east of Evanston some.

Mr. LOVETT. The defendants object to Complainant's Exhibits 159 and 160, because the witness' testimony shows that the figures given are inaccurate.

Mr. SEVERANCE. You have not examined him on 159, where he has some comparisons that are actual.

Mr. LOVETT. I thought those on 160 were actual.

Mr. SEVERANCE. I don't mean actual, but I mean identical.

WITNESS. I think that is a clerical error in those rates only.

Mr. LOVETT. There is an error, isn't there?

WITNESS. Yes, sir.

Mr. LOVETT. I don't care what kind it is.

Mr. SEVERANCE. Can you find out and be back here this afternoon?

WITNESS. I think so.

Mr. SEVERANCE. You have not shown that any of those figures are wrong; you have not asked him anything about it.

Mr. LOVETT. Well, I have no doubt they are, but I don't know where.

Mr. SEVERANCE. Do you want to take this exhibit with you and look it over and come back here in a little while and tell us whether they are right or not?

WITNESS. Yes, sir. Any objections to taking these exhibits?

4302 The witness left the court-room, taking Exhibit 160 with him.

(Later in the afternoon, after the hearing at Salt Lake had adjourned, the exhibit was returned to the reporter. After the words "average ton (2,000 lbs.) rate out of Salt Lake," the figures "$16.55" were stricken out and "$13.24" inserted in red ink. After the words "average ton (2,000 lbs.) rate out of Denver," the figures "$11.00" were stricken out and "$8.80" inserted in red ink. This was followed by the notation in red ink "The figures in red are correct. S. H. Love.")

4303 WILLIAM S. McCARTHY,

recalled on behalf of the Complainant, testified as follows:

By Mr. SEVERANCE:

Q. Mr. McCarthy, counsel for defendants recalled Mr. Oglesby this morning and asked him how long that 54-hour train that you testified about was on. You testified to a train being scheduled 54 hours from Omaha to Ogden, and he said it was his recollection it was on about eight months. What is the fact about that?

A. To my positive knowledge it ran for seven years.

Q. Between what dates?

A. The time I speak of—in 1897 and 1904.

Q. That is train No. 19?

A. Train No. 19.

Q. Do you know of their also having on for a while a 76-hour train?

A. Yes, sir.

Q. When did that run?

A. During the same period, I think.

Q. During the same time?

A. Yes, sir.

Q. Mr. Oglesby said also this morning that he had no recollection of a 32-hour train. You spoke of a 32-hour Portland special of some sort.

A. That ran only a very short time, as I recall it. I think it was probably 60 days.

Q. But you remember of the fact that it was run?

A. Very distinctly.

Q. Did it make the time?

A. Yes, sir.

Q. That is the time of the quarrel between the Union Pacific and the Short Line?

A. Yes, sir; that was the reason for putting the train on.

Q. And the train went on over the Shasta route to Portland?

A. Yes, sir.

4304 Cross-examination by Mr. LOVETT:

Q. Are you prepared to say that that 32-hour train was kept on for 60 days, Mr. McCarthy?

A. In my testimony I said approximately 60. I couldn't say positively as to the number of days.

Q. Well, "approximately" is rather indefinite. Is that to the best of your knowledge and belief—60 days?

A. Yes, sir; about that.

Q. And when was that run?

A. During the year 1897, I think it was.

Q. During the time of the controversy between the Union Pacific and Oregon Short Line?

A. Yes, sir.

Q. Didn't you understand at the time they were losing money in running that train, Mr. McCarthy?

A. I didn't know anything about that.

Q. You had no opinion on that subject—no information on that subject?

A. No.

Q. So you don't know whether it was making money or not?

A. I do not.

Q. Between what points was the 32-hour scheduled?

A. Between Omaha and Ogden.

Q. And this 54-hour train that you testified about just now, as having been operated for seven years, was 54 hours between what points?

A. Council Bluffs and Ogden.

Q. And to your knowledge that train was a regularly scheduled train for seven years?

A. Yes, sir.

Q. From 1897 to and including 1904?

4305 A. A portion of 1904.

Q. Was it taken off then?

A. As to that I couldn't say. I discontinued doing business with the Union Pacific for a time in 1904.

Q. And when you resumed was that train running or not?

A. No; the train was not running—not under that number.

Q. What was the number of that train?

A. No. 19.

Q. You testified yesterday something about the wool traffic. I don't recall just what it was, but did I understand you to say that you were or were not familiar with the movement of that business during your connection with the Short Line and Union Pacific?

A. Yes, sir.

Q. That you were familiar with it?

A. More or less; yes.

Q. What did you have to do with it?

A. Oh, at times solicited it and helped load it.

Q. Where?

A. At Salt Lake City and some points south.

Q. Did you have anything to do with it above here on the Southern Pacific, at Ogden?

A. No, sir.

Q. Was that in your territory?

A. No, sir.

Q. Did you have any occasion to become familiar with it up there?

A. No, sir.

Q. What you testified to about it, then, yesterday, was with reference to Salt Lake and not Ogden and points west and north of Ogden, was it?

A. To what testimony do you refer, Judge?

Q. Your testimony about the wool business.

A. I don't recall exactly what it was, at the present time.

Q. Well, I don't either, but you testified about it, and I
4306 wanted to know whether your testimony about it yesterday had reference to the wool traffic in this locality, that is, Salt Lake, or whether it had reference to the wool business north of Ogden and west of Ogden?

A. I don't recall testifying to any extent of wool traffic, Judge.

Mr. SEVERANCE. I don't think he did. I think you have him mixed with some other witness.

Mr. LOVETT. No, that is just the point. I understood him to testify once yesterday that he didn't have anything to do with it, and then I understood him to testify about it and about some competition with reference to it.

Mr. SEVERANCE. Well, we will admit there was competition.

Mr. LOVETT. Yes, I guess you will. I would rather you would prove it though.

Mr. SEVERANCE. We have proved it.

Mr. LOVETT. There is room for difference as to that.

Q. If you did testify about wool traffic yesterday, you did not mean to testify as to any wool traffic on the Southern Pacific west of Ogden or on the Oregon Short Line north of Ogden?

A. I never loaded any wool on the Southern Pacific west of Ogden.

Q. Did you have anything to do with soliciting that?

A. I was contracting freight agent in the city.

Q. Salt Lake City?

A. Yes, sir; and as such would naturally have to solicit business from anyone that happened to be in the city. I might be detailed to solicit wool business from——

4307 Q. I don't care what might happen; I want to know what occurred. Did you solicit or have anything to do with the wool business in that territory?

A. No, I don't think I ever did, directly.

Q. Well, indirectly?

A. Indirectly, yes.

Q. What was it?

A. As I say, through the solicitation right in the city here.

Q. Did you ever solicit anybody for wool on the line of the Southern Pacific or west of Ogden or north of Ogden on the Oregon Short Line?

A. Without doubt, I did.

Q. For what business?

A. Business moving east.

Q. Wool business from points on the Southern Pacific?

A. On the Oregon Short Line.
Q. How about the Southern Pacific?
A. I don't recall that. I never had anything to do with it.
Q. Just what were your duties?
A. The solicitation of business for the Union Pacific Railroad.
Q. And where did you operate?
A. Why, I was supposed to work in the city, but at times I was detailed to go to other places.
Q. Were you ever detailed to go to the Southern Pacific in connection with the wool traffic?
A. No, sir.

4308 C. E. MURPHY,

being duly sworn as a witness on behalf of the Complainant, testified as follows:

Direct examination by Mr. SEVERANCE:

Q. Mr. Murphy, where do you live?
A. Salt Lake City.
Q. What is your business?
A. In the retail lumber business.
Q. How long have you been in the lumber business?
A. About 14 years, in different capacities.
Q. Here in Salt Lake?
A. Yes, sir.
Q. From what source of supply do you get your lumber?
A. The majority of it from the Pacific coast, in the neighborhood of Portland.
Q. Do you remember when the Southern Pacific and Union Pacific, or the Short Line rather, were separately represented here by commercial agencies? I don't mean the date, but do you remember the fact?
A. Yes, I know in an indirect way that they were working separately.
Q. You knew their soliciting agents, didn't you?
A. Not personally, no.
Q. Did these agencies solicit your lumber business from Portland and vicinity?
A. That was really before I was manager of the business. I would know but very little about it prior to 1902. The last seven years I have been manager of the business, and have been familiar with it since that time.
Q. What was your capacity before that?
A. I was bookkeeper and assistant manager.

Q. Didn't you come in contact with any railroad men prior
4309 to 1902?
A. Not directly.

Q. Did you hear them soliciting the business from the general manager, whoever he was?

A. In a general way only. I was informed they were doing that.

Q. You knew it as a fact, didn't you?

A. Not of my own knowledge, no.

Q. I understood that you did know it, Mr. Murphy; that is the reason I asked you the question.

A. Indirectly.

Q. How is that?

A. Indirectly.

Q. Well, how do you mean indirectly—from whom?

A. Well, they never solicited from me personally.

Q. Did they solicit it in your presence?

A. Yes.

Q. Well, that is what I want to get at. And by what route was the Southern Pacific agency soliciting that business which was solicited in your presence?

A. Via the Shasta Route I should say.

Q. And via which route was the Short Line soliciting business?

A. By its own line—by Portland, O. R. & N.

Q. How does your lumber move from Portland at the present time?

A. By the O. R. & N. and Short Line.

Q. Has it ever moved by the Shasta Route?

A. Not of late years.

Q. Did it formerly? In part, I mean.

A. Yes, several years ago it did.

Q. Did you ever buy any lumber from the Coos Bay region?

A. Yes, quite recently.

Q. How does that move?

A. It is shipped by rail from Bay Point, California, to Salt Lake over the Southern Pacific.

4310 Q. Did it come entirely by rail?

A. By water, I understand, from Coos Bay to Bay Point, California.

Q. That is what I thought. It moved by boat from Coos Bay?

A. By boat to Bay Point, California.

Q. Is that quite an extensive lumber region up there around Coos Bay?

A. So I understand.

Q. Since 1902 you have been the manager of the business, as I understand you?

A. Yes, sir.

Q. Does the joint agency of the Short Line and Southern Pacific solicit your business now or come around and call on you and ask for business?

A. Eastern business, yes, sir.

Q. Do they solicit any business from Portland?

A. No, sir.

Q. It all comes over the Short Line?

A. From Portland and vicinity, yes, sir.
Q. Yes; that is what I mean.

Cross-examination by Mr. LOVETT:

Q. Between what points did the lumber move which you said was solicited by both the Southern Pacific and the Short Line formerly?
A. I know we used to get it from Grants Pass, Oregon.
Q. That is on what—the Southern Pacific?
A. That is on the Southern Pacific, between Sacramento and Portland.
Q. Is that the business that was solicited both by the Southern Pacific and the Oregon Short Line?
4311 A. I couldn't say as to that.
Q. I mean the business which, in answer to questions from Mr. Severance, you said both had solicited in your presence.
A. Yes, sir.
Q. Now, what business was that? Between what points was it moving?
A. I couldn't say what points. I know they called, soliciting the business, but I couldn't say any particular points.
Q. It was lumber that they were soliciting?
A. Yes, sir.
Q. Were you shipping any from Portland at that time?
A. Yes, sir.
Q. To where—Salt Lake?
A. Yes, sir.
Q. You don't know whether it was Portland business they were soliciting or not?
A. I couldn't say, no, sir.
Q. Now, I believe you say that in recent years your lumber from Portland to Salt Lake has been moving exclusively by the O. R. & N. and the Short Line?
A. Yes, sir, all of it.
Q. Formerly some of it moved by way of the Shasta route as well?
A. Yes, sir.
Q. What is the difference between those two routes in distance and grades, generally speaking?
A. I am not familiar with that part of the Southern Pacific.
Q. Have you ever been over the line from Portland to Ogden by way of Sacramento?
A. No, sir, I have not.
Q. You don't know the character of the——
A. No, only from Red Bluff down.
Q. Where is Red Bluff—in California?
4312 A. Yes; it is about 160 miles north of Sacramento.
Q. You don't know, then——
A. Not above that, no, sir.

4313 C. C. GOODWIN,

being duly sworn as a witness on behalf of the Complainant, testified as follows:

Direct examination by Mr. SEVERANCE:

Q. Judge Goodwin, where do you live?
A. Salt Lake.
Q. How long have you lived in Salt Lake?
A. Twenty-nine years.
Q. And what is your profession or business?
A. I am a journalist by profession.
Q. What paper do you publish?
A. I don't publish any.
Q. Well, what paper do you edit?
A. I edit the "Daily Telegram" and a weekly paper.
Q. A weekly paper called "Goodwin's Weekly?"
A. Yes, sir.
Q. Do you remember, Judge Goodwin, of being present at a dinner at the Alta Club, given for Senator Clark, at which dinner he made a speech with reference to the proposed San Pedro Railroad?
A. Yes, sir.
Q. Were you present at that dinner?
A. Yes, sir.
Q. What, if anything, did Senator Clark say at that time with reference to that road which was about to be built being an independent line when constructed?

Mr. KELLY. That is objected to as immaterial and irrelevant; the speech itself is proven to be a literal, verbatim report and is already in evidence.

Mr. SEVERANCE. No, a part of it. That article stated it was a verbatim report of a portion of the speech, and in addition to
4314 that, as you said, he got enthusiastic after dinner and made some promises, too.

A. He said, "We are going to build that road as an independent road to Los Angeles or San Pedro"—I don't remember which; and I remember it particularly because he said he hoped when finished that he could make traffic arrangements with all the other roads that might come in to go over his line.
Q. All the other roads that might come in?
A. Yes.
Q. What, if anything, did Senator Clark say with reference to the connection of that road with a steamship line?
A. I am not sure that he said anything at that dinner.
Q. Did he say anything to you at or about that time with reference to a proposed steamship line in connection with that railroad?
A. No, but an interview was published in the paper.
Q. That was simply something that you read?
A. Yes, sir.

No cross-examination.

4315 ORSON D. ROMNEY,

being duly sworn as a witness on behalf of the Complainant, testified as follows:

Direct examination by Mr. SEVERANCE:

Q. Where do you live, Mr. Romney?
A. Salt Lake.
Q. What is your business?
A. Lumber business.
Q. Wholesale or retail?
A. Both.
Q. Into what territory do you distribute when you wholesale?
A. Utah, Idaho, Montana.
Q. How long have you been in the lumber business in Salt Lake?
A. Twenty years.
Q. What is the name of your company?
A. The George Romney Lumber Company.
Q. And what is your position with that company?
A. Manager.
Q. Where does your lumber supply come from?
A. Mostly from Oregon.
Q. What part of Oregon—the vicinity of Portland?
A. Portland, yes, sir.
Q. Over what line does that lumber move?
A. O. R. & N., Short Line.
Q. Do you remember, years ago, any of that lumber moving over any other line than the Short Line?
A. Some, yes, over the Shasta Route.
Q. Over the Shasta Route. How long ago is that?
A. Ten or twelve years, I imagine; it is a long time.
Q. Who routes your lumber?
A. The shippers, as a rule.

4316 Q. How was the time made between Portland and here in the days when both routes were used, as compared with the time now?

A. Well, I hardly remember. There are some shipments that are made very quickly now and some are very slow. My opinion is that in many instances they are slower than they used to be.

Q. What is the usual time now from Portland here?

A. We have some coming through in a week, some in two weeks, and we have had it longer than that.

Q. Do you know personally of any efforts that were made in the old days, when both routes were open, to make quick time?

A. No, I don't know as I do.

Q. You didn't know it of your own personal knowledge?

A. No, sir.

Q. You simply observed the movement?

A. Yes, sir.
Q. Has your business been both a wholesale and retail business during all the time you have been connected with it?
A. Yes, sir.

Cross examination by Mr. LOVETT:

Q. You say, as I understood you, that you are not certain as to the time formerly, but you think in some instances the time is slower than formerly. Are you positive about that or not?
A. No, I don't know that I am positive.
Q. You have no data which you have consulted to check up on?
A. No, sir.
Q. That is simply your impression?
A. Yes, sir.
4317 Q. Are you familiar with the character of the two routes, that is, the O. R. & N. and the Short Line, from Portland to Salt Lake and the Southern Pacific by way of Sacramento to Ogden?
A. Yes, somewhat.
Q. With the relative grades, I suppose, and distances?
A. Yes.
Q. What is the difference in distance, do you know?
A. I am not positive, but I think from Portland via San Francisco and the Shasta Route would be nearly twice as far.
Q. And it is very much steeper grades?
A. Very much. I have been over it a number of times.

4318 GEORGE E. MERRILL,

being duly sworn as a witness on behalf of the Complainant, testified as follows:

Direct examination by Mr. SEVERANCE:

Q. Mr. Merrill, what is your business?
A. Wholesale and retail lumber business.
Q. Whereabouts?
A. Retail in Salt Lake City, and wholesale in portions of Wyoming, Nevada, Idaho and Utah.
Q. What is the name of your company?
A. Morrison, Merrill and Company.
Q. How long have you been in the lumber business?
A. About twelve years.
Q. Here?
A. Here seven years.
Q. Before that, where?
A. In Wyoming.
Q. From what source do you get your lumber supply?

A. Largely from Oregon; some from Washington and California.

Q. When it comes from Oregon, is it from the vicinity of Portland?

A. To a considerable extent, yes.

Q. How does that traffic move to Salt Lake from Portland?

A. O. R. & N. and O. S. L.

Q. Do you recall whether some years ago it moved by any other route in part?

A. Not within my time, no, sir.

Q. You didn't know of that?

A. Not from Portland.

Q. From what points in Oregon did it move by any other route?

A. Oregon lumber, in my recollection, has always moved by the O. R. & N. and O. S. L.; any movement prior to that time I was not acquainted with.

4319 Q. Seven years, you say, you have been here in Salt Lake?

A. Yes. However, seven years ago I was not informed as to the movement; I was not in a position in the business to know as to the movement.

Q. How long have you been in a position to know of that movement?

A. About five years.

Q. During that time it has all moved Short Line, as far as you know?

A. All moved Short Line.

Q. Are there any points in Nevada, on the Southern Pacific, where Portland lumber can move either way—by the Short Line or the Shasta Route?

A. Until very recently—it is barely possible that the tariff has been canceled recently; until very recently the same rate applied to Ely, Nevada, via either the Short Line, O. R. & N. or via the Southern Pacific line.

Q. That is, by the Shasta Route?

A. By Sacramento, yes.

Q. By Sacramento. Whereabouts is Ely? How far from Salt Lake, or how far from Ogden?

A. I can't give you the mileage.

Q. It is in Nevada, isn't it?

A. Yes.

Q. It is down near Cobre?

A. Yes.

Q. Is it on a main line or a branch line?

A. On a branch line.

Mr. WILLIAMS. Ely is about 140 miles south of Cobre, on a branch, Cobre being the junction point with the main line.

Mr. SEVERANCE. How far west of Ogden is Cobre?

Mr. WILLIAMS. About 140 miles, I should say. I guess Mr. Plaisted knows better. I should say about 140 miles.

Mr. SEVERANCE. It is about half way to Ely, then?

4320 Mr. WILLIAMS. Just about, from Ogden.

Q. Do you do business along the line of the Southern Pacific in Nevada—wholesale business?

A. To a very limited extent, yes, sir.

Q. And where do you ship your lumber from?

A. From Oregon and Washington.

Q. It does not come to Salt Lake and go back, but you ship it direct to your customers, do you?

A. Yes, we ship it direct.

Q. Do you ship lumber down into Nevada by the Shasta Route, Sacramento?

A. Yes, sir, that route is open to Nevada points.

Q. How far east—clear to Ogden?

A. It is open at a common point rate to stations just over the line, in Utah.

Q. Just over the Nevada line?

A. Yes, sir.

Q. That rate is not available at all to ship to Ogden, is it?

A. No, sir.

Q. Any rate there?

A. No, sir.

Q. How far from Ogden does the rate terminate?

A. I might refer to the gentlemen who are more familiar with the mileage. The small stations just over the line, the distance it would be from there to Ogden, but I am not able to give that.

Mr. WILLIAMS. Tecoma?

WITNESS. Yes, Tecoma.

Mr. SEVERANCE. How far is Tecoma from Ogden?

Mr. WILLIAMS. About 120 or 125 miles, as I remember. It is just inside of Nevada.

4321 Q. Then, east of Tecoma you have to ship by the Short Line?

A. Yes, sir.

Q. A short haul on the Southern Pacific?

A. Yes, sir.

Q. Can you ship to any point west of Ely by the Short Line? You say you don't know but even that has been taken out now.

A. That may have been taken out, but when it was in effect, up to very recently, it applied a short distance beyond Cobre, on the main line of the Southern Pacific, according to my recollection.

Q. And to any points west of that, the traffic had to move by the Shasta Route?

A. Yes, sir.

Q. And to any point east of Tecoma it now has to move by the Short Line?

A. I won't give Tecoma as the exact point, but a point close to——

Q. About there, about the Nevada line?

A. Yes.

Q. Does any lumber come to Salt Lake by the San Pedro route?

A. No, sir.

Q. Does lumber come to Salt Lake by the Southern Pacific from San Francisco Bay points?

A. Yes, sir; from California points.

Q. What is the shingle rate from Portland to Salt Lake?

A. It is now from Portland proper 47½ cents.

Q. What is the shingle rate from San Francisco?

A. I won't attempt to give it. My impression is that it is 40 cents.

Q. Yes; that is right—40 cents. Was there a time when that rate was identical from San Francisco and Portland?

A. I don't know as to shingles; as to lumber it was
4322 identical until last October.

Q. What is the rate from Portland now on lumber?

A. 37½ cents.

Q. And from San Francisco how much?

A. 40 cents. That is, when you say San Francisco, you refer to common points?

Q. California common points, certainly. Do you receive any lumber or shingles from Pacific coast points north of Portland?

A. Yes, sir.

Q. What points?

A. Points lying between and including Seattle and Tacoma on the north and Portland on the south.

Q. How does that traffic move to Salt Lake?

A. It now moves very largely by the O. R. & N. and O. S. L.

Q. How does it get to Portland?

A. Over the line of the Northern Pacific Railway.

Q. Has any of it ever moved by boat to San Francisco and thence over the Southern Pacific?

A. No, sir. Very rarely.

Q. Have you ever had any shingles come from Vancouver or Seattle by boat to San Francisco and thence over the Southern Pacific?

A. On one occasion that I recall in recent times, yes—within the last two or three years.

Q. As I understood you, you told me you get no lumber by the San Pedro route?

A. No; not to Salt Lake.

Q. Does any lumber come into Salt Lake by the San Pedro route, brought down by boat to San Pedro?

A. Not to my knowledge.

Q. Does any lumber reach here from Puget Sound by way of Butte and the Short Line?

A. Yes: via the Silver Bow gateway.

4323 Q. What line does it come over from the Coast?

A. The Northern Pacific.

Q. Then you receive lumber into Salt Lake, as I take it, three ways: By the Southern Pacific from San Francisco or California common points, by the Short Line, O. R. & N. from Portland?

A. Yes, sir.

Q. And also by the Silver Bow gateway from North Pacific Coast points?

A. Yes, sir.

Q. The Northern Pacific conects with the Short Line?

A. The lumber coming in, through, on the Southern Pacific, however, is California product—not an Oregon product.

Q. That comes to Salt Lake?

A. Yes, that comes to Salt Lake.

Q. I understand. Oregon lumber cannot move that way?

A. No, sir.

Q. It is not permitted to go that way?

A. No, sir.

No cross-examination.

4324 FRANK S. MURPHY,

being duly sworn as a witness on behalf of the Complainant, testified as follows:

Direct examination by Mr. SEVERANCE:

Q. Mr. Murphy, where do you live?

A. Salt Lake City.

Q. What is your business?

A. Lumber business.

Q. Wholesale or retail?

A. Wholesale at the present time.

Q. How long have you been in the lumber business in Salt Lake?

A. Since February, 1895.

Q. Into what region do you wholesale?

A. Utah, Nevada, and Wyoming.

Q. From what source of supply do you get your lumber?

A. From Eastern and Western Oregon and Eastern and Western California; some from Washington.

Q. Where does your principal supply come from?

A. Oregon is the principal supply—western Oregon.

Q. From Portland?

A. From Portland and vicinity, yes, sir.

Q. How does your lumber move to Salt Lake from Portland at the present time?

A. It moves through the Portland gateway and over the O. R. & N. and O. S. L.

Q. Have you ever used the Shasta Route for lumber shipments here?

A. Yes, sir.

Q. How long ago?

A. About twelve or thirteen years ago, I believe.

Q. Do you remember the days when the Short Line and the Southern Pacific had separate commercial agencies here?

4325 A. Yes, sir.

Q. Who were the agents that you knew in those days?

A. I think Mr. Gray was the representative of the Southern Pacific and Mr. Eccles of the Short Line.

Q. Was your lumber business from Oregon solicited by those agencies then?

A. Yes, sir.

Q. By which route did the Southern Pacific solicit the business?

A. It came over the Shasta Route and down over the Denver and Rio Grande from Ogden.

Q. And which way did the Union Pacific people solicit the business?

A. O. R. & N. and O. S. L.

Q. Do you wholesale into Nevada?

A. Yes, sir.

Q. Did you hear the last witness who was on the stand testify as to the points that were reached by the Shasta Route and by the Oregon Short Line?

A. Yes, sir.

Q. Does that accord with your understanding, or not? Just state how you understand it.

A. I am not familiar as to the dividing point he mentioned.

Q. But can you now ship by the Shasta Route to Ogden or points near there?

A. No, sir; I believe not.

Q. Do you know how far west on the Southern Pacific you can go with traffic moving over the Short Line?

A. I think it depends on the point at which the shipment originates.

Q. Just explain that.

A. I think if it originates at a Southern Pacific point south of Portland it must come by the Shasta Route to any point on the Southern Pacific west of Ogden, but if it originates at Portland it

4326 can go as far west as Cobre on the 40-cent rate, as I understand it.

Mr. LOVETT. That is, it can go by the Oregon Short Line?

Mr. SEVERANCE. Yes, by the Oregon Short Line and O. R. & N.

Q. How do the rates on shingles now compare as between San Francisco and Portland into Salt Lake?

A. I think the shingle rate from Portland is 7½ cents higher than from San Francisco.

Q. Your opinion is the same as the last witness?

A. Yes, sir.

Q. Forty cents as against 47½?

A. That is right.

Q. Were they formerly the same?

A. Yes, sir; I think they were the same.

Q. Do you know of shipments of lumber to this region from Coos Bay?

A. Yes, sir.

Q. How does that traffic move?

A. It moves by boat to San Francisco harbor, and by rail from San Francisco harbor or San Francisco Bay to points on the S. P. and the O. S. L.

Cross-examination by Mr. LOVETT:

Q. Are you acquainted with the character of the road via Shasta Route, Sacramento, and with the character of the line made up of the O. R. & N. and Short Line from Portland to Ogden?

A. Yes.

Q. What is the difference in the matter of distance, about?

A. I should say the distance in favor of the O. R. & N. and O. S. L., that is, between Portland and Ogden, would be in the neighborhood of 500 miles in favor of the O. R. & N. and O. S. L.

Q. How about the mountain ranges or grades, comparatively?

A. The grades are much greater over the Shasta route and
4327 the Sierra Nevada Mountains than they are over the Blue Mountains on the O. R. & N.

Q. That is, they are very much better grades by the O. R. & N. and O. S. L. than by the Shasta Route?

A. Yes, sir.

By Mr. SEVERANCE:

Q. Judge Lovett is trying to develop by you that the Shasta Route is a very bad route, I judge——

Mr. LOVETT. No, indeed.

Q. ——and it being such an exceedingly difficult matter to move traffic over that route, how do you account for the fact that the O. R. & N. and the Short Line—this splendid line that comes down to Ogden—is not permitted to go over into Western Nevada, at least to a point that would make it half way between, and that everything has to move there by the Shasta route? Can you understand that?

A. I would say that is beyond my comprehension, sir.

Q. Yes; it seems very difficult for me to understand in view of the judge's opinion of the Shasta Route; but, as you understand it, the traffic direction of the Short Line, the O. R. & N., and the Southern Pacific is all combined in one gentleman?

A. I have understood so; yes, sir.

Q. And as far as I can make out from the Judge's questions and suggestions, he must be losing a lot of money for his company by forcing traffic over this bad route. That is the way it looks to you?

A. It would look as though they might make it easier by hauling it the other way.

4328 By Mr. LOVETT:

Q. Has he a reputation for losing money, Mr. Murphy?

A. Well, if he has, it hasn't reached me.

Mr. SEVERANCE. The best men will get careless sometimes, you know.

Q. Don't you think that this disposition of the Southern Pacific to limit the extent to which the O. R. & N. and O. S. L. go into local points on the S. P. arises from the fact that the man in San Francisco in charge of the Southern Pacific freight rates would rather have traffic that originates on the Southern Pacific line in Oregon carried over the Southern Pacific to these points in Nevada than have it come over the line that is not under his control? Don't you think that is the explanation of it?

A. I presume he wants to keep his office force busy.

Q. And also his railroad?

A. Yes, sir.

Q. Now, you don't mean to say that the Shasta Route is a bad road, do you?

(The witness laughs.)

Q. Didn't you mean to say this, Mr. Murphy, that the Shasta Route, that is, the Southern Pacific by way of Sacramento, is an excellent route, but that the route by the O. R. & N. and the Oregon Short Line is still better?

A. It is far more excellent, yes, sir.

By Mr. SEVERANCE:

Q. Just one further question. Counsel has suggested to you
4329 that the man in charge of the Southern Pacific traffic at San Francisco—I don't know who he is; we don't hear much about him——

Mr. LOVETT. He gets in his work just the same.

Q. But this man at San Francisco probably insists on moving this traffic around by the Shasta route so as to get the business for his own line.

A. Yes, sir.

Q. Can you understand how that man is willing to submit to have all the business originating north of Ashland, moving to the Atlantic seaboard or the Middle States, move north on the Southern Pacific to Portland and thence east over the Short Line? Can you understand how he will stand that?

A. Yes, I think he consoles himself by the fact that that territory is under the management of the gentleman at Portland and is out of his territory?

Q. You think that is the way he looks at it? He lays that up against his Portland associates?

A. Yes.

Q. Both of them, however, reporting ultimately to Mr. Stubbs?

A. I think so.

By Mr. LOVETT:

Q. You don't know what division the Southern Pacific gets out of it either, do you?
A. No, sir.

By Mr. SEVERANCE:

Q. You—in spite of all this—are in favor of competition among railroads, aren't you?
A. Always.
Mr. LOVETT. Everybody is.
Mr. SEVERANCE. That is all, unless you want to wait for Mr. Love.
4330 Mr. LOVETT. Oh, he would only have to go over it again.

An adjournment was then taken, until the morning of Monday, May 3, 1909, at the grand jury room in the Federal Building, Portland, Oregon.

4331 GRAND JURY ROOM, FEDERAL BUILDING,
*Portland, Oregon, May 3, 1909.*

The taking of testimony was resumed before the Special Examiner, Hon. Sylvester G. Williams, at the above time and place, pursuant to adjournment.

Present: On behalf of the Complainant, Mr. C. A. Severance; on behalf of the Defendants, Mr. R. S. Lovett and Mr. W. W. Cotton.

## D. C. O'REILLY.

being duly sworn as a witness on behalf of the Complainant, testified as follows:

Direct-examination by Mr. SEVERANCE:

Q. Mr. O'Reilly, where do you live?
A. Portland, Oregon.
Q. What is your business?
A. I am in the towing and lighterage business.
Q. How long have you lived in Portland?
A. About nineteen years.
Q. Where did you come from when you came to Portland?
A. From Denver, direct.
Q. What was your business before coming to Portland?
A. I was in the railroad business.
Q. Where?
A. At Denver.
Q. And any other place?
A. I had previously been at Omaha.
Q. With what railroad were you associated?

A. The Union Pacific.

Q. At both Omaha and Denver?

A. Yes, sir.

Q. In what capacity?

A. I was in the general freight office in Omaha, and at Denver I was general freight agent.

4332 Q. What was your business when you came to Portland?

A. I was traveling freight agent of the Union Pacific.

Q. What year was that?

A. That was in 1891.

Q. How long did you stay with the Union Pacific?

A. I stayed with the Union Pacific until July 4, 1894. After that I was with the O. R. & N.

Q. For how long?

A. For about three years.

Q. What was your position here with the Union Pacific? Were you all the time traveling freight agent?

A. No, I was part of the time traveling freight agent, and part of the time I was in the general western freight agent's office.

Q. Who was the general western freight agent?

A. Ben Campbell.

Q. That was his title as a Union Pacific official, was it?

A. Yes, at that time.

Q. And what was his other position here?

A. At the time I was with him that was his position with the Union Pacific.

Q. What was his position with the O. R. & N.?

A. He was general freight agent and then traffic manager.

Q. At the same time that he was general freight agent or general traffic manager of the O. R. & N., did he also hold the position of general agent of the Union Pacific?

A. No.

Q. Or was that prior?

A. That was prior.

Q. Up to what time did he have that relation with the Union Pacific?

A. Up to the receivership of July 4th, 1894.

Q. At the time Mr. McNeil was appointed receiver?

A. Yes, sir.

Q. After the receivership what was his position?

A. He was traffic manager.

4333 Q. Of the O. R. & N.?

A. Yes, sir.

Q. And after the termination of the receivership what was his position?

A. I think he continued as traffic manager. I am not sure. I left during the O. R. & N. administration.

Q. You say you left the O. R. & N. in 1904, as I understand you.

A. No, I went to the O. R. & N. I went over at the same time Mr. Campbell did from the Union Pacific to the O. R. & N., and I left the O. R. & N. service in October, 1897, I think it was; somewhere about that time.

Q. Do you mean 1904 or 1894?

A. 1894.

Q. Oh, yes. I misunderstood you. I thought you said 1904.

A. No.

Q. How many years is it since you have been in the railroad service, Mr. O'Reilly? I think I misunderstood your dates.

A. It has been about twelve years.

Q. I misunderstood you. I understood you to say 1907, instead of 1897.

A. No, 1897.

Q. That is what confused me. Now, do you remember the time when the Southern Pacific, the Union Pacific, the Short Line and the O. R. & N. each had separate agencies here?

A. Yes.

Q. When was that?

A. That was during the receivership—the McNeil receivership.

Q. And after the receivership how were the agencies combined, if at all?

A. I don't have it very clearly in mind because I left just at the close of the receivership and I am not certain just what the representation was. I left town for some time.

Q. During the time of your employment by these roads, do
4334 you remember of the boat line run by the O. R. & N. between here and San Francisco?

A. Yes, sir.

Q. Do you remember at any time of a war of rates between that line and the Southern Pacific, between here and San Francisco?

A. Yes.

Q. When was that?

A. I think it was in 1895 and 1896, and possibly later.

Q. How long did it last?

A. I am not clear in my mind about it, but I think it lasted probably a year and a half.

Q. Did that extend to both passenger and freight?

A. Yes.

Q. Can you recall how low the rates got during that struggle?

A. I think that some freight rates got as low as a dollar a ton.

Q. On both lines or on one line?

A. My recollection is that the Southern Pacific didn't go to bed rock on it, didn't absolutely meet the bed rock rate of the water line, but I am not certain about that. It has been a good while ago, and my memory is not clear on it.

Q. Did the rates fluctuate during this year and a half?

A. It was a steady decline.

Q. How low did the passenger rates get, if you remember?

A. The passenger rates, I believe, did not go below $5 first class fare.

Q. Each way?

A. Yes.

Q. Did you know of a line of boats running to San Francisco from Yaquina Bay?

A. Yes: there used to be a line of boats.

Q. I mean in those days.

A. Yes.

Q. And in connection with what railroad was that boat line operated?

A. That was in operation in connection with what is now
4335 called the Corvallis & Eastern. I don't remember whether it was then called the Oregon & Pacific or—it had some other name in between the two: I don't recall it.

Q. And where does that line of road run?

A. It runs from Yaquina Bay, from Newport, to a place called Detroit, up in the Cascades.

Q. Does that cross the Southern Pacific?

A. At Corvallis and Albany.

Q. Does it cross the Willamette River?

A. It crosses the Willamette River.

Q. At what place?

A. At Albany.

Q. How far east of the Willamette River does it run?

A. I don't know just what the mileage is: I think something like probably 60 or 80 miles.

Q. Did that railroad line have any connection with Portland by boat?

A. Yes.

Q. Now, at the time this rate war was on that you speak of, in 1895 and 1896, between the Oregon Railroad & Navigation Company and the Southern Pacific, did this line running from Yaquina Bay to Albany, connecting with Portland by boats down the river and connecting San Francisco by ships, participate in that fight?

A. Yes, they did: that is, in a local manner: not as between San Francisco and Portland, if I remember correctly. I don't think they entered that field.

Q. How was it between points in the Willamette Valley and San Francisco?

A. There was very strong competition.

Q. What classes of traffic were included in the competition between the Southern Pacific, the O. R. & N., and this Corvallis &
4336 Eastern and connections at San Francisco?

A. Southbound, grain and potatoes: and northbound, general merchandise.

Q. During the time that you were connected with the O. R. & N., what classes of commodities moved between San Francisco and Port-

land, both by boat line and Southern Pacific Railroad—the Shasta Route? What were the chief articles of commerce?

A. The chief articles of commerce were grain and farm products generally, southbound; and merchandise, more particularly in the way of groceries, northbound.

Q. Did they move both ways—both boat and rail?

A. Yes.

Q. At the time you were with the O. R. & N. was there any competition between the O. R. & N., for business out of San Francisco, with the Central Pacific line via Ogden?

A. Out of San Francisco?

Q. Yes; to Montana points?

A. To Montana points—yes.

Q. What classes of commodities were covered by that?

A. All classes.

Q. And how did that traffic move to Montana points if the O. R. & N. secured it?

A. It moved by the way of Huntington and Pocatello for one route, and I think our line was entirely that way. I was thinking there was a route via Spokane, but I don't think there was.

Q. How did it get here from San Francisco—by boat?

A. Pardon me?

Q. Brought up by the boat from San Francisco?

A. Yes; and rail also.

Q. And how did the traffic move by Ogden?

A. By the Central Pacific and the Union Pacific and Oregon Short Line.

Q. Do you remember of any time when the Southern Pacific
4337 Shasta Route shortened their time between San Francisco and here to meet the competition of the boat line?

A. I don't remember any period when they shortened their time.

Q. What was their passenger time between here and San Francisco?

A. I think it was in the neighborhood of 36 hours; I don't remember.

Q. Was that the usual time?

A. I think so. My recollection is the time was not a factor.

Q. And what was the time of the boats?

A. It was about 53 to 55 hours from here.

Q. After this rate war that you spoke of, was there a differential between the boat line and the rail line?

A. After this rate war?

Q. Yes, sir.

A. Yes.

Q. Was that fixed or fluctuating?

A. I am not certain about that; in fact, I don't know. If my memory serves me right, the rate war was terminated either just before I left the company or just after, and I am not in a position to know just what they did.

Q. Do you remember any time during the receivership of the Oregon Short Line when business was worked closely between the Short Line and the Ogden Route of the Southern Pacific?

A. For what business?

Q. Idaho and eastern Washington.

A. Yes.

Q. How long did that last?

A. I think that lasted all during my connection with the O. R. & N. company; pretty close to it.

Mr. COTTON. Idaho and eastern Washington, you say?

Mr. SEVERANCE. I misspoke.

4338 WITNESS. No; the Short Line wouldn't touch eastern Washington.

Mr. SEVERANCE. I meant Idaho points and northern Utah points.

WITNESS. The O. R. & N. were never in the field for the business between California and Utah points.

Q. How was it between California and points west of Pocatello?

A. Points west of Pocatello it was competitive territory.

Q. And the business moved both ways and around by Portland?

A. Yes, sir.

Q. Do you remember of the establishment of steamship lines to the Orient in connection with the O. R. & N.?

A. Yes, sir.

Q. What was the first line that you recall?

A. I think the first line was the Samuel Samuel's Line.

Q. Do you remember when that was established?

A. I think it was in 1894; I am not sure. I think the Samuel's Line was before 1894. I think it was established by the Union Pacific. I wouldn't be certain about that, so many changes have been made in those lines.

Q. In connection with what railroad line did the Samuel's Line run?

A. In connection with the O. R. & N. and its connections.

Q. On the O. R. & N., if traffic was destined to points east of the Missouri River, how did it move?

A. It moved, I think, by both Huntington and Spokane gateways; both the Union Pacific and Great Northern, I think.

Mr. COTTON. The Samuel Samuel's Line?

WITNESS. Now, I won't be positive about that, because there

4339 were different lines in there, and I won't be sure whether it was with the Samuel's Line, but with one of the lines that was in existence during my time.

Q. Where it moved both ways?

A. Yes, sir.

Q. How about the Dodwell Line; do you remember when that was put on?

A. I think the Dodwell Line succeeded the Samuel's Line. I won't be sure about that. I think it succeeded it.

Q. When the Dodwell Line was put on, how frequent sailings did they have; do you remember?

A. I think it was 30-day sailings.

Q. And what classes of commodities were brought in from the Orient by the Dodwell Line?

A. Tea, silk, matting, curios. That covered the general range.

Q. And how did that traffic move to points east of the Missouri River?

A. I am not sure which of the lines worked both routes, but, of course, the principal line was the Huntington gateway. Whether that was exclusive with the Dodwell Line or with the Samuel's line I don't remember.

Q. By the "Huntington gateway" you mean O. R. & N., Oregon Short Line and Union Pacific?

A. O. R. & N., Oregon Short Line and Union Pacific; yes.

Q. Do you remember the organization of the Portland and Asiatic Steamship Company which succeeded the Dodwell Line?

A. I think I can remember about the date when it was organized.

Q. That line was organized by the O. R. & N.?

A. Yes.

Q. Their traffic was routed the same way, wasn't it, through the Huntington gateway?

A. That is my recollection, entirely through the Huntington gateway.

4340 Q. Was the importation of the same general class?

A. Yes.

Q. How did business from the Atlantic seaboard territory reach Portland during the time of your connection with the O. R. & N.?

A. It reached Portland via all the lines—Union Pacific, Great Northern, Northern Pacific, Southern Pacific.

Q. Did the Southern Pacific Sunset Route participate in that business?

A. Yes.

Q. How did the O. R. & N. get the traffic that came from the east?

A. They received the traffic at Huntington and Spokane.

Q. If from Huntington, from what company did it receive it—the Short Line?

A. From the Oregon Short Line.

Q. And if at Spokane, from what companies?

A. From the Great Northern.

Q. Was the Northern Pacific participating in that traffic also?

A. Oh, yes.

Q. They came in over their own rails?

A. Over their own rails.

Q. At the time the various railroads you have mentioned—that is, the Southern Pacific, the O. R. & N., the Short Line, and the Union Pacific—had their separate agencies here, was this Atlantic seaboard traffic the subject of solicitation by these agencies?

A. It was.

Q. Was that competition active or otherwise?

A. I think it was active. That is my recollection.

Q. What classes of traffic, chiefly, were covered by that Atlantic seaboard business?

A. It was, of course, all classes of traffic. The principal items were what we would call Atlantic seaboard commodities.

4341 Q. General merchandise?

A. Yes; dry goods and iron and commodities of that character.

Q. Do you know the territory into which Portland merchants distribute their commodities?

A. Yes.

Q. What territory do they reach?

A. I don't know what territory they reach now.

Q. What territory did they reach in your days?

A. They reached all points west of Pocatello, west of Wallace, and west of Spokane.

Q. Wallace is in Idaho?

A. Yes, sir.

Q. And how far south did it go?

A. I am not certain about that, but there was a dividing line down the Southern Pacific somewhere where they met; I was not familiar with that.

Q. Did they also reach the territory in central Oregon which has not yet been penetrated by railroads?

A. Yes.

Q. Goods packed into that country?

A. Yes.

Q. How much of Oregon, if any, was there that was not tributary to Portland?

A. As against San Francisco?

Q. Or any other point.

A. Well, there wasn't any part of Oregon that wasn't directly tributary to Portland.

Q. And was a large part of Idaho likewise tributary?

A. Just that part on the Oregon Short Line and along west of Pocatello and in the north where the O. R. & N. lines reached.

Q. You spoke of Wallace.

A. Yes; Wallace.

4342 Q. That is the principal town in the Coeur d'Alenes, isn't it?

A. Yes.

Q. That is a big mining region?

A. Yes.

Q. Did the Portland merchants penetrate a territory in which they were competitive with San Francisco also?

A. Did they what?

Q. Penetrate into a territory in which they were competitive with San Francisco?

A. Well, their competition with San Francisco was in a local way, was principally in the Willamette Valley, and in a general way, of course, on what we call California commodities they were more or less competitive all over the Northwest.

Q. And traffic moved up from San Francisco into this territory of Pocatello?

A. Yes.

Q. Did they also meet the competition of Salt Lake?

A. The Portland jobbers?

Q. Yes.

A. I believe they had Salt Lake competition in southern Idaho.

Q. In addition to this westbound traffic of the Atlantic seaboard, was there any traffic to the Atlantic seaboard that was the subject of competition between these lines?

A. Yes.

Q. What was it?

A. It was wool, hides, hops, canned goods—canned salmon.

Q. Was that a large or a small business?

A. Well, in these days it wouldn't be considered very big tonnage.

Q. In those days how was it?

A. Well, it was considered quite important.

1343 Q. Can you give an idea of the number of carloads or approximately the number of carloads of that class of traffic that moved to the east every year?

A. No; it would be nothing but a wild guess.

Q. The hop business is a large business in the Valley here, isn't it?

A. In some years it is; it is quite an important business. Some years it fluctuates a good deal; some years larger than others.

Q. I don't know that I quite understand what you meant by your answer that this tonnage was considered a large tonnage then, but it would not be considered so large now.

A. My idea was of course that the tonnage of this country was very much lighter then than it is now, in a general way.

Q. You mean proportionately it would not be as great?

A. Yes; proportionately.

Q. You did not mean to testify that the amount of that class of tonnage had fallen off, but the proportion would not be as great because of the growth of the country?

A. That is the idea.

Q. The general traffic being so much larger?

A. Yes.

Q. Now, Mr. O'Reilly, did the O. R. & N. meet the competition of the Southern Pacific Sunset Route as to this Atlantic seaboard business eastbound?

A. Yes, my recollection is they did.

Q. How was the business in the east which was west of Pittsburg? Did that move both ways?

A. West of Pittsburg?

Q. Yes.

A. I don't remember——

4344 Q. That is to say, did it move by the Southern Pacific out of here either through the Ogden or the New Orleans gateway?

A. Oh, yes, that was competitive by either route.

Q. And it also moved by the O. R. & N. and Short Line through Ogden?

A. Yes.

Q. Do you recall how frequently the boats ran between here and San Francisco in those days?

A. Not exactly. The service differed at different times, according to the season of the year and the amount of traffic.

Q. I am speaking of the O. R. & N. boat lines, not of other lines.

A. Well, that is what I had reference to.

Q. You understood me?

A. Yes.

Q. Do you recall how frequent the sailings got to be at times?

A. At one time we had three boats in the service, and I think there was a four-day service, and then I believe it was cut down to two boats, and shortened up the lay-over and made it a five-day service. It changed at different times according to the existing conditions.

Q. Do you remember a time, during the receivership, when the Union Pacific had some difficulty with the receivers of the Short Line, when the divisions were taken out at one time by Ogden? Have you a recollection of that?

A. Yes, I do. I think for a short time there was some hitch in the divisions via Huntington.

Q. How did the Union Pacific work its traffic into Portland at that time?

A. For a time they worked it by Ogden and the Central Pacific.

Q. Sacramento?

A. Yes.

Q. Or Marysville?

A. Yes.

4345 Q. Commonly known as the Shasta Route?

A. Yes, sir.

Q. At that time what line east of Ogden did the Short Line work in connection with?

A. The Short Line east of Ogden?

Q. Yes; during the time of that trouble.

A. Now, maybe I answered your previous question wrong. I don't think it was a disturbance between the Short Line and the O. R. & N. which brought about that situation.

Q. Of the O. R. & N., the Short Line, and the Union Pacific?

A. Yes; the Short Line and the Union Pacific.

Q. That is the way I put my question.

A. What was your last question?

Q. I said, during the time of that division between the Short Line and the Union Pacific, what route east of Ogden did the Short Line and O. R. & N. work with.

A. They worked with the Colorado lines, and I believe the Union Pacific also took their traffic, if I remember correctly.

Q. At the time the divisions were out?

A. Yes. If I remember correctly, they took what they were offered of it.

Q. How did the chief part of it move east of Ogden?

A. I think the chief part of it moved via the Colorado lines.

Q. And the Union Pacific were working with the Southern Pacific?

A. Yes.

Q. How long did that condition last?

A. Well, I don't remember: I don't think it was more than a few months.

Q. Do you remember the character of the service put on at that time by the Union Pacific and the Shasta Route into
4346 Portland?

A. As to time?

Q. Yes.

A. I think they made a special effort in the matter of service, if I remember correctly.

Q. Do you recall in those days the boat lines on the Willamette River, conducted by the O. R. & N.?

A. Yes.

Q. How far up the river did those boats go?

A. As far as Corvallis, as a regular run.

Q. What kind of traffic did they bring in?

A. They brought in grain, potatoes, hops, some wool; those were the principal commodities.

Q. Was that traffic or a portion of it brought in by those boats, the class of commodities that would also move by rail?

A. Yes. The hops and the wool would be rail traffic.

Q. That same district from which you stated the Sunset Route wool moves to the east?

A. Yes.

Q. And when those commodities were brought in here to Portland by this boat line on the river, how did it move to the East if it was destined to the east?

A. That which came in over the O. R. & N. boats would go East over the O. R. & N. line.

Q. Do you know about a boat line on the Yamhill River?

A. Yes.

Q. Who ran that?

A. The O. R. & N.

Q. What class of business did that line bring in?

A. That was the same general class as the Willamette; the Yamhill was just a short tributary to the Willamette.

Q. Was that traffic which was brought in also traffic that
4347 could move over the Southern Pacific?

A. Yes. That was what you might call the eastern commodities.

Q. Yes; that is what I mean.

A. There were some potatoes and grain that the Southern Pacific wouldn't touch.

Q. Did any of the potatoes and grain which were brought in here move to San Francisco by the boats?

A. Yes; quite largely.

Q. Did that condition on the rivers continue as long as you were connected with the company?

A. Yes; I am quite sure it did.

Cross-examination by Mr. COTTON:

Q. Mr. O'Reilly, you have spoken about the Union Pacific and the O. R. & N. Apparently there has been a little confusion as to when this line between Portland and Huntington was operated by the Union Pacific and when by the O. R. & N. Please state what you mean by that.

A. When the O. R. & N. lines were operated by the——

Q. Yes; by the Union Pacific and the O. R. & N.

A. The O. R. & N. lines in my time were operated by the Union Pacific, when I came here in July, 1891, until July 4th, 1894.

Q. Then Mr. McNeil became the receiver and remained the receiver until the 17th of August, 1896?

A. Yes; I am not sure as to that date, but somewhere in there.

Q. After that the O. R. & N. proper took over the property and continued to operate it—that is, the company?

A. Yes.

4348 Q. So, when you speak about the Union Pacific operating the O. R. & N., you mean prior to July 4, 1894?

A. I think that was the answer I made to the questions, as I understood them.

Q. During the time that the Union Pacific operated the property, the whole line from Portland to Omaha was managed by the same set of officers?

A. Yes.

Q. And when you speak about Mr. Campbell being the general western freight agent of the Union Pacific, that was the position which Mr. Campbell occupied here?

A. Yes.

Q. In charge of the O. R. & N. business, the Union Pacific business and the Short Line business?

A. Yes; he represented the Union Pacific system as a whole.

Q. He represented the Union Pacific system as a whole, and he continued such representation until the independent receivership of Mr. McNeil?

A. Yes.

Q. And then he became the general freight agent or general traffic manager of the O. R. & N.?

A. That is a fact.

Q. Now, after Mr. McNeil became receiver in 1894, the Oregon Short Line and the Union Pacific remained under the management of Clark, Mink, and the Union Pacific receivers?

A. For a short time, I think; that is my recollection.

Q. Until the Short Line was foreclosed?

A. Yes; until the separate receivership was appointed of the Short Line.

Q. Was there a separate receivership of the Short Line or a foreclosure?

A. I wouldn't say which. I know they were under separate management.

4349 Q. Yes. That was after the Short Line property was sold?

A. I am inclined to think it was, although my memory doesn't tell me.

Q. The O. R. & N., then, was independent, you might say, of the Union Pacific from the 4th of July, 1894, until the Short Line took it over in 1898, or thereabouts?

A. Yes; that is my understanding.

Q. And during that period of Mr. McNeil's management was when this rate war between San Francisco and Portland, between the steamboat lines and the Southern Pacific, occurred?

A. Yes.

Q. That rate war continued only during the time of Mr. McNeil's management?

A. That is my recollection.

Q. And it ceased during his management?

A. That is my remembrance.

Q. Do you know what the purpose of that rate war was?

A. My recollection is that it was precipitated by the Southern Pacific, if I remember correctly, through a determination to compete for San Francisco and Portland traffic which previously they had engaged in.

Q. Hadn't a differential existed between the passenger rates prior to that time, prior to the rate war?

A. Yes.

Q. And then the Southern Pacific attempted to abolish it?

A. Yes.

Q. And then the rate war commenced?

A. Of course, I am not thinking much from the passenger standpoint because it is not as clear in my mind as the other; but since

4350 you mention it, I think that was one of their objects, one of the purposes, and one of the things that started it.

Q. Then the rate war terminated by a concession of that general differential and the general agreement as to freight conditions and other matters, did it not?

A. That is my recollection, that it terminated on an agreement.

Q. That all took place during Mr. McNeil's time, when the O. R. & N. was absolutely independent of either the Union Pacific or Southern Pacific control?

A. Yes; it took place during my stay there, and I left there before the Union Pacific took the property.

Q. The fight occurred and the settlement was made?

A. Yes.

Q. Now, since that settlement was made, freight and passenger conditions on the steamer lines and the railroad lines between here and San Francisco have been substantially the same ever since, have they not?

A. So far as I know.

Q. There has been no change at all?

A. Not that I am aware of.

Q. The merger made no change in the condition as compared with the situation as it terminated under McNeil's management?

A. I have never heard of any change.

Q. At the time Mr. McNeil was managing the property, he was absolutely independent of anyone's control?

A. So far as I know he was.

Q. The number of boats since Mr. McNeil's time has been about the same, has it not?

A. Yes.

Q. What about the quality of the boats?

4351 A. It has been practically the same.

Q. Now, during those days did the Southern Pacific meet the passenger rates made by the O. R. & N., or do you know?

A. During what period?

Q. During this fight which they had on.

A. When they got down to the $5 rate? Yes, I think they met it, if I remember correctly.

Q. Do you know how low they got?

A. I think the fare was about five dollars.

Q. Did that include the sleeper or not?

A. I don't think it did; I don't remember, though, positively.

Q. After this agreement was made with Mr. McNeil and the Southern Pacific, did the boats and the Southern Pacific both continue in business, that is, engage in the carrying business?

A. Yes.

Q. What change has taken place since, in that regard?

A. Since then?

Q. Yes.

A. I don't know of any.

Q. You have been familiar more or less with conditions here, have you?

A. Well, familiar with what service is rendered, but as to the traffic I have not been very familiar with it except as I would hear of any disturbance or controversy.

Q. In those days, you say, the O. R. & N. was operating some boats on the Willamette River and the Corvallis & Eastern was a competitor to some extent?

A. Yes.

Q. The Corvallis & Eastern was purchased by Mr. Hammond in 1893 under foreclosure?

A. I believe it was about that time.

4352 Q. And very shortly after the purchase what did he do with the boats which were operating, after he had operated the steamship—what was the name of it—the Willamette?

A. I don't think the Willamette was operated in Mr. Hammond's time. It was sold at the same time.

Q. What boats did he operate, if you know?

A. He operated principally the "Firlong."

Q. How long did that operation continue?

A. I think that continued until the latter part of 1896, something like that, or 1897.

Q. What became of the Willamette River boats which the old Corvallis & Eastern owned and which Mr. Hammond bought?

A. He operated them for some time, and he laid them up and subsequently sold them.

Q. They were laid up on the Willamette River, were they?

A. Yes.

Q. Do you know why?

A. Because they wouldn't pay. The traffic didn't warrant their operation.

Q. They were operating, were they not, from Corvallis, the terminus of the Corvallis & Eastern, on the Willamette River, or from Albany?

A. They were operating from Corvallis; according to the stage of the water, from all points.

Q. Corvallis to Portland?

A. Yes.

Q. And then they were afterwards sold?

A. Yes.

Q. And then, Mr. Hammond, after he purchased the Corvallis & Eastern, only operated these boats for, say, a year or two or three years?

A. About two years, I think.

4353 Q. What was the quantity which the Corvallis & Eastern line handled into that territory—the bulk? Did it amount to anything?

A. The traffic?

Q. Yes.

A. Do you mean the business in from the south, from San Francisco?

Q. The northbound business.

A. The northbound business probably amounted to three or four hundred tons a trip.

Q. How many trips did they make a month?

A. They would make about two and a half trips a month.

Q. What about the southbound business?

A. The southbound tonnage was about the same, I think.

Q. Now, you spoke about a condition of things which continued about sixty days, when the Southern Pacific worked business from Portland around by the way of Sacramento as against the Short Line and the O. R. & N.

Mr. SEVERANCE. The Union Pacific.

Mr. COTTON. The Union Pacific.

Mr. SEVERANCE. You said Southern Pacific. The Union Pacific worked it that way.

A. I am not certain as to the time; I am not very clear on that.

Q. That was during a very short period, immediately after the foreclosure of the Short Line road, was it not?

A. Yes, it was.

Q. Now, it was during that same period that the Short Line worked strong against the O. R. & N. in Idaho?

A. Yes.

Q. And that only lasted during that same period?

A. Yes.

Q. In other words, it was just during the period of disintegration of the Union Pacific system proper?

4354 A. That was all.

Q. Now, you referred to a number of boats which the O. R. & N. operated on the Willamette River. You have been engaged in the boat business more or less since you left the employ of the company, have you not?

A. Yes.

Q. What became of the Willamette River boats of the O. R. & N.—what happened to them?

A. Well, they have been laid up—tied up—at the boat yard.

Q. Any of them wrecked?

A. They have all been wrecked once or twice.

Q. What about the character of boat operation on the upper Willamette River? Is it regarded as a profitable business or not?

A. It is not, no; that is, it is considered very limited at the present time.

Q. What was the character of the boats that could be operated there, as to draft and ability to carry tonnage?

A. It was a very light-draft proposition. The boats had to be specially constructed to carry the greatest amount of traffic on the least water.

Q. Is the river narrow also, and snaggy?

A. It is narrow in places and snaggy in places and swift in places, at different seasons.

Q. What about the low-water season? How long does that continue in the upper river?

A. The low-water season continues about three months, I think. I am not very familiar with the conditions of late years in the
4355 upper river, but I think it is about three months of uncertain water.

Q. When does this low water continue; that is, what period of the year?

A. It is during the late summer and fall, after the freshets have run out and before the rains begin.

Q. It continues up until about what time of the year?

A. Anywhere from the middle of October, I think, to the first of December; sometimes later.

Q. What change has taken place in the Willamette Valley in regard to the cultivation of wheat since your time and now?

A. The tonnage of wheat has dropped from the principal product to almost an incidental product, so far as the territory along the river is concerned.

Q. Instead of producing wheat along the river tributary to the boat line, as in your time, that country is now devoted largely to dairying and small crops.

A. To something besides wheat, I know.

Q. A boat line was referred to along the Yamhill River. What change, if any, has come over that country since your time and now?

A. Well, that is just the same as the Willamette River. There is no difference. The Yamhill is just a short run-off from the Willamette.

Q. Do they raise any wheat now along the Yamhill River?

A. Yes; I think they do. I am not familiar with how much. They must raise some.

Q. What about the quantity as compared with your time?

A. I could not put figures on it at all. My knowledge
4356 comes from the traffic that I know boat lines handle, and I know it is not an important traffic.

Q. In your day, was it an important article of traffic on the boats?

A. It was; the principal traffic.

Q. The principal tonnage which kept the boats alive?

A. Yes, sir.

Q. Now, something has been said about the decrease of Portland's territory in the direction of Wallace. Do you know what caused that?

A. I don't know of any decrease in their territory.

Mr. SEVERANCE. You said "decrease." The witness didn't say anything about decrease. You misunderstood him.

Q. Well, you said in your time they sold goods up to Wallace from Portland.

A. Yes.

Q. Do they now?

A. I believe they do, as far as I know.

Q. The territory at Wallace was competitive between Portland and Spokane, was it not?

A. More strongly than any other point.

Q. Has San Francisco and the east always done more or less business in this territory? I mean out through eastern Oregon and Washington.

A. Yes.

Q. Those competitive conditions have remained about the same all the time, to your knowledge, have they not?

A. As far as I know.

Q. The Dodwell line and the Samuel Samuel's line were organized and promoted and induced to go into business for what purpose?

A. Principally for the purpose of taking away the flour tonnage which originated on the lines of the O. R. & N., and the wheat that was milled here.

4357 Q. To what points?

A. To what points did the flour go?

Q. I mean to what points did the flour go. Asiatic points?

A. Asiatic points, Hongkong, Shanghai, Yokohama.

Q. The Dodwell line was also operated in connection with what lines of railroad up north? Let me put this question to you. Did not the Dodwells have a line which they operated in connection with the Northern Pacific?

A. They did.

Q. And they operated from what point—Puget Sound?

A. From Tacoma and Seattle.

Q. To Asiatic ports?

A. To Asiatic ports.

Q. And that line was organized in connection with the Northern Pacific for the purpose of getting rid of N. P. flour, was it not?

A. I suppose it was; that was the supposition.

Q. What about the inbound cargo—was that heavy?

A. The inbound cargo was not always as heavy as the steamships would have liked.

Q. And the westbound cargo which originated east of Portland, that was also light, was it not?

A. You mean the rail traffic?

Q. Yes.

A. Yes.

Q. I mean other than the rail traffic.

A. That was very limited.

Q. General merchandise and stuff other than this particular flour trade?

A. Yes; that was very limited.

Q. About how often did the Samuel Samuel's line operate boats, do you remember?

4358 A. I think there was a boat about every thirty days.

Q. And the Dodwell line?

A. I think the service was the same by each line, if I remember correctly.

Q. Were the sailings more frequent out of Puget Sound at that time?

A. I think they were.

Q. What about San Francisco—that is, the quantity of stuff that was moving out of San Francisco for Asiatic ports?

A. Well, there was a big tonnage. Of course, the largest tonnage was moving from San Francisco during all that period.

Q. Did these boats from Portland undertake to do a general passenger business, first-class passenger business, or was it simply a few Chinese coolies?

A. Some of them, I think, had a limited passenger accommodation.

Q. Did they have any passengers?

A. Yes; they handled some.

Q. Do you think they had any passenger accommodations at all, first class?

A. Some of the boats had; whether it was the Dodwell or the Samuel's line, I don't remember.

Q. What about the number of passengers they carried?

A. It was very limited.

Q. The line was not really known as a passenger line to the public at all, was it?

A. It wasn't very strongly such.

Q. And their carrying capacity westbound practically flour from the east?

A. Yes; that was the bulk of the tonnage.

Q. Milled at local mills?

4359 A. The bulk of it was milled right here at Portland; some of it was milled at local points up the country.

Q. At mills located on the line of the O. R. & N.?

A. Yes.

Q. And space reserved for the carriage of that flour from these mills; they had the first call on the business?

A. The mills located on the lines of the O. R. & N.; yes.

Q. The Samuel Samuel's line was practically a line which was subsidized, was it not, by the O. R. & N. and the Portland Flouring Mills Company?

A. Yes.

Q. In order to induce them to come into the business here at this port?

A. Yes.

Q. Now, Mr. O'Reilly, what has been the principal factor at all times during your experience and knowledge in fixing rates between Portland and San Francisco—O. R. & N. boats and the Southern Pacific boats, or independent boats?

A. What has been the factor that has fixed the rates?

Q. Yes.

A. Well, it is the water line, I think. The water line fixes the rates, the water competition, always.

Q. Has this water competition been confined solely to boats operated by the O. R. & N.?

A. No.

Q. What other class of boats has been operating between Portland and San Francisco?

A. Well, there have always been tramp schooners; they have carried northbound and southbound tonnage at various rates.

Q. The schooners took lumber down and brought merchandise up, as a rule?

A. Yes, as a rule, that was the way.

Q. And what rates did these schooners make—high or low?

4360 A. They made low rates; they had to, to get the business.

Q. Were they independently operated schooners? That is, I mean they were not run in regular lines as a rule, but run by independent owners?

A. As a rule they were independent owners, put on for trips.

Q. And operated in considerable number all the time?

A. Yes.

Q. In other words, wherever the lumber business was heavy, the schooner trade down was heavy, and of course cut-rates made at any old price to get the business coming up? That is, the steam schooners.

A. Generally so, yes.

Q. That situation prevailed all the time, according to your knowledge, since you have been in the country?

A. Yes, it has.

Q. And it exists at the present time?

A. Yes.

Q. What about the character of the competition now?

A. That competition is as keen today as it ever has been.

Q. So far as tonnage is concerned it is very much larger than it was when you were here in charge of the business?

A. Oh, yes; much larger.

Q. Now, the character of the freight moving from San Francisco up here has remained just about the same—merchandise, largely?

A. I presume it has, so far as I have been in a position to observe.

Q. And San Francisco's territory, into which San Francisco would sell goods, and into which Portland could sell goods of California origin, has been limited by competitive conditions existing around Spokane?

A. It has, in that territory.

4361 Q. That territory affects all of eastern Washington north of the Snake River?

A. Yes. That was the condition when I was in a position to know. Just what the conditions are to-day, I am not very much of an expert, if any.

Q. There has been competition also for all that territory between San Francisco and Puget Sound, by steamer?

A. Yes.

Q. Now, in your days, did the Southern Pacific and the O. R. & N. control the rates between here and San Francisco, or were they made by the schooners?

A. The competition of the schooners was the governing factor really as to the freight rates.

Redirect examination by Mr. SEVERANCE:

Q. You speak of these tramp boats, schooners, as a governing factor in making rates. That is still true to an extent, I suppose, isn't it?

A. It is, yes.

Q. So far as you know?

A. I understand it to be still the condition.

Q. And, as you understand it, the competition between the O. R. & N. and the Southern Pacific rail lines on the one hand and these schooners on the other brings down the rates or holds down the rates, or is a factor in fixing them?

A. I don't know whether the railroads to-day meet these low rates or not.

Q. If there is a fixed differential between the boat line and the rail line, of course one has to follow the other, doesn't it?

4362 A. If they stick to the differential, yes.

Q. Assuming, as you have now, that the Southern Pacific and the O. R. & N. boats are under the same control and have a fixed differential, as it has been testified they have, then of course if one rate goes up the other goes up?

A. Yes.

Q. The same difference exists.

A. It ought to.

Q. The general freight agent or the traffic manager of the Southern Pacific said that it was an automatic matter; he so testified in this case.

A. That the differentials were an automatic matter?

Q. The rates, I say, would automatically go up or down as the boat rate went up or down. He said the rail rate would.

A. Well, on the basis of a fixed differential agreement that would be the natural result. Whether it does or not, I don't know.

Q. Well, he says it does. Now, after the settlement of this boat line and railroad rate war that you have spoken of, the boat line and the Southern Pacific each maintained their agencies here, didn't they, and were each soliciting business?

A. Yes.

Q. And endeavoring to get what business they could at the established rates?

A. Yes.

Q. That continued as long as you were connected with them?

A. As long as I was in the service.

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Q. And in that way they were competing with each other for the business?

A. Yes.

4363 Q. Now, what is the difference in the facilities possessed by regular lines of steamers, like the O. R. & N. boats, and these tramps, for getting business?

A. Well, of course, the tramps don't maintain regularly an organization such as the San Francisco and Portland Steamship Company does, and naturally the large organization and the permanent organization has the advantage.

Q. That is to say, the O. R. & N., when it owned the boats, or the successor company, controlled by the same interests that own the boats now, has a regular organization here all the time on the lookout for business, and does that give them an advantage over a tramp that dodges in here for a load, and dodges away again, taking what it can get?

A. Yes.

Q. Now, on the line to the Orient, you have testified in answer to Mr. Cotton that the Portland & Asiatic boats or their predecessors (the same thing) run in connection with the O. R. & N., were put on largely because of the grain or flour traffic, I think you said.

A. Yes.

Q. Did that line in your day maintain agencies at different points in the Orient, soliciting shipments this way?

A. Yes. During the Samuels and Dodwell line period I don't think the railroad company did. I am not sure about that though.

Q. The Dodwell people and the Samuels people had agencies in the Orient?

A. Yes.

Q. And they were endeavoring to work business by this line, weren't they?

A. Yes.

Q. Which moved on to the East, as you have stated, over the O. R. & N. and its connections?

A. Yes.

4364 Q. Now, when the Portland & Asiatic was organized, do you recall that Mr. Cameron was sent over to the Orient as agent?

A. Yes. I want to say that my memory has come back to me a little on that. The Portland & Asiatic was organized shortly after I left the O. R. & N.

Q. But you were familiar with the facts?

A. Yes.

Q. You have been in the steamboat business here right along?

A. Yes. I know Mr. Cameron was sent to China as the general agent of the Portland & Asiatic Steamship Company.

Q. Now, the business that moved from the Orient on the Portland & Asiatic boats, which might have been secured by Mr. Cameron or the preceding organization over there, came from the same ports from which the Pacific Mail steamers to San Francisco sailed, did it not?

A. Yes.

Q. What do you call going to the Orient? do you call it going east or going west?

A. Going West.

Q. That is always called the east. It is westbound in this country. You stated in answer to Mr. Cotton that the westbound traffic over the Portland & Asiatic, aside from the flour traffic, was limited in extent.

A. Yes.

Q. Such as there was of it originated where?

A. Originated—well, the commodities were principally cotton and railroad iron, and machinery.

Q. Did that originate east of the Missouri river?

A. Yes, that originates east of the Missouri river.

Q. And did the O. R. & N., in connection with those boats, bring cotton here from Texas?

A. I believe some did come from Texas.

Q. And did cotton move from Texas by the Southern Pacific
4365 Sunset Route to San Francisco also?

A. Yes.

Q. Where did the iron, steel, that you speak of, originate?

A. It came from Pittsburg territory.

Q. How was it as to the return cargoes from the Orient? did they mostly move to the east, or did they stop here, locally?

A. Mostly to the east.

Q. You stated that the Samuel Samuels line was subsidized by the O. R. & N. What did you mean by that?

A. They were guaranteed a certain amount of westbound tonnage for each vessel, at a fixed rate.

Q. That is, the O. R. & N. guaranteed them a certain amount irrespective of the amount that might actually be shipped?

A. No, they guaranteed them a certain tonnage in a fixed commodity: I think of flour, if I remember correctly.

Q. They didn't buy so much space on the boats, then, and take the chances on filling it?

A. My recollection is it was so many tons per vessel.

Q. In addition to the O. R. & N. boat line, the regular line to San Francisco, having an established soliciting agency here, was there any advantage to that line over the tramps in the regularity of their sailings?

A. Yes.

Q. Is that something that business men regarded as of importance?

A. Yes.

Q. Counsel asked you with reference to the changes in the class of agriculture conducted along the Willamette and the Yamhill valleys. He asked you with reference to grain. Has there been any change in the hop production up there?

A. I understand there has, but the hop production will go along for two or three years and then drop down to a low
4366 figure, and then it will go up again to a heavy production.

Q. I mean that they have not abandoned the production of hops.

A. No, not that I am aware of.

Q. Counsel indicated by his questions that they had gone out of the wheat business there.

A. Yes.

Q. And what I wanted to know was, if they had gone out of the hop business, too?

A. No, I don't understand that they have.

Q. From what region do the sheep come that produce this wool up there in the Valley? Are they driven in from some other place, or are they local?

A. Most of the wool is cut from small bands of local sheep and goats.

Q. Are they still in the sheep business in the Valley?

A. As far as I know they are; I am not familiar with it lately.

Q. You also testified, in answer to Mr. Cotton, that the boats on the Willamette were not profitable, as I understood you.

A. I understand they are not profitable at the present time.

Q. Oh, yes. How was it in your day—were they profitable?

A. Yes.

Q. Were they profitable as an independent proposition, or profitable because of the fact that they were feeders to the through lines?

A. Well, in my time they were both.

Q. What is the basis of your present understanding that they are not? Of course now there are none, as I understand it, and as I understand it, the O. R. & N. boats are taken off?

4367 A. Yes, practically, except to Oregon City; they run a boat that far.

Q. What do you mean by saying that they are not profitable now, if they are not running at all?

A. Well, because, for one thing, the boats are not in operation, and from general knowledge that I gather—I am on the water here all the time and with water-line people who operate in those directions; I can not base it on any figures or anything of that kind, but I know that the business is not there for more than a limited service. There is some business there, of course; I don't mean to say there is none.

Q. Is there any boat line running up the Willamette?

A. Yes.

Q. Who runs that?

A. The Oregon City Transportation Company.

Q. Who runs that?

A. Captain Graham.

Q. That is still running?

A. Yes.

Q. You said that the Willamette River boats were frequently wrecked. Were they raised again after they were wrecked?

A. Oh, yes.

Q. That was a mere casual matter though?

A. In a measure, yes; rather expensive casualty though.

Q. Up to what time did the Willamette River boats resume operations after they were wrecked? When did they take them off finally? I mean the O. R. & N. boats.

A. According to my observation they have been gradually dropped; the last one probably was taken off last year.

Q. What is that?

A. The service has been gradually discontinued, as I have
4368 understood, with the gradual decrease in the traffic. There was no abrupt taking off of the boats.

Q. Those boats were in active operation up to 1901, were they not?

A. Yes.

Q. That was the year that the Union Pacific-Southern Pacific came under common control?

A. Yes; they were in active operation up to that time.

Q. And this gradual sagging off has been since that time?

A. Yes.

Q. Finally, about two years ago, it winked out, as I understand it?

A. I think probably this last fall was the final petering-out of it.

Q. Do you know what became of that Corvallis & Eastern Railroad concerning which you were interrogated?

A. I have understood that it was purchased by Mr. Harriman.

Q. Mr. Harriman is president of the Southern Pacific Company, isn't he, and also of the other lines?

A. That is my understanding.

Q. I mean, you mean that Mr. Harriman?

A. That Mr. Harriman, yes.

Q. How long ago did Mr. Harriman acquire that line?

A. I believe it was about a year and a half ago or two years ago; I am not clear on that.

Q. Have you ever been to Yaquina Bay?

A. No.

Q. Is it your experience or is it not your experience as a railroad man that traffic is secured to any considerable extent by active solicitation for it?

A. Yes; it has always been my experience that you had to solicit it to get it, particularly competitive traffic.

4369 Q. And that was the way the traffic was secured for the boat line from here to San Francisco and for the Southern Pacific, respectively, when they had separate agencies?

A. Yes.

Q. You stated in answer to counsel, when he was asking you about the competition by the boats, that competition is as keen as it has ever been. What did you mean by that? You meant between the outside boats and the O. R. & N. boats, did you not?

A. Yes, that is what I had in mind.

Q. You didn't mean between the railroad company and the O. R. & N. boats?

A. No, that is not what I had in mind.

Q. That is what I thought; I wasn't sure, because the question was put in rather a general way.

By Mr. COTTON:

Q. Has there been any change between the O. R. & N. and the Southern Pacific?

A. In the matter of competition between here and San Francisco?

Q. Yes: that is, as it existed back here after they stopped quarreling in 1897?

A. Not that I know of.

Q. You haven't noticed any change?

A. No.

Q. No change has been called to anyone's attention?

A. Not to my attention.

Q. Speaking about separate agencies: in your time the O. R. & N. agents looked after the San Francisco boat business?

A. Yes, in my time railroad agents.

Q. Yes, the O. R. & N. railroad agents here in town.

A. Yes.

4370 Q. They didn't have separate agencies for the steamships to San Francisco?

A. No, they did not.

Q. At present they have a separate agent for the steamship and a separate office, have they not?

A. Yes.

Q. That office is located where?

A. On Washington street, on Ainsworth dock.

Q. I mean the soliciting freight agents, Mr. Ransom's office.

A. That is on Ainsworth dock, I think.

Q. And they have a separate soliciting force, have they?

A. Yes, I understand they have.

Q. Actively soliciting business in competition with the Southern Pacific to-day?

A. I understand they are; they have never been after any of my business.

Q. In your time the Corvallis & Eastern operated about as many boats on the Willamette River as the O. R. & N., did they not?

A. Yes; each operated two through boats.

Q. And before Mr. Harriman bought the Corvallis & Eastern Mr. Hammond junked the Corvallis & Eastern boat?

A. Yes; several years before.

Q. Several years before; and went out of the business, and junked the boats?

A. Yes.

Q. By "junking" them, what do you mean?

A. In this instance, selling them at what you would call a junk price—what the machinery and boilers and furniture and odds and ends were worth if the boats had been dismantled.

Q. They were not sold as boats?

A. Yes, but——

Q. But they were sold at a price that would not represent their value as boats on anything like a profitable route.

4371 A. Yes.

Q. About how long ago was that done, according to your recollection—this selling-out process?

A. That was done in 1900.

Q. And the Corvallis & Eastern has not operated any boats since that time?

A. No sir.

Q. Do you know anything about the separate agencies of these steam schooners here in Portland? Don't they maintain a separate agent—a man by the name of Young?

A. He represents the North Pacific Steamship Company.

Q. What is the North Pacific Steamship Company?

A. They operate the steamers "Roanoke" and "Elder" between Portland and Humboldt Bay and San Francisco.

Q. That is a regular line?

A. That is a regular line.

Q. And operating in competition with whom—the Southern Pacific and the O. R. & N. boats?

A. Yes, as far as I know.

Q. Then, in addition to that, there are independent tramp steamers—schooners?

A. In addition to this North Pacific line there are independent schooners.

Q. Now, these schooners are nearly all operated in connection with mills?

A. The majority of them are.

Q. And the mill owners are located here in Portland?

A. Yes.

Q. The general sailing dates of these schooners are quite well known to these mill owners?

A. Well, that isn't exactly the fact.

Q. What is the fact?

A. The sailing dates at this end are.

4372 Q. They get information from San Francisco and they inform the merchants of the fact that they will have a schooner up at a given time, and solicit freight in that way for these schooners?

A. Well, I don't know as to that.

By Mr. SEVERANCE:

Q. Do you remember the names of the schooners that were running back in the 90's between here and San Francisco on this O. R. & N. line?

A. Yes sir.

Q. What are their names?

A. The steamship "Columbia," "State of California," "Oregon," and sometimes the "Elder."

Q. What is that?

A. And sometimes the "George W. Elder," as an extra boat.

Q. Do you remember that in 1893, or along there, they had a four-days service?

A. I believe they did, at one time in there; whether it was 1893 I couldn't say.

Q. What do they have at present?

A. I think it is a seven days service.

4373 W. C. McBRIDE,

being duly sworn as a witness on behalf of the Complainant, testified as follows:

Direct examination by Mr. SEVERANCE:

Q. Mr. McBride, I want to ask you just a few questions in addition to what you were interrogated about before. How long have you lived in Portland?

A. Almost seven years.

Q. Previous to living here, where did you live?

A. The five years immediately preceding I lived in Butte, Montana; prior to that in Salt Lake City, Utah.

Q. And what was your position in Salt Lake City?

A. I was connected with the Union Pacific, the Chicago & Northwestern, the Denver & Rio Grande, and the Rio Grande Western.

Q. How long did you live in Salt Lake?

A. I made that my home since about 1880.

Q. What was your business in connection with these lines of road in Salt Lake City?

A. I was in the station service; I was in the local freight department of the Union Pacific; I was travelling freight agent for the Chicago & Northwestern, and I was travelling freight agent for the Denver & Rio Grande and Rio Grande Western at that time.

Q. Where did you travel when you were working for those roads? What part of the territory did you travel into?

A. When I was with the Chicago & Northwestern I had Utah,
Idaho and Montana; and when I was with the Denver & Rio
4374 Grande, stationed at Salt Lake City, I just had the Denver & Rio Grande lines and Utah common points.

Q. And Utah common points?

A. Yes, and Utah common points.

Q. That would take you up to Ogden and that region?

A. Yes.

Q. What is your position here?

A. General agent of the Denver & Rio Grande.

Q. Are you familiar with the territory in southern Idaho and northern Utah and Nevada lying between the Oregon Short Line on the north and the Southern Pacific on the south?

A. Yes, in a general way.

Q. I mean up near Corinne and that neighborhood west of Corinne.

A. In a general way. I am more familiar with it from the Oregon Short Line's side; I have travelled into that territory from the Oregon Short Line side, but not from the Southern Pacific side.

Q. What are the products of that region?

A. At certain seasons there are wool and live stock; they are about the two leading commodities that move out of there, or were at that time.

Q. When you were over in that country, how did the wool from that region move to the east, to the seaboard?

A. That would depend on what line it was loaded.

Q. I imagine that might be so.

A. That would depend upon the rail line it was loaded. If it was loaded on the Oregon Short Line, it would move east all rail, and if loaded on the Southern Pacific it would go via Sacramento and the Sunset Route.

Q. Was there any competition for that wool business in the
4375 region between those lines?

A. Yes. The competition, however, was when the wool was on the sheep's back.

Q. To get the sheep driven from one place to another?

A. In order to get the sheep sheared adjacent to the various lines.

Q. Was that an active competition, or otherwise?

A. At times it became quite active, and other times not so much. It would depend a good deal on the feed for the sheep en route going to the summer ranges; some seasons they would drive north and some seasons they wouldn't go so far. It would depend a good deal on the spring feed en route.

Q. Did these two railroads, the Short Line and the Southern Pacific, each have soliciting agents in that territory trying to get that business?

A. Yes, sir.

Q. How did the live stock from that region move?

A. Both by the Oregon Short Line and by the Southern Pacific, depending upon the drive.

Q. That moved all rail, didn't it?

A. All rail.

Q. To what points?

A. At that time it was largely moving to the Missouri River packing houses.

Q. To what line would the Southern Pacific deliver that live stock when they got it to Ogden?

A. Either to the Denver & Rio Grande or the Union Pacific.

Q. It moved both ways?

A. Both ways.

Q. To whom did the Short Line deliver?

A. After the Ogden gateway opened they could deliver to the Denver & Rio Grande: prior to that time they would take it
4376 via Granger, but they could always deliver it to the Union Pacific except at a certain time, when they could not.

Q. Do you remember at one time when there was some difficulty between the Short Line and the Union Pacific, when you were at Salt Lake?

A. Yes; I think about 1897, when there was some controversy, I believe, as to divisions through Granger.

Q. How did the Union Pacific work its traffic up into this country at that time?

A. They moved it, I believe, through Ogden, via Sacramento.

Q. Via the Shasta Route?

A. Via the Shasta Route.

Q. When you were at Butte, how did California traffic, San Francisco traffic, reach that region?

A. Either via Ogden, Southern Pacific and Oregon Short Line; or via the O. R. & N. boats at Portland, and then rail via Huntington; or via Spokane and the Great Northern.

Mr. SEVERANCE. I think I examined you about everything else that I wanted to go into with you. Your testimony, given before, has been put into the record.

Cross-examination by Mr. LOVETT:

Q. Mr. McBride, when traffic moved from San Francisco to Butte by the O. R. & N., you said it would go either by Huntington and then over the Short Line, or to Spokane and over the Northern Pacific.

A. Why, that is my recollection of it. They had divisions also through Wallula in connection with the Northern Pacific.

Q. Have you any personal knowledge as to the movement of that traffic?

4377 Mr. SEVERANCE. You said Northern Pacific; you meant Great Northern.

Q. How did it move from Spokane to Butte?

A. I believe I said the Great Northern. They had divisions in connection with the Great Northern, I think through Spokane, to portions of Montana, as well as the Northern Pacific, I believe.

Q. And some moved to Huntington and then via the Short Line?

A. Some moved to Huntington. My recollection may not be very clear, as I had no particular interest in that particular class of traffic other than general knowledge.

Q. Is your statement based on personal knowledge of it?

A. Not other than the general hearsay of the solicitors. I was well acquainted with them and they probably would tell me from

time to time of their solicitation. I was well acquainted with the representatives of the O. R. & N. and the Southern Pacific in that field.

Q. The principal movement that way was by the Southern Pacific and the Oregon Short Line, wasn't it?

A. I believe probably the preponderance of the traffic was moved via that line.

Q. All that the O. R. & N. got was by the boat line from San Francisco?

A. Yes, that was their route; they hauled principally the sugar and the beans that route.

Q. With reference to this wool traffic about which you testified: where did that originate?

A. That would depend upon where the sheep were shorn.

Q. Well, where were they shorn?

A. Sometimes in Northern Nevada and Southern Idaho. It would depend upon the drive to the railroad, the distance to
4378 the railroad.

Q. That is as between the Southern Pacific and the Oregon Short Line?

A. And the Oregon Short Line.

Q. That is the portion of the Southern Pacific that ran north of Salt Lake, isn't it?

A. It is the old line running by Corinne.

Q. By Corinne; that is north of Salt Lake?

A. That is north of the lake, yes, sir.

Q. That was before the cut-off across Salt Lake was built?

A. The two lines ran parallel for about twenty-one miles, very close together.

Q. You said the two lines ran parallel—where?

A. The two lines ran parallel or very close together for about twenty-one miles.

Q. That is, in that territory?

A. In that territory and west.

Q. West; that would be on the Southern Pacific?

A. West, between the Southern Pacific and the Oregon Short Line.

Q. How far?

A. I have known cattle as far west as Caldwell, Idaho, and Halleck, Nevada, to come into competition.

Q. How about sheep?

A. Not so much sheep; principally live cattle.

Q. I was speaking about sheep; how far west the sheep?

A. The wool traffic, you mean?

Q. Yes, between the Southern Pacific and the O. R. & N.

A. About as far west as Kelton, as far as I know.

Q. How far west is that from Ogden?

4379 A. I should judge it is about eighty miles.

Q. And the sheep in that territory from north of Salt Lake and east of Kelton and thence over towards the Short Line?

A. Yes, sir.

Q. You say the competition between the railroads was chiefly for the wool on the sheep's back?

A. Yes, sir.

Q. How was that done, Mr. McBride?

A. Why, in an effort to induce the sheepmen to shear along close to the road, so that they would not have to haul the wool as far.

Q. And such of that wool as the Southern Pacific controlled, you say, went by way of Sacramento and thence Sunset?

A. Yes, sir; it went west.

Q. Didn't a good deal of it go over the Union Pacific and the Denver & Rio Grande?

A. Not at that time; there were no divisions through Ogden.

Q. No divisions through Ogden either by the Union Pacific or the Southern Pacific?

A. Either by the Union Pacific or the Southern Pacific.

Q. When was that?

A. My recollection is——

Mr. SEVERANCE. You mean either by the Union Pacific or the Rio Grande?

Mr. LOVETT. Yes.

Mr. SEVERANCE. You said either by the Union Pacific or the Southern Pacific.

WITNESS. Either by the Union Pacific or the Rio Grande?

Mr. LOVETT. Yes.

4380 WITNESS. I think that condition existed for a number of years.

Q. Fix about the period; that is, up to what time?

A. Up to 1898 and 1899; prior to that time, I think.

Q. Were the divisions put in on that wool eastbound, then, in 1898 and 1899?

A. I do not know. I left that territory then. I can't speak as to that.

Q. When did you leave that territory?

A. In 1902.

Q. You left Salt Lake in 1902?

A. I left Montana, but my territory was in Idaho.

Q. How far south in Idaho?

A. It came to Pocatello; from Pocatello west to Huntington.

Q. When did you leave Salt Lake?

A. In 1897.

Q. What position did you hold and with what company when you left Salt Lake in 1897?

A. Traveling freight agent of the Denver & Rio Grande or Rio Grande Western.

Q. I am not sure that I understood the position you held with the Union Pacific at one time.

A. I was with the Union Pacific from 1884 until 1893 in station work, and my last position with them was chief clerk in their local freight office in Salt Lake.

Q. How long were you in that position?

A. About four years, if I recollect right; three or four years.

By Mr. SEVERANCE:

Q. What road is Kelton on—the Southern Pacific?

A. The Southern Pacific.

Q. That is the westernmost point that you know of sheep
4381 being sheared that came from this region in there, is it?

A. Yes; that is the farthest west that I have any recollection of now.

Q. Do you recall from what place these sheep were driven to Kelton to be sheared?

A. At that time a great many sheep wintered in what was known as the desert west of Salt Lake, out on the desert, and in the spring of the year, as the shearing season approached, they would go to the summer ranges in Idaho; they would start north, and the solicitation would commence in order to have them sheared—stop and sheared—somewhere near the lines.

Q. You didn't mean by your testimony to say that these sheep represented traffic originating east of Kelton, but they came from that desert country, and they were en route when they were driven in there?

A. They were en route to the summer range.

By Mr. LOVETT:

Q. I didn't ask you about cattle, about which you testified in your direct examination. I understood you to testify that there were certain cattle——

A. Cattle and horses.

Q. Where did they originate?

A. In southern Idaho and northern Nevada.

Q. And they moved in which direction?

A. They moved east.

Q. And they might go either over the Southern Pacific or the Oregon Short Line?

A. Yes, sir.

Q. Go over either the Union Pacific or the Denver & Rio Grande when controlled by the Southern Pacific?

A. Yes, sir.

4382 By Mr. SEVERANCE:

Q. Just one other question I forgot to ask you. You said there was one time when there was no division through Ogden either by the Denver & Rio Grande or the Union Pacific. You meant that answer to apply to this wool traffic?

A. Beg pardon?

Q. You meant that answer, that there were no divisions through Ogden either with the Denver & Rio Grande or the Union Pacific, to apply to the wool traffic?

A. Yes; I referred to the wool traffic alone.

Q. That is what I assumed—this wool traffic originating west on the line of the Southern Pacific?

A. Yes.

Q. They had divisions ordinarily, hadn't they, on most everything?

A. Oh, yes.

(A recess was here taken until two o'clock p. m.)

4383 A. C. BURDICK,

being duly sworn as a witness on behalf of the Complainant, testified as follows:

Direct examination by Mr. SEVERANCE:

Q. Mr. Burdick, where do you live?

A. Portland, Oregon.

Q. What is your business?

A. Prune business; the shipping of dried prunes.

Q. How long have you been in that business?

A. I have been in that business since 1898.

Q. Where is your prune-canning establishment?

A. It is over at Vancouver, Washington, at present.

Q. How long have you been at Vancouver?

A. I have been there about five years.

Q. Previous to that time where was your establishment?

A. I did business in Portland.

Q. To what points do you ship your product?

A. We ship all over the country, you might say; away back to Boston, New York, and intermediate points.

Q. How far west?

A. Denver.

Q. You ship practically to all import jobbing points between Denver, New York and Boston?

A. Yes.

Q. And have for a number of years?

A. Yes, sir.

Q. How does your traffic at present move to the east from Vancouver?

A. It moves over the northern lines, over the North Bank road in connection with the Northern Pacific, Great Northern, or Burlington.

4384 Q. Previous to the time the North Bank road was built, how did your product move to the east?

A. We shipped out by the Northern Pacific Railway and the O. R. & N. and the Great Northern.

Q. When you were located in Portland how did it move?

A. When we were in Portland we used to ship several ways, according to the buyers who bought the goods, according to the preference they expressed.

Q. Now, Mr. Burdick, you remember when the O. R. & N. and the Southern Pacific had separate agencies here, don't you? I don't mean the year, but the fact that they used to have them?

A. Yes, sir.

Q. Did those agencies solicit your traffic?

A. Yes, sir.

Q. And which way did the Southern Pacific move the traffic if they secured it?

A. Sometimes one way and sometimes the other, according to the preference we would give. They used to take it Sunset Route if it were going the long haul to New York; and some shorter haul, Kansas City, why they would switch it off at Sacramento, I think, and take it off that way.

Q. Which way did the O. R. & N. move their traffic if they secured it?

A. Over the O. R. & N. line.

Q. And their Union Pacific connections to the east?

A. Yes, the Short Line.

Q. Who was the agent of the Southern Pacific who solicited your traffic when they were separate?

A. Mr. C. H. Markham was the general manager here, and Mr. McCusker, I think, was the——

Q. Used to call on you?

A. Yes, sir.

4385 Q. Since the consolidation of the management of the Southern Pacific and the O. R. & N., which way have they solicited your business?

A. I had a preference and expressed it to them, and they followed it; my preference was to ship it O. R. N. and Short Line; I didn't want it to go south.

Q. What?

A. I didn't want them to take it south.

Q. That is, the Atlantic seaboard business?

A. Well, general eastern business.

Q. Did they express any preference between the two routes in soliciting your business?

A. No; they said I could have my choice.

Q. Can you remember the name of the representative of the O. R. & N. who used to solicit your business at the time they were competing for it?

A. Mr. Morse, I think; he was back quite a long ways too, and recently it was Mr.——

Q. I mean when they were separate agencies.
A. Yes, sir, Mr. Morse.

Cross examination by Mr. COTTON:

Q. How many cars do you ship a year?
A. It all varies according to the season; sometimes we only ship about twelve, and sometimes seventy.
Q. And there is no restriction, that you know of, on the manner in which you shall ship as respects the route?
A. No, sir.
Q. You can ship any way you want to?
A. Yes, sir.
Q. It is a matter of purely independent preference?
A. Yes, sir.
4386 Q. And the routes are open to you just the same as they were before?
A. Yes.

By Mr. SEVERANCE:

Q. Is the Sacramento Route open to interior points now? Are you sure of that, sir?
A. I don't know; I haven't asked, because I wouldn't want to ship that way.
Q. You want to ship by the Short Line?
A. Yes.
Q. You don't know whether you could ship that way if you wanted to, do you?
A. I do not, no, sir: I haven't asked.

4387 E. C. WARD,

being duly sworn as a witness on behalf of the Complainant, testified as follows:

Direct examination by Mr. SEVERANCE:

Q. Mr. Ward, where do you live?
A. Seattle.
Q. How long have you lived in Seattle?
A. About two months.
Q. What is your business there?
A. General agent of the Pacific Coast Steamship Company.
Q. Were you ever in the transportation business prior to your employment by that company?
A. I was.
Q. Where and when?
A. On this coast, at San Francisco, from 1894 to 1901.
Q. And what was your position at San Francisco?

A. The last three years, prior to 1901, I was general agent of the Oregon Railroad & Navigation Company.

Q. Previous to that?

A. Local freight agent for the same company.

Q. At San Francisco?

A. Yes, sir.

Q. How did the traffic that you secured move out of San Francisco?

A. Why, most of it by steamer.

Q. By steamer to what place?

A. Steamer to Portland.

Q. Into what regions did traffic move from San Francisco, by steamer, or by the steamer and the rail connections?

A. Via Portland and points east.

Mr. LOVETT. What steamer was that?

Mr. SEVERANCE. By the O. R. & N. steamers.

4388 Q. I don't mean a particular steamer, but by any of the steamers of the O. R. & N.

A. Yes.

Q. They had a line of boats from here to San Francisco, had they?

A. It moved to Portland and points in eastern Oregon, eastern Washington, northern and southern Idaho, Montana.

Q. Now, as to business to Montana common points. I will ask you about that first. What are known and what were known as Montana common points or Butte common points?

A. Why, Butte, Helena, Anaconda, Silver Bow, I think; there were several smaller points up there; those are the principal ones.

Q. Great Falls?

A. My recollection is Great Falls was not a Montana common point, but it took the Montana common point rates on account of being intermediate.

Q. Yes; intermediate by the Great Northern.

A. Intermediate by the Great Northern.

Q. That is what I meant. I wanted the principal points in Montana that took the common-point rate from San Francisco; and those were the places, were they?

A. Yes, sir.

Q. Now, how did traffic move from San Francisco to those various points in Montana; over what lines?

A. They moved over the O. R. & N. steamer lines and thence over the O. R. & N. rail lines and their eastern connections; moved by the Pacific Coast Steamship Company and the Great Northern and Northern Pacific through Puget Sound; moved via the Shasta Route and the Northern Pacific; by the Central Pacific to Ogden and the Short Line.

4389 Q. What was the nature of that traffic that was moving by these various lines?

Mr. LOVETT. What was the question before that?

Mr. SEVERANCE. The various lines into Montana common points.

A. What was the question?

Q. What was the nature of the traffic that moved to Montana common points by these various routes?

A. California products, very largely.

Q. What did that cover?

A. Sugar, canned goods, dried fruit.

Q. Was there any differential in force as between San Francisco and those common points in Montana as between the water line and the all-rail lines?

A. No, sir.

Q. It moved at an equality, did it?

A. Yes, sir.

Q. How was it as to equality of rates beyond the O. R. & N. rail lines in southern Idaho, between the water and rail lines this way, and the all-rail line by Ogden.

A. My recollection is that the water and rail line via Portland had some slight advantage into points between Huntington and down about Boise.

Q. Down about Boise?

A. Yes; but I am not very clear on that.

Q. How was it east of Boise—between there and Pocatello?

A. My recollection is that the rates were about equal.

Q. And did it move both ways from that territory?

A. Yes, sir.

Q. How large a force did the O. R. & N. keep in San Francisco?

4390 A. There were seven of us in the general agent's office, including all the clerks.

Q. How many soliciting agents?

A. Two freight and two passenger.

Q. Was there an established differential after the war between the steamers and the rail lines, between San Francisco and Portland, if you remember?

A. Yes; that was my understanding.

Q. Do you remember what the differential was?

A. Six cents on the less than carload rates and three cents on the carload rates.

Q. How often did you run ships in those days between San Francisco and Portland?

A. The regular schedule was every five days; we ran additional freighters once in a while when cargo offered.

Q. What were the names of the boats—do you remember?

A. The "Columbia" and the "State of California" were the regular steamers, and they had the "Oregon" and the "George W. Elder" in reserve.

Q. Do you remember the time of the steamship war—that is, the war between the steamers and the Southern Pacific Shasta Route?

A. Yes, sir; I do.

Q. How low did rates get down during that time?

A. The steamer rates got down to a dollar a ton, weight or measurement, possibly 75 cents a ton on such commodities as salt once in a while. My recollection is that the Southern Pacific rail rates were down to a basis of $2 a ton, dead weight.

Q. Your base was a dollar a ton, measurement?

A. Weight or measurement—ship's option.

Q. How long did that war of rates last?

4391 A. My recollection is not very clear on that, but I should say a year or a year and a half; something like that.

Q. Where did the traffic originate that moved by the boat coming north?

A. The most of it originated, as far as we were concerned, at San Francisco. Being California products, their originating point was really in the interior.

Q. Did that war extend to passenger as well as to freight business?

A. Yes; the passenger rates were reduced at the same time.

Q. Were there other steamer lines engaged in that controversy?

A. Yes, sir.

Q. Were they passenger steamers or freight steamers?

A. They had very limited passenger accommodations. They were the craft known as steam schooners; probably could not accommodate over 15 or 20.

Q. How many people could be accommodated on the O. R. & N. ships—how many passengers?

A. Oh, I don't just remember their capacity now; but I should say, if they were berth-full, somewhere between 300 and 400. I think that is a little high. Between 200 and 300, I had better put it.

Q. Were they about the same size?

A. Very near the same size. One was a little smaller than the other.

Q. Which was the smaller?

A. The "State of California."

Q. Did you run that same number of ships up to the time that you quit the service in 1901?

A. Yes, sir.

Q. What time in 1901 did you quit the service?

A. April 15th.

4392 Q. Who succeeded you?

A. Messrs. Hitchcock & Schumacher.

Q. You were succeeded by a syndicate, were you?

A. Yes, sir; I was succeeded by a syndicate—one for freight and one for passengers.

Q. When you brought commodities up here, moving to Montana, you stated that you interchanged with both the Short Line and with the Great Northern and the Northern Pacific.

A. Yes, sir.

Q. Where did you interchange with the Short Line—at Huntington?

A. At Huntington.

Q. And with the Great Northern?

A. At Spokane.

Q. And with the Northern Pacific?

A. At Wallula.

Q. And then the Northern Pacific took it from Wallula to Pasco and on to Montana?

A. Yes.

Q. Who started that war on rates? Was it started by the steamer lines or by the steamer and rail line?

A. It was started by the O. R. & N. Company steamer line.

Q. How long before the Southern Pacific became involved in it?

A. I don't just recall the length of time; it may have been a year or a year and a half or two years.

Q. Before they went into it?

A. Yes, sir.

Q. And then it lasted how long with them—another year and a half?

A. Why, possibly up in there somewhere; I don't just remember. No; I think I have got the time too long on that. I think the rate war lasted altogether from 1895 to 1897; about two years altogether; a year and a half or two years.

4393 Q. How long were the O. R. & N. fighting the other boat line before the Southern Pacific took a hand cutting rates?

A. I am unable to give even an approximate estimate on that. I remember that we were fighting for quite a while before the Southern Pacific reduced their rate to the two dollar basis, and we fixed up the schooner lines, but the Southern Pacific still kept that rate in and we had some further trouble with them.

Q. What did the passenger rate get down to during that time?

A. It got down on the steamer to $5 first class and $2.50 second class.

Q. And by rail?

A. I am not sure, but I think it was down to $10.00. I am not positive on that though.

Q. What did that steamer rate include—anything but transportation?

A. It included berth and meals.

Q. What did the rail rate include?

A. I am under the impression that it included berth. I am not sure of that, however.

Q. Now, during the time that that war was on between the steamship lines, before the Southern Pacific got into it, do you know whether traffic moved by rail from interior points to San Francisco and thence up by boat?

A. Yes; there was some of it, I expect; I know there was.

Q. From Southern Pacific territory?

A. Yes.

Q. Do you remember of any instances when transcontinental traffic, so called—that is, from east of the Missouri River—moved to

San Francisco by way of Portland and the O. R. & N. boats to San Francisco?

4394 A. Why, I remember one or two instances where we moved some traffic that way. We couldn't handle it that way as a rule, though.

Q. What were those instances? Where did it originate?

A. Well, I remember that for a time we moved shipments of stoves from St. Louis to San Francisco by way of Portland and our steamer lines, and on another occasion we moved shipments of vehicles from eastern territory to San Francisco that way.

Q. Do you remember of any movement from Pittsburg and vicinity?

A. No, sir.

Q. Where did these vehicles originate?

A. I remember some of them originated at Columbus, Ohio; I think some of them originated up in Michigan.

Q. How did that move to Portland?

A. Some of it moved over the Union Pacific and Oregon Short Line, some over the Colorado lines and the Oregon Short Line, and some over the Great Northern and Oregon Short Line.

Q. How long did that movement continue?

A. Not more than two or three months.

Q. Do you remember when that was?

A. No, sir; except it was in around 1898 or 1899; in there somewhere.

Q. Do you remember how long that movement of stoves kept up?

A. That kept up for about the same length of time, I judge; it wasn't very long—several months.

Q. And where did those stoves come from?

A. St. Louis.

4395 Q. Oh, one thing I forgot to ask you about that railroad war. Who started the cutting on passenger rates—the railroad or the steamship line?

A. My recollection is the Southern Pacific did.

Cross examination by Mr. COTTON:

Q. Prior to 1895, what relation existed between the steamship rates and the railroad rates, as to the differentials?

A. If I remember correctly, there was about a twenty-five cent differential on first-class rate, for instance.

Mr. SEVERANCE. To Portland?

Mr. COTTON. Yes, to Portland.

Mr. SEVERANCE. To Portland proper?

WITNESS. Yes, to Portland proper.

Q. And on carload stuff?

A. I don't recall what that was.

Q. Do you know how long that general situation, whereby the steamships were allowed to make a lesser rate, continued prior to 1895?

A. No, sir; I do not.

Q. How long were you familiar with the situation prior to 1895?

A. I wasn't familiar with it at all prior to the first of December, 1894.

Q. Then, from the first of December, 1894, until 1895, when this war broke out, that same differential existed?

A. So far as I know; yes, sir.

Q. Twenty-five cents a hundred first-class?

A. Yes, sir.

Q. Do you know what relation the passenger rates, rail and
4396 water, bore to each other prior to the war?

A. I think the Southern Pacific all-rail rate was $20 first-class and the steamer was $15, to the best of my recollection.

Q. Now, after they had this fight, the differential on freight, I understood you to say, was six cents on the higher classes, less than carloads, and three cents on carload stuff?

A. Yes, sir.

Q. And how did they wind up on the passenger situation?

A. The steamer lines had a rate of $12 first-class, including berth and meals, and the Southern Pacific had a net rate, I think, of $17, which included a Pullman berth. They had a rebate system in at that time. I think they charged the passenger $25 and rebated him $7 at this end or $8 at this end.

Q. How long did you say you stayed down there, until what year? When did you quit?

A. 1901.

Q. In 1898 the railroad rate got up as high as $25, did it not?

A. That was the gross rate, yes sir.

Q. And out of that came $5 for sleeper?

A. $5 for sleeper and $8 rebate.

Q. So when they got through they had practically, as the result of this war, restored the same system in the way of differentials as existed prior to the subsidy?

A. About a $5 differential.

Q. Do you know what started the war?

A. The passenger-rate war?

Q. Yes. The freight rate resulted from the passenger, didn't it?

A. No, sir; it did not.

4397 Q. This $1 a ton rate which you referred to, charged by the steamers, applied only to northbound vessels?

A. That was all.

Q. What about the southbound rates?

A. They were never reduced that low.

Q. What was the carrying capacity of the "State of California" and the "Columbia?"

A. The "State of California" would carry from 1,300 to 1,400 tons of the character of cargo which they would ship southbound, and the "Columbia" would carry from 1,500 to 1,600.

Q. Northbound about how much?

A. They wouldn't carry quite as much northbound; possibly 100 to 150 tons less, each steamer.

Q. What is the character of the stuff that moves south?

A. Oregon and Washington produce very largely—potatoes, grain, box shooks and salmon.

Q. The bulk of the traffic was potatoes and grain and box shooks?

A. Yes, sir.

Q. Now, these two steamers amalgamated and made a five-day trip, that was the regular trip?

A. Yes, sir.

Q. And the other boats were only put on as necessity required?

A. Yes, sir.

Q. And did that necessity arise from southbound business only?

A. Southbound business almost altogether.

Q. The tonnage was light coming north practically all the time, wasn't it, as compared with the carrying capacity of the ships?

A. Yes.

Q. To what extent were you able to load the ships northbound as a general average proposition, compared with their
4398 carrying capacity?

A. They varied so in different seasons and different years that it would be rather hard to say. I presume that possibly an offhand figure would be seventy-five per cent.

Q. Competing with these ships were ships of the Pacific Coast Steamship Company up to Puget Sound from San Francisco?

A. Yes. They were competing on certain classes of business.

Q. That is, I mean for all business which went over into competitive territory on the O. R. & N. line.

A. Yes, sir.

Q. Montana?

A. Yes, sir.

Q. Did that competition still continue?

A. Yes, sir.

Q. In addition on that, there was some competition to Portland, locally, by steam schooners?

A. Yes, sir; part of the time.

Q. Do you know anything about the extent of that competition now as compared with what it was when you were in the business?

A. Only from hearsay.

Q. From your general knowledge; you are in the traffic business?

A. Yes, sir.

Q. In the steamship business?

A. Yes, sir.

Q. With the Pacific Steamship Company?

A. Yes, sir.

Q. In a general way, you know what the conditions are down here?

A. I think it is fully as keen, if not keener, than it was at that time.

Mr. SEVERANCE. Between whom?

Q. Between the steam schooners and the O. R. & N. steamers.

A. Between the steam schooners and the O. R. & N. line.

4399 Q. Between San Francisco and Portland?

A. Yes, sir.

Q. These steam schooners load generally with lumber going south, do they not?

A. Yes, sir.

Q. And upbound they compete to their utmost possible ability for this comparatively light merchandise loading?

A. Yes.

Q. Do they maintain suitable rates, or do they get what they can get?

A. I have no knowledge on that point at present. Under the old conditions they used to take it at any rate they could get.

Q. They were really engaged, that is, they were run for the primary purpose of taking the lumber south?

A. Yes, sir; most of them. One or two exceptions possibly.

Q. Do you know anything about the character of the lines now being operated, as to whether these schooners have systematized their business to a greater extent, so that they are running more on regular lines, with regular agents, than they did in your day?

A. It is my understanding that they are better systematized, better organized.

Q. And that therefore the competition is more severe now than it was then?

A. That class of competition, yes, sir.

Q. Both in the number of ships and in the character of the solicitation?

A. Yes, sir.

Q. And the matter of handling the business?

A. Yes, sir.

Q. Now, you have spoken about some transcontinental traffic which moved. Was it merchandise generally, or only this particular class of commodities to which you refer.

A. Just those particular classes of commodities.

Q. Over what routes did those shipments move to Portland, if you know?

4400 A. They moved over the Great Northern via Spokane; over the Union Pacific and the Rio Grande lines, and thence up over the Short Line via Huntington.

Q. About what quantity moved this way?

A. My recollection is that the movement of vehicles aggregated some 50 odd cars all together; the stoves I don't remember, but I don't presume over ten or twelve cars.

Q. Did you ever ascertain the reason why they moved?

A. Yes, sir.

Q. What was it?

A. The rates were more favorable via Portland.

Q. How did that happen?

A. They had a lower rate from eastern points via North Pacific and Pacific Coast Steamship Company to California terminals.

Q. It was not a through rate all the way?

A. Not on the stoves; on the vehicles it was.

Q. And this stuff only moved during that period of time. You don't know how those rates became established, do you?

A. No; I do not.

Q. And it only applied to those two commodities?

A. I think there was an additional commodity; I think we moved pianos also at one time.

Q. Did those vehicles come Union Pacific or Great Northern?

A. Both.

Q. And the stoves?

A. I don't recall that. They came up to Portland, but I don't remember whether they moved exclusively by the Union Pacific or by the Rio Grande.

Q. What year was that?

A. I can't place that except it was around 1898 or 1899, pos-
4401 sibly 1900; right around in there somewhere.

Q. How long were those tariffs allowed to remain in effect before they were cancelled?

A. That I don't remember. I remember that the movement was limited in time, and I presume that it ceased on account of the changing of the tariff. I don't know.

Q. I don't quite hear you, sir.

A. I say I remember that the movement was limited in time; I presume that it ceased on account of the changing of the tariffs, but I don't remember as to that.

Q. This adjustment of rates did not apply to any other articles that you know of?

A. Not that I recall; there were comparatively few commodities.

Q. Are you sure that there was any through rate in effect via the Union Pacific?

A. Why, I don't know that that was the through rate in effect. I remember the through rate was not protected. I don't know whether it was published. My recollection is that the Union Pacific would not participate in the publication, but they participated in the movement just the same.

Q. Were there through rates via Puget Sound to the Pacific Coast?

A. Yes, sir.

Q. On these commodities only?

A. There was the same through rate applied on vehicles.

Q. Was the rate withdrawn on the Pacific Coast route from Puget Sound to San Francisco about the same time?

A. Why, I don't know that that through vehicle rate was ever withdrawn. Those vehicles moved not on account of any more favor-
able rate via the North Pacific Coast terminals, but on account
4402 of some restrictions as to the length of the cars on the Califor-

nia line via Mojave. That is what caused the cars to move around that way. But the rates themselves were equal.

Q. Do you know what that traffic restriction was in the way of the size of the cars?

A. It was some restriction on the length of the car.

Q. Based on the character of the tunnels that were on those roads?

A. That, I don't know.

Q. Snowsheds?

A. Snowsheds, I presume. I don't know.

Q. Now, this war that you have referred to continued during the period, say, from December, 1895, until the fall of 1896,' or thereabouts, about a year or a year and a half?

A. In there somewhere; I don't remember the exact time.

Q. And the war terminated in 1896?

A. In there somewhere, 1896 or 1897.

Q. And was not renewed from that time up until 1901, to your knowledge.

A. No, sir.

Q. Substantially the same relation of rates continued from the time of the settlement of the war in 1896 to 1901 as had prevailed prior to the time the war commenced.

A. Yes, sir; and the water line was allowed a differential on its business.

Q. On the northern lines they allowed a 50-foot car for those vehicles, and on the southern lines a 40-foot car?

A. I think that was it; that is my recollection; something like that.

Q. You are familiar with the traffic conditions now, are you not? That is, the movement of freight into Montana?

4403 A. In a general way, yes, sir.

Q. What routes are open now from San Francisco to Montana common points?

A. I have no knowledge of my own on that. I have supposed that the same number of routes are open now that were open when I was in the service.

Q. You haven't heard of the closing of any routes via Shasta or otherwise, have you?

A. No, sir, I have not.

Q. Your line still continues to carry freight in connection with the Great Northern and the Northern Pacific?

A. You mean the Pacific Coast Steamship Company?

Q. Yes.

A. Yes, sir.

Q. And the O. R. & N., rail and steamer, engage in competition with you?

A. Yes, sir.

Q. And the Shasta Route in connection with the Northern Pacific via Portland still engage in the business?

A. I understand so.

Q. And the Southern Pacific and the Oregon Short Line?

A. Yes, sir.
Q. By Ogden?
A. Yes, sir.
Q. At equal rates?
A. To Montana?
Q. Yes.
A. Yes, sir.
Q. So, therefore, the situation in that respect as to Montana common points is substantially the same as it was prior to 1901?
A. Yes, sir.

By Mr. SEVERANCE:

Q. As you understand it, the Southern Pacific, with its connections, is still a competitor of the O. R. & N. boat line and its connections for Montana business?
A. That is my understanding, yes, sir.
4404 Q. What time was made by rail between here and San Francisco?
A. Freight or passenger?
Q. What time, I say?
A. Do you mean freight service or passenger service?
Q. No, by boat.
A. About 55 or 60 hours.
Q. And what is the passenger schedule by the rail lines?
A. About 36 hours, I believe.
Q. And how many trains a day were run to San Francisco?
A. During the time I was located in San Francisco?
Q. Yes.
A. One each way.
Q. And the boats, you say, regularly had a five days service?
A. Yes, sir.
Q. What was the freight schedule between the two places? How long did it take?
A. Between 4 and 5 days.
Q. You stated that after the adjustment following this steamship war, or the war between the steamers and the railroads, that a rate of $25 was put in by the Southern Pacific, which included a berth and an $8 rebate. What was the price of a berth as an independent proposition between here and San Francisco?
A. $5.
Q. Taking out the berth, $5, and the $8 rebate, it left a net rate to the railroad of $12?
A. Yes, sir.
Q. Out of the $25?
A. Yes, sir.
Q. For the transportation charge?
A. That is as near as I can remember it. I can't remember whether that rebate was $7 or $8; it was in there somewhere.

Q. It was either $12 or $13 net?

A. Yes, sir.

4405 Q. And the rate by steamer, including berth and meals, was $12?

A. Yes, sir.

Q. You stated, in answer to counsel, that the heavier movement of freight was southbound, Portland to San Francisco.

A. Yes, sir.

Q. How was it as to the class of traffic moving? Was it a higher class moving north?

A. Yes, sir.

Q. The revenue was greater on that, wasn't it, than on the southbound movement?

A. Yes, sir, that is, on a general average.

Q. That is what I mean. Do you remember of the Canadian Pacific doing business into San Francisco in connection with the boat line?

A. I do.

Q. During what part of the time that you were in San Francisco were they doing business in there, or were they doing it all the time?

A. I haven't any clear recollection on that; I think they were doing it all the time.

Q. You left there in 1901?

A. Yes. I don't remember when that adjustment was made, when they quit doing business there.

Q. You remember that they had a differential for a long time into San Francisco, don't you?

A. Yes, sir.

Q. During the time that the Canadian Pacific had that differential in, did they do a large or small business into San Francisco from points in the east?

A. Why, they did a pretty good business.

Q. From what points did that business come?

A. I don't know that I can say as to that. My impression is it was pretty generally over the east.

4406 Q. Pretty generally from all points east of the Missouri river, wasn't it?

A. Yes, east of the Missouri river and north of the Ohio.

Q. During the time the Canadian Pacific had in that differential rate, did the Great Northern and Northern Pacific do any business into San Francisco by Puget Sound boats?

A. To the best of my knowledge they did not.

Q. They did not?

A. No.

Q. Do you know of any time that the Great Northern and the Northern Pacific have handled traffic into San Francisco by boat and rail?

A. From the far east?

Q. Yes.

A. Once in a while a stray car goes around that way—not very often.

Q. Taken down by the Pacific Coast Steamship Company?

A. Yes, sir.

Q. Are there published rates in force?

A. Yes, sir.

Q. Always have been?

A. Yes, sir, ever since I have known anything about it.

Q. Aren't there published rates in force by way of Portland?

A. Yes, sir.

Q. And the O. R. & N. boat line?

A. Yes, sir.

Q. Those rates are on an equality with the all-rail rates?

A. Yes, sir.

Q. You testified a moment ago that through rates were now in force from the east by way of Portland and the boat line, the same as by Puget Sound and the boat line?

A. Yes, sir.

Q. Over what lines do those rates prevail? Do they prevail over the Northern Pacific and Great Northern only, or over the

4407 Union Pacific, the Great Northern, and Northern Pacific?

A. They prevail over the Great Northern and Northern Pacific. I don't know about the Union Pacific.

Mr. LOVETT. What rates are those, Mr. Severance?

Mr. SEVERANCE. From the east, by the boat line here.

Q. Does the Union Pacific at present, since they acquired control of the Southern Pacific, keep in any rates of that kind?

A. I have no knowledge on that point, as to what they do now.

Q. When you were with the O. R. & N. Company at San Francisco were those rates published, in connection with the Union Pacific?

A. I believe the Union Pacific did not participate in those rates; that is, they didn't publish them.

Q. That is, they did not participate in the publishing of them?

A. Yes, sir.

Q. I believe you stated they participated in the traffic, but not in the publishing of the rates?

A. They did on a portion of the particular traffic I referred to.

Q. Were you down in San Francisco at the time the Coos Bay boats were running in connection with Spreckles' little railroad there? Did your boats make Coos Bay, too?

A. No, sir.

Q. Never stopped there?

A. No, sir.

Q. What kind of traffic did those Spreckles boats carry?

A. They carried merchandise north and coal south.

Q. And lumber, too?

A. Why, I don't know. They may have carried a little, but not very much. They were used more as an outlet for his coal mines up there than anything else.

Q. And carried merchandise north?
A. Yes, sir.

4408 By Mr. COTTON:

Q. The Canadian Pacific went out of San Francisco business, that is, from the east, did they not?

A. They went out of it on the ten per cent differential.

Q. They sought to have the American roads allow them a differential, and the American roads refused, and then they ceased doing business on a differential basis?

A. Yes.

Q. Now, in regard to those through rates from the east to San Francisco. Through rates are made from Chicago and west, from north of the Missouri river and Kansas, to San Francisco via the Great Northern to Spokane, thence over the O. R. & N. to Portland, and thence by steamer to San Francisco at the present time. Is that your understanding?

A. In a general way. I am not sure about the definition of the eastern territory that they are effective from, but in a general way that covers the situation.

Q. That is, there are through rates from some points in the east, from Chicago, by the Great Northern and its connections to Spokane, thence over the O. R. & N. to Portland, and thence by O. R. & N. steamer or San Francisco and Portland steamship line to San Francisco?

A. That is my understanding.

Q. And that rates from the same territory are made from those eastern points over the Northen Pacific to Wallula, thence over the O. R. & N. to Portland, and thence by the steamship line to San Francisco?

A. They used to be that way, and I have never heard of their having been withdrawn.

Q. You never heard of those rates having been withdrawn?

A. No.

4409 Q. Now, you didn't solicit business to eastern points via the Union Pacific from San Francisco, did you?

A. No, sir.

Q. I mean prior to 1901.

A. We didn't solicit it.

Q. Prior to 1901 you didn't solicit business from San Francisco, via the steamship line to Portland, thence east over the Union Pacific?

A. No, sir.

Q. And if you heard of a San Francisco merchant desiring to move business west via that route or any other route, you didn't solicit his business either?

A. Yes; we solicited it if we heard of anybody who wanted to move freight that way.

Q. What?

A. If we heard of anybody who wanted to move freight that way we would solicit it all right.

Q. But, as a matter of fact, you never heard of anybody excepting these two instances that you have referred to?

A. No, sir; not at equal rates.

Q. There was no movement of business from the east via the Union Pacific to Portland, thence to San Francisco by steamer, in your time—that is, no general movement of merchandise?

A. No, sir; just those few commodities I have mentioned, that is all.

Q. And there was no movement from San Francisco that way to the east via the steamer line and the Union Pacific?

A. No, sir.

Q. Did you ever hear of any articles moving that way toward the east?

A. Not during my time.

Q. Did you ever hear of any rate having been in effect, that is, any through rate, in your time?

A. By the Union Pacific?

Q. Yes.

A. No, sir.

Q. Either way—east or west?

A. No, sir.

4410 By Mr. SEVERANCE:

Q. There was nothing in the physical situation of the roads and the steamship lines that would have prevented the Union Pacific in connection with the Short Line, the O. R. & N., and the boats, doing business to San Francisco from points east of the Missouri river as effectively as the Canadian Pacific and the boat line from Vancouver, was there?

A. No; I suppose not. I suppose business could have been handled that way as effectively as via Vancouver.

Q. As a matter of fact, that differential by Vancouver was in effect for about ten years, wasn't it, and a vast amount of traffic was handled that way?

A. I don't know the length of time. My impression is it was in effect about all the time I was in the service at San Francisco.

Q. The arbitration took it out in 1898, as I remember. The route from the east to San Francisco by way of Portland would be shorter in mileage, wouldn't it, than by the Canadian Pacific and Vancouver?

A. Oh, I suppose it would, a short distance; it wouldn't cut very much figure, though, in the time.

Q. As a matter of fact, in the movement of traffic, distance (unless it is very excessive) doesn't make any difference?

A. No, sir.

Q. The longer lines compete on an equality with the shorter lines?

A. Yes, sir.

4411 H. M. ADAMS,

being duly sworn as a witness on behalf of the Complainant, testified as follows:

Direct examination by Mr. SEVERANCE:

Q. Mr. Adams, where do you live?
A. Portland.
Q. What is your business?
A. I am general freight and passenger agent of the Spokane, Portland & Seattle Railroad.
Q. Where does that road run?
A. From Portland to Spokane.
Q. How long have you been with that road?
A. Since it was opened for business, in December, 1907.
Q. Over what lines does traffic move to Portland in connection with your road?
A. From the east?
Q. Yes.
A. The Northern Pacific and Great Northern.
Q. And where do you take the traffic?
A. Up to this time we have been taking it at Pasco; commencing today we take it at Spokane.
Q. Previous to your connection with this road that you are employed by now, what was your business?
A. I was with the Great Northern Railway at Seattle.
Q. In what capacity?
A. Assistant traffic manager.
Q. For how long?
A. Two and a half years.
Q. Previous to that what was your business?
A. I was assistant general freight agent of the O. R. & N.
Q. For how long?
A. Three years.
Q. When did you cease service with them?
A. In 1905, end of May.

4412 Q. What was your position before you were assistant general freight agent?
A. General agent at Spokane for four years.
Q. You went to Spokane in 1902?
A. No, in 1898; I left there in 1902.
Q. Previous to that, what was your position with the company?
A. Travelling freight agent of the O. R. & N. Company.
Q. Out of what place?
A. Portland.
Q. For how many years?
A. Two and a half years.

Q. Before that what was your position, before you were travelling freight agent?

A. For a period of a few months prior to that I was chief clerk in the general freight office.

Q. Was your connection with the O. R. & N. all the time in the traffic end of the business?

A. I went to work for the O. R. & N. in 1897, as a clerk in the baggage department, and continued in the service until 1900, when I left the railroad service altogether, and re-entered it again in 1894 as a clerk in a ticket office at Seattle.

Q. By 1900, you meant 1890, didn't you?

A. I meant 1890, yes. In 1894 I entered the railroad service again as a clerk in a ticket office at Seattle, then Union Pacific. I remained there for a few months, and then came to Portland as a clerk in the general freight office. After that I was appointed travelling freight agent, as I have said before.

Q. At the time you were employed here in Portland by the O. R. & N.—I mean the time previous to the date you went up to Spokane in 1898—you came back here in 1903?

A. 1902.

Q. Previous to that time, what was the differential between the Shasta Route to San Francisco and the boat line, the O. R. & N., if you remember, on Portland business?

4413 A. There never was a fixed differential on Portland and San Francisco business, that I can recall.

Q. It never was fixed?

A. No.

Q. But there was a differential, was there not?

A. Yes.

Q. That is, there was a difference in rates?

A. The rail rates were always higher than the water rates on the bulk of the traffic, including possibly some perishable or light-bulk stuff or something of that kind.

Q. But you don't know of any fixed basis of differential?

A. Not on Portland and San Francisco business; no, sir.

Q. That is what I mean. Now, as I understand it, in railroad parlance, a differential is a difference in rates that is arrived at by agreement between the two lines? That is what you would technically call a differential, isn't it?

A. That is, as the term is usually applied; it is usually agreed to, but I suppose it really means any difference between rates.

Q. Mr. Stubbs, who is a very good authority, I believe, on traffic matters, testified that the word "differential," when used strictly, meant when there was an agreement as to the difference.

A. Yes.

Q. That is the understood meaning?

A. Yes.

Q. Then, as I understand it, your impression is, that while there was a difference in the rates all the time you were here between the rail line and the steamer line, there was no fixed basis of differential?

A. Yes, sir; that is my belief.

Q. Do you remember when the O. R. & N. ran boats up the Willamette River?

A. Yes, sir.

4414 Q. What points that were common with the Southern Pacific Railroad did they touch?

A. It depended, of course, during certain seasons of the year on the stage of the water. They operated to the head of navigation, but usually it included Corvallis, Albany, Independence, Salem, and Oregon City.

Q. Did they ever go higher?

A. Not with regular service. They have had some boats above Corvallis on the Willamette River, but I don't think they were ever able to maintain a schedule there except periodically, for a few weeks at a time, probably.

Q. How frequent boat service was that up to the point you named, to Corvallis?

A. Well, that was governed——

Q. Corvallis is the farthest up the river, isn't it?

A. Yes; you can consider that as high as any regular service is ever maintained.

Q. How frequent was that boat service?

A. Generally a daily service as long as the freight traffic offered support to that kind of service.

Q. What kind of traffic was brought into Portland by those boats?

A. Farm products and paper from mills at Oregon City.

Q. Did some of that traffic go to San Francisco by boat line?

A. Yes; a very large quantity of paper and the farm products—potatoes in particular.

Q. Did you participate in the hop business out of that territory?

A. Yes; the through rates on hops to the east applied in connection with the boat lines then, just as they do today.

4415 Q. I didn't hear; it is so noisy. What is that?

A. The through rates on hops to the east applied in connection with the boat lines then, just as they do to-day.

Q. In connection with what boat lines?

A. The Willamette River steamer lines.

Q. How did those hops move to the east, if the O. R. & N. secured them with their boats?

A. Speaking of the time I was familiar with it, say, after the year 1894, they could move out of here over the O. R. & N., thence either to Wallula, on the Northern Pacific, via Spokane and the Great Northern, or via Huntington and the Oregon Short Line and the Union Pacific.

Q. Did the Southern Pacific participate in the hop movement out of that same territory?

A. Via their own lines; yes, sir.

Q. Yes; I understand. And by which route did they send the hops to the seaboard, if you know? By Ogden or by the Sunset?

A. I won't say positively, but I think the rates applied by both routes. The business generally moved via the Sunset.

Q. Was the hop business in that territory and this other business the subject of solicitation by the two agencies—the Southern Pacific and the O. R. & N.?

A. The Willamette River business was not tributary, generally speaking, to the hop business.

Q. I am speaking of the hop business now.

A. That didn't go around these common points we are talking about.

Q. How is that?

4416 A. The hops are not delivered at these common points very largely; some of it is, but a great deal of it originates at local points on the river, and that business was not tributary to the Southern Pacific, of course, because they had no through rates in connection with the steamer lines. The business on the rail lines, of course, was tributary to the Southern Pacific and moved largely via their lines.

Q. Take the business tributary to these towns you have mentioned—they were common points?

A. Yes.

Q. Hops moved out of those points?

A. Yes, sir.

Q. And they could move either way?

A. Yes, sir.

Q. Was that competed for by the two lines?

A. Yes, sir.

Q. Do you remember about the movement of lumber from Portland to Colorado and Utah common points previous to the amalgamation of the Union Pacific and Southern Pacific interests?

A. I was not in close touch with that traffic prior to the time it began to move through Portland, but as a matter of common knowledge, the lumber traffic prior to that time moved through Sacramento.

Q. That is, the Southern Pacific?

A. Yes.

Q. What they secured?

A. Yes; what they secured.

Q. I am speaking of lumber originating in Portland, where it could be reached either by the Southern Pacific or by the O. R. & N.

A. Yes; that is right.

Q. In those days, when you were with the O. R. & N., did it move to Salt Lake and other Utah points by both routes?

A. Yes; that is my understanding of it. I am not clear as to the application of the Southern Pacific tariffs at that time, but, as a matter of general knowledge, that is my recollection.

4417 Q. Do you remember when the tariffs were so adjusted that that business no longer moved by the Shasta Route and the Central Pacific to Utah?

A. I think some time in the year 1902 the rates via Sacramento were withdrawn to Utah and the east, and rates applied via Portland instead of from the Willamette Valley territory.

Q. By the Southern Pacific to Portland and sent over the O. R. & N., instead of moving east by the Southern Pacific via Ogden?

A. Yes, sir; via Sacramento.

Q. Via Sacramento. Aside from that, do you know of any change made in the matter of the solicitation of traffic or the endeavor to route traffic to different sections of the country made by Mr. Campbell's agency here, after he became the representative of both lines?

A. My recollection of it is that after the rates were established through Portland from Southern Pacific territory, probably restricted to the State of Oregon, the business was then solicited for movement via Portland rather than via Sacramento.

Q. For what points?

A. For the common territory in the east, say Utah common points in the east.

Q. How about the traffic destined from this territory to the Atlantic seaboard—how was that solicited?

A. There never were any instructions on that, as to the definite division of the business, that I know of. It moved both ways.

Q. You say you were in Spokane up to what time?

A. 1902.

Q. Do you know anything about the movement of lumber formerly to points in eastern Nevada, by way of the Short Line

4418 and thence west from Ogden?

A. From this territory, from Portland?

Q. Yes; from Portland.

A. As far as I know, all Nevada business always moved via Sacramento.

Q. And how far east did that exclusive movement continue?

A. Utah common points, I would say.

Q. It moved both ways to Utah common points?

A. Yes; up to the time the rates via Sacramento were cancelled.

Q. As far as your recollection goes, how did San Francisco business to Butte and common points in Montana move?

A. There were many different routes. After the rates were established via Ogden in connection with the Central Pacific and the Oregon Short Line, that route was opened; there was an all-rail route via Portland and the Northern Pacific; and there were the water routes to Portland in connection with the O. R. & N. and the Northern Pacific through Wallula, the Great Northern through Spokane, and the Oregon Short Line through Huntington; there were also routes open by steamer from San Francisco to Puget Sound and thence in connection with both the Northern Pacific and the Great Northern.

Q. You were familiar with that business, weren't you?

A. Yes, sir.

Q. Was that a very considerable traffic?

A. Yes; considerable traffic moved from San Francisco to Montana common points.

Q. Was it actively competed for by these different routes?

A. Yes, sir.

Q. Do you remember how frequent a schedule was for a time
4419 maintained by the O. R. & N. boat line to San Francisco from Portland in the old days?

A. Why, I can remember a long time ago when there was a three or four days' schedule. I don't know when that was or when it was discontinued; and later it was reduced to a schedule of a steamer every five days, when I was actively connected with freight traffic.

Q. Do you happen to know what it is now?

A. The San Francisco and Portland Steamship Company, which is the successor to the O. R. & N. line, has a weekly service.

Q. What is the time that your line, with its connections, makes from St. Paul to Portland on freight?

A. Six days.

Q. And Chicago?

A. Eight or nine.

Q. Did any business move to the territory between Huntington and Pocatello from San Francisco by way of the O. R. & N. boat line and the rail lines?

A. Yes; during my connection with the company there did.

Q. Did business go to that same territory by the Central Pacific and Ogden Short Line?

A. Not all of the time, as I recall it. I think there was a considerable period, during my early connection with the business, that the rates only applied to Portland, to that territory, but they were later established via Ogden and the Oregon Short Line—the all-rail route.

Q. Is there quite considerable traffic into that region from San Francisco?

A. Yes, sir; there was at that time.

Q. Was that competed for actively by these two routes?

A. Yes; but I am not clear as to the date when those rates via Ogden were established, but it seems to me it was the latter
4420 part of my connection with the business. It was not done for a long time after I commenced working for the company.

Cross-examination by Mr. COTTON:

Q. Mr. Adams, you said that the O. R. & N. boats operated at one period up to the head of navigation. By that you mean they operated as far up the river in the direction of Corvallis as the water permitted?

A. I think you misunderstood me. I meant to convey the idea that they operated to the head of navigation, and that was the controlling

factor at various seasons of the year as to how far up the river they would get. Sometimes they wouldn't even get to Salem; they would get to Independence and Albany, according to the stage of the water.

Q. Then the head of navigation was more or less movable; it wasn't fixed in one particular place, say Corvallis, all the time?

A. It was movable every little while.

Q. The stage of water in the Willamette River is such that the boats had great difficulty in navigating above the falls during the low-water season?

A. Yes, sir.

Q. The falls are at Oregon City?

A. Yes, sir.

Q. How long did that low-water stage continue each year, and about when?

A. Well, there was always a low-water period, say, from August to November, beginning probably in August and ending some time in November, generally. Very often there was a low-water period in the winter time.

Q. And during that time it was impossible for the boats to navigate to a very great extent, varying at different seasons of the year, in different low-water periods, above the falls, at Salem, or in between?

A. Well, they could get a little ways up above the falls, 15
4421 or 20 miles, probably any time, but beyond that it was—in low-water period they couldn't get there.

Q. There were difficulties in connection with this navigation in the way of snags, bars, wreckage of boats, all the time, weren't there?

A. Yes, sir; the greatest difficulty was the low water.

Q. When did your connection with the O. R. & N. cease at Portland—that is, when you came back as assistant general freight agent?

A. When did it cease?

Q. Yes.

A. The end of May, 1905.

Q. Was the O. R. & N. still engaged in the Willamette River business, with boats?

A. Yes; to a limited extent, as I recall it, at that time.

Q. The extent of their operations up there was limited very largely by the wearing out of their boats and the destruction of the boats engaged in that branch of the business and the decrease of business, was it not?

A. Yes; they didn't keep up their complement of boats to maintain regular service.

Q. Isn't it true that at one time the O. R. & N. boats stopped at Yamhill, and then the Oregon City Transportation Company undertook to maintain a daily service as far up the river as they could go, and operated boats but three times a week?

A. That is quite probable at some low-water period, when the O. R. & N. Company didn't have a boat that could go up above the mouth of the Yamhill River. I don't recall any particular period as to when that was.

Q. Now, you say that at one time rates were established via Ogden to Montana. When was that?

A. I can't recall the time when those rates were established.
4422 It does not seem to me, however, that they were always in there, always effective. It seems to me they were established some time during my connection with the O. R. & N. freight department.

Q. Now, eliminating that route for the present, because you don't know when that route was opened via Ogden, the routes which have always been open from San Francisco to Montana common points have been the following, as I understand it: The Shasta route to Portland, thence from Portland over the Northern Pacific via Tacoma?

A. Yes, sir; that is one of them.

Q. The O. R. & N. boat line to Portland, thence to Wallula over the O. R. & N., and thence to Montana via the Northern Pacific?

A. Yes, sir.

Q. The O. R. & N. boat line to Portland, thence to Spokane over the O. R. & N., and thence to Montana over the Great Northern?

A. Yes. That route was established some time in the early part of Mr. McNeill's receivership.

Q. 1894?

A. Yes, sir.

Q. From San Francisco to Puget Sound by the Pacific Coast Steamship lines, and thence to Montana via the Great Northern or the Northern Pacific?

A. Did you name the steamship line?

Q. The Pacific Coast.

A. Yes, sir.

Q. Are those routes open to-day?

A. Yes, sir.

Q. And have been open all the time that you know anything about the history of the traffic moving from San Francisco to these Montana common points?

A. Yes, sir.

Q. You have no rates via your line from here, have you?

A. From here?

4423 Q. Yes; that is, from San Francisco.

A. No rates from San Francisco; no, sir.

Q. Through your line?

A. Except as they might be made on the combination of locals through Portland.

Q. Now, I see there is a little difference in the opinion of some of these other witnesses as to whether or not there was a differential. Isn't this the fact, that so far as the published rates were concerned there was a differential, but the boats made a rate at various times for the purpose of getting business?

A. When I referred to the differential I referred to a fixed or agreed differential on Portland-San Francisco business. I don't recall that there ever was an agreed differential on that local traffic.

Q. The O. R. & N. boats were in competition with steam schooners all the time?

A. Yes.

Q. They had to make rates which would get the business in competition with the schooners, no matter what rate they had to make?

A. Yes; it was the competition between the steamer lines that fixed the maximum rates.

Q. This refers now to purely local business between Portland and San Francisco?

A. Yes, sir.

Q. And San Francisco and Portland?

A. Yes.

Q. The rail rates were more or less permanent because they were required to publish and keep to those rates, were they not?

A. Yes, sir.

Q. You solicit hops, do you, or the Northern Pacific does, in the Willamette Valley to-day in connection with the boat lines?

A. Yes, sir; in connection with the boat lines we do.

4424 Q. Do the rates from points in the Willamette Valley on hops apply via Portland and the Northern Pacific to the east?

A. Yes, sir.

Q. That is, rail points on the Southern Pacific to Portland and thence over the Northern Pacific east?

A. Yes, sir.

Q. And those rates are in existence at the present time on hops?

A. Yes, sir.

Q. Such rates apply from Willamette Valley points on all commodities over the Northern Pacific via Portland, do they not?

A. The transcontinental rates apply generally from the territory in the Willamette Valley in connection with the Northern Pacific the same as they do with other routes.

Q. And that rate adjustment applies all the way down as far as Ashland?

A. Yes, that is my recollection.

Q. Then, any shipper, at the present time, desiring to ship from Willamette Valley points on transcontinental rates, can ship east either by the Sunset or via Portland and the O. R. & N. lines or by way of Portland and the Northern Pacific?

A. To the Atlantic seaboard; yes, sir.

Q. Either way?

A. Yes, sir.

Q. You say to the Atlantic seaboard because I included the Sunset Route?

A. Yes, sir.

Q. Eliminate the Sunset, and to what extent does this similarity of rates prevail?

A. Generally to the Missouri River and east.

Q. Either by the O. R. & N. and its connections or the Northern Pacific and its connections?

A. Yes, sir.

Q. This rate adjustment applies practically from every point
4425 in the Willamette Valley on the Southern Pacific lines, doesn't it, in the state of Oregon?

A. Yes, sir.

Q. Irrespective of whether it comes in competition with the boats or not?

A. Yes, sir.

Q. You spoke about those Willamette River boats operated by the O. R. & N. Do you know anything about their earning capacity; did you have charge of those when they were operated?

A. Operated by the O. R. & N.?

Q. Yes.

A. Yes; I had more or less to do with them.

Q. In 1892 and thereafter, the Willamette River boats did not earn their operating expenses in the traffic in which they were engaged, did they?

A. No, sir.

Q. I mean 1902.

A. No, sir.

Q. What?

A. No; they did not.

Q. There was a deficit in operation all the time?

A. All the time; yes, sir.

Q. And that deficit applied even when you eliminated what might be regarded as heavy repairs to the boats?

A. It was true right along, as the statements came along month after month.

Q. There was a constant deficit in the operations?

A. Yes, sir; I think probably the heavy repairs were included.

Q. You were getting the best rates you could?

A. Yes, sir.

Q. Do you know about how much the earning capacity of the boats was per year; about what it would represent in dollars?

A. No; I can't recall that.

Q. You were familiar with that business from the time you came with the company in 1902 until the time you left?

4426 A. Yes, sir.

Q. And during all that time the operation was on the wrong side of the ledger?

A. Always; yes, sir.

By Mr. SEVERANCE:

Q. How many years did it take them to find that out, so as to discontinue the boats?

A. So as to what?

Q. So as to discontinue the boats. I say how many years did it take to get that through their head, that they were losing money on the boats?

A. I think that they continued the operation of the boats largely as a feeder to their rail line.

Q. That is what I thought. They operated those boats as a feeder to the O. R. & N.?

A. Yes, sir; at an operating loss.

Q. And they did that until such time as the O. R. & N. and the Southern Pacific interests were identical, and then they didn't care about operating them any longer. Is that true?

A. No; I don't think that is true. The change took place about that time, but——

Q. You think it was a coincidence, do you?

A. No; I want to explain it to you. It was at a time when the traffic was becoming less all the time, and it had become apparent to the officers that an individual could operate the boats to better advantage than a corporation could, and there was an opportunity to make through rates with the Oregon Transportation Company, supplant the O. R. & N. Company's own service, and still get the traffic for their rail lines, and they have continued that up to this time.

4427 Q. And that is done in connection with Captain Graham's boats now?

A. Yes, sir.

Q. They are still in that traffic?

A. Yes, sir.

Q. Now, you stated a few moments ago, in answer to Mr. Cotton, that hop business from the Willamette Valley, as I understand you——

A. Yes, sir.

Q. —could now move to the east by the Southern Pacific to Portland, thence by the O. R. & N. and its connections. Are you sure that the rates are in that way?

A. Yes; I feel sure on that point.

Q. You do feel sure on that?

A. Yes, sir.

Q. How far up do those rates apply?

A. I can't be sure about that, but my recollection is that the hops originate as far south as Eugene.

Q. Can traffic that is above the head of navigation move that way?

A. Yes, sir; that is my recollection of the application of the transcontinental tariff.

Q. Are you sure?

A. Well, I feel sure in my own mind about it.

Q. That is, to the Atlantic seaboard territory?

A. Yes, sir.

Q. How long have those rates been in force?

A. I think they have always been in. I don't think the rates to the Atlantic seaboard via Portland and the rail lines were ever withdrawn.

Q. That is your best impression, is it?

A. Yes, sir.

Q. How was it as to rates to the interior of the country, east of the Missouri River? Weren't the rates withdrawn by Sacramento, from these points in Oregon?

A. All transcontinental rates applying via Sacramento were canceled at one time.

4428 Q. Counsel was examining you with reference to certain lines being still open; the Southern Pacific line by Sacramento and the connection at Ogden is no longer open, is it?

A. No; no longer open.

Q. Now, you say that the line made up of the Southern Pacific into Portland and the Northern Pacific to the east is still open?

A. Yes, sir.

Q. But you have no divisions by which that traffic can move out of Portland over your line to Spokane and be there delivered to the Northern Pacific, have you?

A. No, sir; none at all.

Q. Can you, as a traffic man, see any reason why the Southern Pacific should not deliver traffic to you at Portland, to be sent east from Spokane over the Northern Pacific, as well as to deliver it direct to the Northern Pacific here, to go around by Tacoma and the mountains?

A. We naturally think that should be done.

Q. How is that?

A. We naturally think that should be done, and we are negotiating with them to-day for those rates.

Q. You are negotiating?

A. Yes, sir.

Q. How long have you been negotiating?

A. Since last November.

Q. And you are still reporting progress?

A. Yes; and we think we are going to win out.

Q. Has it appeared to you, from your knowledge of traffic conditions, that the fact that the O. R. & N. has a line from Portland

4429 to Spokane which is competitive with the North Bank road, has anything to do with your failure to complete those negotiations successfully?

A. Why, I think so, yes; that their having the through rates in connection with their own route has some bearing upon it.

Q. And you look upon the O. R. & N. and the Southern Pacific as substantially the same people? They have the same officers, haven't they?

A. Yes; they are very closely allied.

Q. They have the same officers here in Portland?

A. Yes; the same traffic officers.

Q. How long have those rates in connection with the Northern Pacific been in?

A. Ever since I can remember.

Q. How far south do rates apply from the east over the Northern Pacific in connection with the Southern Pacific Shasta route?

A. My recollection is the Oregon State line, or Ashland, is the most southerly point.

Q. Aren't rates in as far south as California points?

A. I was going to correct that. The California rates do apply to San Francisco. Now, wait a minute. I am not clear about that—about the all-rail road. Yes; they apply via the all-rail route.

Q. And they don't apply to points south of San Francisco, south of Stockton?

A. No; I don't think so.

Q. Stockton is the southernmost point.

By Mr. COTTON:

Q. These tariffs are renewed and have been renewed from time to time. They could have been canceled at any time by the Northern Pacific, couldn't they?

A. The Southern Pacific could cancel them at their will, or the Northern Pacific, either one.

4430 Q. Your line operates from Spokane to Portland only?

A. That is all.

Q. All-rail?

A. Opened up to-day.

Q. Do you operate in connection with the Northern Pacific and the Great Northern?

A. Yes, sir.

Q. The property is owned and controlled by those two companies, is it not, according to common information?

A. Owned jointly by the two companies.

Q. And the Northern Pacific closes the Puget Sound gateway to the O. R. & N. via Portland, do they not?

A. The rates from the east to Puget Sound?

Q. Yes.

A. Yes, sir.

Q. And they have kept that shut all the time?

A. Yes, sir.

Q. So that the O. R. & N. and the Union Pacific can't solicit continental freight to Puget Sound points via Portland and the Northern Pacific?

A. No; they can not. Why I hesitated was about these lumber rates. They put in some lumber rates.

Q. I mean the transcontinental rates that you were talking about.

A. No; they can't apply via Portland.

Q. And that condition of affairs has continued for the last twenty years?

A. Ever since my connection with the business it has continued; yes, sir.

Q. And continues to-day?

A. Yes, sir.

Q. And yet you think that the Southern Pacific, having a route from the Atlantic seaboard by the Sunset, should open up to a connection of the Northern Pacific with rates into the Willamette Valley on transcontinental freight?

4431 A. Yes, I naturally do.

Q. That is because of your connection with the Portland, Spokane & Seattle?

A. Yes, sir.

4432 A. B. GRAHAM,

being duly sworn as a witness on behalf of the Complainant, testified as follows:

Direct examination by Mr. SEVERANCE:

Q. Captain Graham, where do you live?

A. Portland.

Q. How long have you lived here?

A. Thirty years.

Q. What is your business?

A. River steamer transportation.

Q. On what river?

A. The Willamette.

Q. What is the name of your company?

A. Oregon City Transportation Company.

Q. How long have you been connected with that company, Captain Graham?

A. Twenty-two years.

Q. How far up the Willamette River do your boats run?

A. Corvallis.

Q. How high up do you go in times of high water?

A. As far as Harrisburg.

Q. How many miles is that above Corvallis?

A. About twenty-six, I think.

Q. When you were doing business on the river, fifteen or sixteen years ago, how many boats were then running?

A. Somewhere about ten.

Q. Was the O. R. & N. Company operating boats on the river at that time?

A. Yes, sir.

Q. What time did they cease?

A. About a year and a half ago, above Oregon City.

Q. Do they still run to Oregon City?

A. They run to the Oregon City locks, to the paper mills.

4433 Q. One boat?

A. One steamer, called the "Ruth."

Q. Do they handle any traffic now with the exception of the output of that mill?

A. Supplies to the mill and the output from the mill.

Q. Do they handle it all?

A. Yes, sir. They take all the output; we handle a little of the supplies in.

Q. You don't participate in the output at all?

A. No, sir.

Q. How far from Portland is Oregon City?

A. Thirteen miles by river.

Q. How far by rail?

A. Fifteen by Southern Pacific, and a little over fourteen by Oregon Water Power.

Q. Oregon Water Power, an electric line?

A. Yes, sir.

Q. Does the Southern Pacific reach this paper mill?

A. No, sir.

Q. How far are they from it?

A. Right across the river. The paper mills are in the locks, and they are inaccessible even to a team.

Q. The product can only come out by boat?

A. Yes, sir.

Q. And that is the only traffic that is being brought down the Willamette River now by the O. R. & N. Company?

A. Yes, sir.

Q. What does your line handle?

A. All kinds of merchandise south, all kinds of farm products north.

Q. Do you handle hops?

A. Yes, sir.

Q. Do you remember, years ago, when the O. R. & N. were separate from the Southern Pacific in management?

A. Yes, sir.

Q. Was there any traffic up the valley that was competed for by the O. R. & N. boats, on the one hand, and the Southern Pacific railway on the other, in those days?

A. Coming this way?

4434. Q. Yes, or going the other—either one.

A. Well, I don't know so much about going the other way, but this way there was competition on the river, on hops, prunes——

Q. As between the boat lines and the Southern Pacific Railway?

A. Yes, sir.

Q. And both the boats and the railway brought hops and prunes out of that region?

A. Yes.

Q. When the O. R. & N. boats secured that traffic up there, which way did it move to the east?

A. That I can't say.

Q. You don't know about that?

A. No, sir.

Q. In those days did you also bring down hops and prunes?

A. Yes, sir.

Q. To whom did you deliver them?

A. To the O. R. & N. principally.

Q. Under what kind of traffic arrangement did you operate with the O. R. & N. at that time, when they had their own boats? Did you have a part of the through rate to the east, or a local rate, or what did you have?

A. We had our local rate to Portland. That is, it wasn't the local rate; there was a division allowed us by the O. R. & N., or a certain fixed rate.

Q. They allowed you a division of the through rate?

A. I presume you might call it that, yes.

Q. And did that traffic which you brought in move out over the rails of the O. R. & N.--some of it?

A. And Southern Pacific, I presume.

Q. You delivered it to the O. R. & N., you say?

A. Yes.

4435 Q. I am speaking of the old days, before the lines were in any way connected. If the O. R. & N. got it, it didn't move out over any other line?

A. No.

Q. It moved out over their line. Now, at the present time, do you bring out hops by your boats?

A. Yes, sir.

Q. How do these hops which you bring out move east at the present time?

A. Either way the shipper elects.

Q. And what routes are open?

A. The O. R. & N., the Portland-Spokane, the Northern Pacific, the Southern Pacific.

Q. The Southern Pacific by the Sunset Route to the east, or don't you know how they go?

A. Yes, routed Sunset.

Q. And do they move to the Atlantic seaboard also by the O. R. & N. and the Northern Pacific and this North Bank road that you have mentioned?

A. Yes.

Q. Do you remember whether at the time the O. R. & N. and the Southern Pacific agencies were separate they each had soliciting agents out in the Willamette Valley looking for business?

A. Yes.

Q. Who represented the O. R. & N., if you remember?

A. Mr. Overbaugh.

Q. Who represented the Southern Pacific?

A. Mr. Lounsberry.

Q. Captain Graham, Mr. Cotton indicated by some of his questions to another witness that there had been some change in the products up the valley in the last few years. What do you say as to that?

A. Well, there is not as much wheat produced.

Q. What else is produced, in lieu of wheat, by those farmers?

A. There is more garden truck, as they would call it, and
4436 more hops, more potatoes; I think more oats.

Q. I have in mind particularly the matter of hops. There has been no falling off on the production of the hops, but, on the contrary, an increase; is that so?

A. I think so.

Q. Those hops that are grown in the valley are shipped chiefly to points in the east, are they not?

A. Yes.

Q. Do you happen to know the extent of that product that goes out in carloads only?

A. Well, it varies. The valley crop runs from 80,000 to 110,000 bales.

Q. How many bales to a carload?

A. I think the maximum is 150; the average is about 75, I think.

Q. And do you happen to know, from your experience in handling hops that are taken on east, to what points in the east they are chiefly shipped?

A. Well, they go to all the eastern points—New York; they go to England.

Q. They go to England also?

A. To London.

Q. And some of them go to St. Louis?

A. Some to St. Louis.

Q. And possibly Milwaukee?

A. Yes; some to Milwaukee.

Q. Mr. Cotton has brought out that at some times there is a lack of water up the river. Are there any difficulties other than that in the way of successful transportation business on the river?

A. Nothing, with the exception of low water.

Q. Low water; that is what I meant. Can you always get up as far as Corvallis?

A. No, sir.

Q. How high can you get up in low water?

A. We have gone to Salem daily for the last fifteen years.

Q. How far is Salem from here?

A. 73 miles by water.

4437 Q. That is a station on the Southern Pacific, isn't it?

A. Yes, sir.

Cross-examination by Mr. COTTON:

Q. You testified that there were about ten boats on the Willamette River about fifteen years ago, I believe. Who operated those boats?

A. The O. R. & N. had three; the Oregon Pacific had two; we had two (that makes seven); Captain Geer had one (eight); Abernethy and Eldridge had one (nine); and I think Captain Jones had one operating to Eugene, if I remember correctly.

Q. What became of Jones' boat? What was her name, do you remember?

A. The "Eugene."

Q. What became of her?

A. They sold her and sent her north—to Alaska.

Q. What became of the Abernethy and Eldridge boat?

A. She was also sold north.

Q. What became of the Geer boat?

A. She was sunk—wrecked.

Q. Where?

A. In the Willamette River.

Q. What became of the three boats owned by the Oregon-Pacific?

A. They were worn out, practically; sold and rebuilt.

Q. Were they then operated on the Willamette River, after they were rebuilt?

A. No.

Q. They took the engines out of them and such parts as might be valuable—that is, other people, not the Oregon-Pacific?

A. No; other people rebuilt them.

Q. The Oregon-Pacific made no attempt to rebuild the boats
4438 after they were laid up?

A. I believe Mr. Hammond operated them awhile.

Mr. LOVETT. What is the Oregon & Pacific?

Mr. COTTON. The Oregon & Pacific was the company which was afterwards succeeded by the Corvallis & Eastern.

WITNESS. Yes; they were operated by the Corvallis & Eastern.

Q. Were these boats taken off by Mr. Hammond prior to 1901—off the river?

A. I have just forgotten the date.

Q. They were the "William M. Hoag," and what were the other two?

A. "N. S. Bentley" and the "Three Sisters."

Q. And those three boats were practically junked down here and the machinery removed and sold?

A. Yes, sir.

Q. By Mr. Hammond?

A. Well, the "Three Sisters" was wrecked and the "William Hoag" was rebuilt and the "N. S. Bentley" rebuilt, and their names changed.

Q. Where was the "Three Sisters" wrecked?

A. Somewhere up the river, I think—away up.

Q. That is, the Willamette River?

A. Yes.

Q. Now, fifteen years ago what boats were you operating?

A. The "Altoona" and the "Ramona."

Q. Do you still own boats of the same name now?

A. Not of the same name: practically the same—ending with the same two letters.

Q. What became of your original "Altoona" and "Ramona"—what happened to them?

A. They were both sold north.

Q. Then you rebuilt other boats?

A. Yes; we rebuilt new boats.

Q. About what is the draft of your two?

4439 A. One boat draws 14 inches and the other draws 19½—that is, light.

Q. Now, you have remained in river navigation on the Willamette all the time during this period, substantially?

A. Yes, sir.

Q. And Abernethy, and Jones, and everybody else who have been on the river at various times, private boat owners, including the Oregon-Pacific, have ceased operating boats on the river, practically?

A. Yes, sir.

Q. You are operating only one line at the present time?

A. Yes, sir.

Q. One boat up there above the falls—the "N. R. Lang," isn't it?

A. She operates for the paper mills, is used by the paper mills.

Q. Used for hauling logs and handling their own freight?

A. Yes, sir.

Q. Not engaged in the business commercially?

A. No.

Q. She operates above Oregon City locks, as a rule?

A. Well, down to Portland also.

Q. She is what might be called purely a private carrier?

A. Yes, sir.

Q. That is, carrying for one particular institution?

A. Yes.

Q. Now, fifteen years ago, what boats did the O. R. & N. operate up there, by name?

A. The "Ruth," the "Elmore," the "Modoc," and the "Gypsy."

Q. The "Gypsy" was a boat which drew about six inches of water, wasn't she? How much did she draw? Three-six?

A. No, sir; she drew one foot.

4440 Q. And when she was really doing business she could haul about how much?

A. Her capacity would be 90 tons.

Q. In 1900, the "Gypsy" became a total wreck, didn't she? Whereabouts?

A. Between Salem and Independence.

Q. What happened to her?

A. The captain ran her on a snag and sunk her.

Q. Are there snags in the Willamette River?

A. Yes, sir.

Q. Many of them?

A. Yes; a good many of them.

Q. What caused the wreckage of all these other boats you have referred to—windstorms, or snags, or something in the bottom of the river?

A. The one of Captain Geer was snagged; the "Gypsy" was snagged.

Q. The other boats were sold?

A. Worn out.

Q. What became of the "Elmore?"

A. She was sold. You mean the "Elwood?"

Q. No, the "Elmore."

A. The "Elmore" still belongs to the O. R. & N. Company.

Q. Is she running?

A. No, sir.

Q. Do you know what draft she was?

A. When running?

Q. Yes. Deep.

A. You mean loaded or light?

Q. Loaded.

A. Oh, she would draw about five feet loaded.

Q. Was she suitable for the navigation of the river?

A. Too heavy.

Q. Now, referring to the "Modoc:" what became of the "Modoc?"

A. She is down here in the O. R. & N. boat yard.

Q. She went out of service on the 10th of September, 1908; was operated last from Portland to Oregon City, I believe?

4441 A. Yes, sir.

Q. Is she an old boat?

A. Yes, sir.

Q. What is her present condition so far as operation is concerned?

A. Very good.

Q. And she was running September 10, 1908, between Portland and Oregon City, and she is now in the yard, is she not?

A. Yes, sir.

Q. What boat took her place?

A. The "Ruth."

Q. When was the last trip of these boats made above Oregon City?

A. The O. R. & N.?

Q. Yes.

A. I don't know.

Q. You said you thought it was about a year and a half ago?

A. Yes; about a year and a half ago.

Q. Do you think it was as long ago as that?

A. I don't know for sure.

Q. Now, these boats were engaged in hauling what class of products?

A. All kinds.

Q. Fifteen years ago, largely?

A. All kinds of farm products, merchandise.

Q. Did they depend upon wheat largely for their traffic off the river?

A. Yes.

Q. Between the Southern Pacific and the Willamette River, on the east bank, as far north as Salem, is operated the Oregon Electric line into Portland?

A. Yes.

Q. And that is operated between the Willamette River and the main line of the Southern Pacific?

A. Yes.

Q. It runs from here to Salem?

A. Yes.

4442 Q. Takes in all the French prairie country?

A. Yes.

Q. Woodburn and everything on the east side of the river, does it not?

A. Yes; but it does not touch lots or points on the east bank of the river—that the railroad does not go very near.

Q. No; but it lies between the Southern Pacific and the Willamette River?

A. Yes.

Q. Is that engaged in the handling of freight?

A. Yes.

Q. As well as passengers?

A. As well as passengers.

Q. Now, in those days, fifteen years ago, you connected with all the railroad lines here at Portland with the traffic that your line brought down the river?

A. No, sir.

Q. With what line only?

A. The O. R. & N.

Q. You were then engaged exclusively with the O. R. & N.?

A. Yes, sir.

Q. And what do you do now?

A. Why, with all of them.

Q. You do business with all?

A. Yes, sir.

Q. And you are practically the only line operating on the river?

A. Yes.

Q. And deliver all the freight that you get, consigned any way, to any railroad, practically on equal rates?

A. Yes.

Q. Now, as to rates: How do rates compare now with the rates in force in 1900?

A. They are higher.

Q. They are higher now?

A. Yes, sir.

Q. How much higher?

A. Considerably higher.

Q. Well, about, in amount?

A. We had a flat rate then, if I remember rightly, of about $2.50 a ton. Now we work on Western Classification.

4443 Q. On a classified basis? Wasn't that flat rate prior to 1900?

A. Yes; prior to 1900.

Q. Didn't you go to the transcontinental basis in 1900?

A. I think not until 1902—1901 or 1902.

Q. Now, about the profits of this business. Or, let me ask one other question. How often do you operate boats now?

A. The year round.

Q. No; I mean how many trips do you make a week?

A. Six.

Q. That is, you operate two boats three times a week?

A. We operate two boats daily to Salem and three times a week to Corvallis.

Mr. LOVETT. Let me understand that. Do you run a boat each way a day?

WITNESS. One boat each way a day from Salem and one boat three times a week from Corvallis and to Corvallis.

Mr. SEVERANCE. From Corvallis to Portland?

WITNESS. From Corvallis to Portland; one boat three times a week.

Q. You have been operating pretty regularly to Corvallis?

A. To Corvallis.

Mr. SEVERANCE. Now, just a moment. He said six times a week. Does he mean week days, or Sundays, or what?

Q. You run some Sundays, don't you?

A. Very seldom.

Q. You lay off on Sundays?

Mr. SEVERANCE. That is what he means.

Q. Now, as to the traffic. You are handling anything you can get out of the Willamette Valley?

A. Anything we can handle.

4444 Q. And in connection with any of the railroads operating out of Portland?

A. Yes, sir.

Q. You spoke about the traffic from the paper mills. That is paper in large rolls, is it not?

A. Large and small.

Q. Do you seek that traffic?

A. No, sir; we don't care for it.

Q. Why not?

A. Not enough revenue in it.

Q. That paper is destined to what points, as a rule—that is, this heavy roll paper?

A. Mostly San Francisco.

Q. It goes to San Francisco by boat routes, does it not; one, by your boat line to Portland?

A. Boat line to Portland.

Q. And the other by the line over to Pulp?

A. To Pulp.

Q. Just directly across on the west side of the river, and is there loaded on the Southern Pacific and taken down that way?

A. Yes, sir.

Mr. SEVERANCE. You said "it."

Mr. COTTON. I said "the line."

Q. I don't mean by your boat line.

A. You said the line.

Q. By the O. R. & N. So the O. R. & N. boat moves some of it to San Francisco, which goes out by boat to San Francisco?

A. Yes.

Q. And the Oregon City paper mills send some of it across the river in their own boat, over to Pulp, and that goes down on the Southern Pacific?

A. Yes, sir.

Q. The Oregon City paper mills have a loading platform for their pulp on which they also receive merchandise, do they not?

A. Yes, sir.

Q. And they get logs over there, too?

A. Yes.

4445 Q. The Southern Pacific hauls logs from St. Johns——

A. Up to Pulp.

Q. Down to Pulp, and they are there dumped in the river, and the line takes them over to the paper mill?

A. Yes, sir.

Q. So that heavy paper moves from the paper mills to San Francisco at the present time, does it not?

A. Yes, sir.

Q. Now, what has caused this falling off of river boats upon the Willamette River?

A. Lack of river traffic.

Q. Has the traffic decreased?

A. Yes, sir.

Q. Are you handling all the traffic you can get without any restriction at the present time?

A. Yes, sir.

Q. As to route——

A. Yes, sir.

Q. Rates or anything else?

A. Yes.

Q. That is the situation, is it not?

A. We are handling all we can get.

Q. And routing it over any of the railroad lines out of Portland?

A. Any way they wish.

Q. And the O. R. & N. and the Southern Pacific do not attempt to discriminate against your traffic or compel you to handle all the traffic that you originate by their line in any way whatsoever?

A. No.

Q. Is this business immensely profitable to you?

A. No, sir.

Q. I don't care about prying into your business particularly, but I would like to know in a general way. You are there without competition at the present time, so far as river boats are concerned?

A. Yes, sir.

4446 Q. Would you mind stating in a general way what the returns are on your investment?

Mr. SEVERANCE. I would suggest to the witness that he need not do that if he doesn't want to.

Mr. COTTON. No; he need not do that if he doesn't want to, but I want to show that the business is not extremely profitable.

WITNESS. The profits are not as good as they should be.

Q. The decrease in river transportation has been due, therefore, to very natural causes, resulting from the fact that the business is no longer attractive to steamboat men?

A. I would say from the improvement of county roads and railroad facilities, warehouses; that would be one reason.

Q. By that you mean that the county roads in the Willamette Valley have improved to such an extent that it is easier for people to haul from the river banks to the railroad stations, and therefore the traffic naturally seeks that outlet; is that what you mean?

A. Yes.

Q. Has the falling off in the production of grain affected the business—wheat?

A. Well, wheat; yes.

Q. The Willamette Valley used to produce about six million bushels a year, and now it produces about two million?

A. About that; yes, sir.

Q. Now, in regard to hops. Hops weigh about 180 pounds to the bale, and there are about seven pounds tare for the sacks. Isn't that right?

A. We take them at 200 pounds to the bale.

Q. Yes; but I mean, in estimating a crop, they estimate

4447 bales at 180 pounds to the bale, I believe.

A. No; more than that. They will average more than that.

Q. But I mean when they undertake to estimate the number of bales.

A. Just the hops themselves?

Q. Yes. I mean whenever it says a crop of 80,000 bales in a state, they mean bales of 180 pounds, do they not?

A. Yes—or 200.

Q. The 200 includes the tare, that is the sacks.

A. That is the gross weight.

Q. Now, the hop crop of Oregon has not increased, has it, in the last ten or fifteen years?

A. Yes, sir.

Q. How much?

A. Why, it increased from 10,000 or 15,000 bales to 110,000.

Q. You say fifteen years ago there were only about 10,000 bales of hops produced?

A. I think so.

Q. In Oregon?

A. I think so; I am not positive on that.

Q. In 1898 about how many bales?

A. Why, I don't know.

Q. In 1900?

A. In 1900 I should think about 80,000.

Q. What was the production this last year?

A. Estimated at 100,000.

Q. And the production this year will be 80,000 or less, won't it?

A. Yes.

Q. So, therefore, the hops in the Willamette Valley from 1898 down to the present time—the increase in production has not been steady and constantly rising, but it has fluctuated simply with the market demand, has it not?

A. Yes.

Q. It is commonly said that the average crop of hops in the Willamette Valley has been about 80,000 or 90,000 bales a year?

A. Yes.

4448 Q. And that has probably continued for about how many years?

A. Oh, for eight years, I would think.

Q. And you don't remember the statistics prior to that?

A. No, sir.

Q. The Willamette Valley used to be an exporter of wheat largely?

A. I don't know.

Q. Well, what I mean, shipping wheat out of the valley in large quantities, did it not, in an early day?

A. I don't think so. I think they used to use most of their wheat at Oregon City and Salem for grinding into flour.

Q. I mean after they ground it into flour and——

A. They exported it.

Q. Did they then export it from Portland?

A. I presume.

Q. At one time they exported wheat from Yaquina Bay, too, did they not?

A. Yes, sir.

Q. To San Francisco?

A. Yes, sir.

Q. What is the fact now about the Willamette Valley shipping wheat in for domestic consumption, from Eastern Oregon?

A. Well, they do that in small quantities to mix with their Valley flour.

Q. Is there much flour that moves out of the Willamette Valley at the present time to San Francisco?

A. Yes.
Q. From what mills?
A. Corvallis mills.
Q. You handle all of that?
A. No, sir, not all of it.
Q. Part of it goes by rail?
A. Part of it by Southern Pacific.
Q. When you handle it by boat how does it then reach San Francisco from Portland?
A. By the water lines.
4449 Q. O. R. & N.?
A. Not now.
Q. The Southern Pacific takes it from Corvallis, do they?
A. Yes, sir.
Q. About how much does this flour movement amount to per year, out of the valley?
A. By river?
Q. Yes. How many tons?
A. About a thousand tons.
Q. Have there been any new boats placed upon the Willamette River route other than yours, say in the last ten years, that is, by any new people?
A. Other people have operated there for a short time.
Q. Why didn't they continue in the business?
A. Not profitable.
Q. That is, private individuals?
A. Private parties.
Q. So, at the present time you are the only person now engaged in that river transportation?
A. Yes, sir.
Q. You operate with anybody and everybody operating railroad lines out of Portland?
A. Yes, sir.
Q. Steam schooners, or the O. R. & N. or anybody?
A. Anybody.
Q. And you are allowed to go ahead and do as you please?
A. Do as I like.

By Mr. SEVERANCE:

Q. You say that you bring flour down to Corvallis?
A. Yes, sir.
Q. Who takes it on to San Francisco?
A. We have been shipping by the North Pacific Steamship Company.
Q. Did the O. R. & N. ever take any of that flour?
A. Yes, sir.
Q. When?
A. Previous to this season.

Q. Has the Southern Pacific been carrying it too for some-
4450 time?

A. It carries it right along.

Q. And was at the same time the O. R. & N. was?

A. Yes, sir.

Q. And the O. R. & N. retired from the traffic this season, did it?

A. From the ocean traffic?

Q. Yes.

A. About three months ago.

Q. You stated several reasons for the diminution in river traffic, in answer to Mr. Cotton. One of them was the improvement in roads. Do you mean the roads from points along the river to railroad stations on the Southern Pacific?

A. Yes, sir.

Q. Formerly that business would move more readily by river than now?

A. They have more warehouses now along the river and better warehouses, and they move it to the warehouses and ship it when convenient.

Q. There was more effort made in those days to get it to move by the river, wasn't there?

A. Yes.

Q. The O. R. & N. were very active in endeavoring to get business to move by the river, weren't they?

A. They all were.

Q. Well, were they?

A. Yes, they were active.

By Mr. COTTON:

Q. You are just as active now as you know how to be, aren't you?

A. Yes, sir.

Q. This North Pacific Steamship Company operate a regular line between here and San Francisco?

A. Yes, sir.

Q. How many boats?

A. One at present—usually two.

Q. And make sailings how often?

A. Every week.

Q. How long have they been engaged in this business?
4451 A. Some three years, that I know of.

An adjournment was then taken until the morning of Tuesday, May 4, 1909, at Convention Hall, Commercial Club Building.

4452 CONVENTION HALL, COMMERCIAL CLUB BLDG.,
*Portland, Ore., Tuesday, May 4, 1909, 10:30 a. m.*

The hearing was resumed before the Special Examiner, Hon. Sylvester G. Williams, at the above time and place.

Present: On behalf of the Complainant, Mr. C. A. Severance; on behalf of the Defendants, Mr. R. S. Lovett, Mr. W. W. Cotton.

## THAD SWEEK,

being duly sworn as a witness on behalf of the Complainant, testified as follows:

Direct examination by Mr. SEVERANCE:

Q. Where do you live, Mr. Sweek?
A. Portland.
Q. What is your business?
A. In the real estate business.
Q. How long have you been in that business?
A. About a year.
Q. Previous to that time what was your business?
A. I was in the packing business for two years and a half.
Q. What line?
A. Salmon packing.
Q. Were you ever in the railroad business?
A. Yes, sir, previous to that.
Q. Where?
A. In Portland.
Q. What year did you commence?
A. My first railroad service was in 1898.
Q. With what company?
A. With the O. R. & N.
Q. In what capacity?
4453 A. I was in the engineering department at that time.
Q. How long did you work in that department?
A. About a year and a half.
Q. What was your next position?
A. In the traffic department.
Q. In whose office?
A. In the office of Mr. Campbell.
Q. Mr. B. Campbell?
A. Yes, Mr. B. Campbell.
Q. What was Mr. B. Campbell's position?
A. Traffic manager of the O. R. & N.
Q. And what was your position in Mr. Campbell's office?
A. I was correspondence clerk when I came there.
Q. How long did you fill that position?
A. For about three years; two or three years.
Q. About three years?
A. Two to three years, yes.
Q. And in addition to being correspondence clerk, what other duties did you have, if any?
A. There were a great many duties in the office; at different times I issued bills of lading and through bills-of-lading.
Q. What was your next position with the company?

A. I did some soliciting while I was a clerk; some soliciting on the Columbia and Willamette Rivers, and afterwards I was out of the general office on the street, as city contracting agent.

Q. When did you begin to be contracting agent?

A. When I left the freight department and went exclusively to soliciting, it was about in 1904 sometime.

Q. While you were still in the freight office you did soliciting, did you?

A. Yes, I did, for special lines of goods—not general soliciting.

4454 Q. Now, you say that you traveled into the Columbia Valley and the Willamette Valley. What were you soliciting in the Willamette Valley?

A. Well, I didn't, as city soliciting agent.

Q. I mean when you were still in the office; you said you went out to solicit.

A. Well, I solicited hops and prunes—principally hops.

Q. Were you out in the valley soliciting hops previous to the time that the Southern Pacific and the Union Pacific organization was amalgamated—when they were separate?

A. I don't know as I did any active soliciting. I issued some bills of lading at that time on them and I had considerable to do with the business, but I don't remember whether I traveled in the valley or not before that time.

Q. Are you familiar with the movement of business at that time?

A. Yes.

Q. That hop business out of the valley?

A. Yes, I am familiar with it.

Q. Now, previous to the time that the Southern Pacific and the O. R. & N. came together, what methods, if you know, were used by the O. R. & N. to secure shipments of hops to the east from the Willamette Valley?

A. Well, they were solicited actively by representatives of the O. R. & N. You ask what methods were used. I don't——

Q. Well, take hops that were naturally tributary to the Southern Pacific line; how did the O. R. & N. get them over to their boat-line? That is what I had reference to.

A. Well, usually drayed, usually hauled them to the river.

4455 Q. When they were in the vicinity of the railroad?

A. Yes; sometimes.

Q. Now, were the Southern Pacific agents soliciting that business in the valley at the same time?

A. Oh, yes; solicited every bit they could get.

Q. How did the hops move at that time if they were secured by the O. R. & N.?

A. Of my own knowledge, I don't know as I could say. I represented the O. R. & N. at the time.

Q. I asked you about the O. R. & N.

A. Oh, I thought you said the Union Pacific.

Q. No; the O. R. & N.

A. They would come to Portland by boats and then here would be consolidated and shipped east over the Union Pacific or any line they might be routed by, the Union Pacific preferably.

Q. At that time did hops move over the O. R. & N. to the east by the Great Northern, too?

A. Yes.

Q. Interchanged with the Great Northern at Spokane?

A. Yes; interchanged with the Great Northern at Spokane.

Q. You say that at that time you don't know how the Southern Pacific routed their shipments of hops?

A. Well, I was under the impression it was the Sunset, but I couldn't say that I knew, because I wasn't working for them.

Q. I understand.

A. Although I knew they solicited in that way, and I presume that was the natural route.

Q. They did not work them over the O. R. & N.?

A. No, not then.

Q. What was the state of affairs between the Southern Pacific soliciting agency and your agency at that time in this competition for hops? Was that active or otherwise?

4456 A. Oh, it was active all right.

Q. At that time what was the tariff rate to the seaboard on hops?

A. $2 a hundred, I believe.

Q. That would be $4 a bale?

A. Approximately.

Q. About 200 pounds?

A. About 190 to 200.

Q. And how many could you get in a car?

A. 50 to 60 bales was considered a pretty fair car. Of course, take a large furniture or vehicle car, sometimes we could get in a hundred bales.

Q. So that the rate in vogue at that time, $2 a hundred, produced a revenue of from $200 to $400 a car, depending on the size of the car?

A. At that figure, yes; that would be $4 a bale, yes. I don't remember exactly, but I presume ordinarily 50 or 60 bales to the car. I think that was the ordinary quantity.

Q. You said in the large cars you could get in as high as a hundred.

A. Yes; that is the highest—the top notch.

Q. The revenue would run from $200 minimum to $400 maximum a car?

A. Yes.

Q. At that time were you familiar with the Portland & Asiatic Steamship Company?

A. Yes, sir; at the time it was organized. I don't remember what year it was organized. It was organized after I came there.

Q. Yes; but you remember the fact of its being organized?

A. Yes.

Q. Did you have to do with the traffic over that line?

A. Only for a few months, at the time Mr. Ransom was in the office.

4457 Q. Who was Mr. Ransom?

A. He was a clerk in charge of the office at that time, and had charge of that.

Q. A clerk in the O. R. & N. office?

A. Yes. He attended to the steamship business; we all had our duties.

Q. And that was under the general charge also of Mr. Campbell?

A. Yes.

Q. Now, what kind of cargoes were brought in from the Orient by the Portland & Asiatic Steamship boats?

A. There were rice, tea, matting, lily bulbs, curios, silk, camphor, sulphur, jute; I think that comprises the principal commodities.

Q. What were their ports of call in the Orient, if you remember?

A. As I remember, Yokohama, Kobe, Moji for coal, Hongkong.

Q. Shanghai?

A. No; Shanghai only when there was a certain minimum, 500 tons probably, to go in. Shanghai was not a regular port of call.

Q. Outside of those regular ports of call, what other ports did they sometimes make?

A. Once in a great while into Shanghai, but I think I only remember of once or twice.

Q. Did they make Naga-saki?

A. Yes; Nagasaki once in awhile too.

Q. You didn't mention Nagasaki.

A. Let's see now; hold on. I think that was only extra, too. If they had a specially large engagement for those outside ports, they would go, if it was profitable for them to go, but it was not regular.

Q. Who, if any one, was sent over to the Orient as the agent of the boat-line when it was established—the Portland &

4458 Asiatic line?

A. Mr. Cameron was the general agent for the Orient.

Q. Where did he come from?

A. Vancouver, British Columbia.

Q. He was engaged at the time the Portland & Asiatic was organized?

A. About that time.

Q. Where did he make his headquarters?

A. At Hongkong.

Q. You say he was the general agent?

A. Yes.

Q. Did he have other agents working under him in the Orient?

A. Yes; there was an agent at Yokohama and one at Kobe. I am not sure about Kobe. There was for a while, but I don't remember just——

Q. You don't know what arrangements Mr. Cameron had to get business out of those ports, or do you?

A. Arrangements with whom?

Q. Well, to secure traffic. You said he was the general agent for the Orient.

A. Yes; he was the general agent, with offices at Hongkong, and the other offices reported to him. Everything that was taken up in the Orient was taken up with him.

Q. How frequent were the sailings the first year?

A. About once a month.

Q. Those boats were under charter, weren't they? They were not owned by the Portland & Asiatic?

A. Yes; I understand they were under charter.

Q. Did they carry passengers as well as freight?

A. No, no passengers.

Q. Freight?

A. They were freighters only.

Q. What kind of traffic did they take to the Orient?

4459 A. They took flour, principally; wheat, barley, machinery, tobacco, cotton, cotton-piece goods, and various other small items.

Q. Where did this machinery that they took originate? Where did the traffic originate?

A. I have forgotten the originating points; there were different places throughout the east.

Q. Were they all east of the Missouri River?

A. Yes; east of the Missouri River.

Q. How did that traffic move to Portland so far as movement from the Missouri River on?

A. East of the Missouri River?

Q. This traffic in machinery that you speak of, that originated east of the Missouri River, how did that reach Portland; over what rail lines?

A. It came principally over the Union Pacific, as I remember.

Q. Did the O. R. & N. maintain agencies in the east to solicit traffic for this steamship line, or was that done through their regular railroad agent?

A. No; some of the eastern agents were appointed, I guess most of them were appointed, agents of the steamship line, and then the steamship line had its own traveling men.

Q. In the east?

A. Throughout the United States.

Q. From what points did the cotton come that you said was exported?

A. It came from different points, a great deal of it came from Texas and the South Central States.

Q. How did that cotton reach Portland coming up from Texas?

A. I believe at the time most of it came up over the International & Great Northern route or the Frisco lines to Kansas City, or sometimes into Denver.

4460 Q. And it was taken up by the Union Pacific there?

A. Yes.

Q. Brought on over the Short Line and the O. R. & N.?

A. Yes.

Q. Do you happen to know whether cotton also moved from these Texas points to the Orient by way of the Southern Pacific and the Pacific Mail and other steamship lines out of San Francisco?

A. That was our understanding from correspondence and solicitation. Of my own knowledge, I don't know.

Q. Where did the tobacco for the Orient originate?

A. Oh, throughout Virginia, I think, principally.

Q. And did that, as well as the other traffic, move westerly as a rule over the Union Pacific from Missouri River?

A. Yes.

Q. What became of this traffic that was brought in from the Orient, that you enumerated? Where did it find its destination—in the east or west? You spoke of some jute and bulbs.

A. Jute was a coast product, but lily bulbs, matting, and such went into the east and south.

Q. You said you had charge of the issuance of bills of lading. Was this traffic that came in from the Orient billed through from the Orient to points in the east or was it rebilled at Portland?

A. There were times when it was billed through and times when it was not.

Q. Did Mr. Cameron have authority to bill it through?

A. He had authority to issue through bills of lading. Of course it was all way-billed from Portland.

4461 Q. Way-billed, naturally; through bills of lading were issued from points in the Orient to points in the east. When he issued those through way-bills, what routes did the traffic move from Portland going east of the Missouri River?

A. Most of that was not routed by Mr. Cameron. I don't think it was, as I remember it. I think the routing was left principally to the local officials.

Q. What I want to get at is this: If the traffic was not through billed, but was billed locally from Portland, who had charge of that billing? Did the shipper or the consignee, or did the local officials of the O. R. & N.?

A. The O. R. & N. tried as far as possible to have control of the routing; that is, to facilitate the loading, sending it out in train loads, to make much better time, if possible, and have it go in a bunch.

Q. And when the O. R. & N. officials controlled the routing and the traffic was moving east of the Missouri River, what route did they send it over east of their own lines?

A. At that time the Portland & Asiatic went to the Union Pacific.

Q. That is what I want to get at.

A. That is, as far as was practicable.

Q. Now, do you remember of any competition between the O. R. & N. boats to San Francisco and the Shasta Route of the Southern Pacific on business between San Francisco and Portland?

A. Well, there was competition at the time I came here.

Q. And what efforts were put forth by the O. R. & N. Company to secure traffic for their steamship lines between here and
4462 San Francisco?

A. It was solicited like other business at the time, although I am not so very familiar with the steamship business. I didn't have much to do with that.

Q. You didn't have much to do with that?

A. No.

Q. Do you remember of any special steamer trains that were run by the Southern Pacific on the days the steamers sailed?

A. It seems to me I have a faint recollection of such a thing, but it must have been before I came here; I don't think it was after I came here.

Q. I didn't know whether you knew about it or not.

A. No; I don't think so.

Q. What was the character of the traffic that was brought into Portland by the O. R. & N. boats on the Willamette River, with a view to sending it out, other than prunes and hops? You stated they were brought in by the boats.

A. Well, that was the principal commodity brought in for eastern shipment.

Q. Do you recollect the time—I don't mean the date, but the fact of Mr. Campbell being put in charge of the Southern Pacific business here as well as the O. R. & N.?

A. Yes, sir; I do.

Q. It appears by some testimony which has been put into this record, that a meeting of soliciting agents of the Southern Pacific and the O. R. & N. was called by Mr. Campbell at his office after that event. Do you know anything about such a meeting?

A. Yes, sir.

Q. Who were present at it? Were you present?

A. Yes, sir.

4463 Q. Who else was present?

A. That would be very hard for me to say. I remember a few of the men who were there.

Q. Name those that you can remember.

A. Mr. Ransom, Mr. Lounsberry, Mr. Wilde, Mr. Ellis, Mr. McCusker, Mr. Miller, and I think Mr. Skinner, as far as I can remember.

Q. Do you remember whether Mr. Jenkins was there?

A. Yes; Mr. Jenkins was there.

Q. Do you remember whether Mr. Keating was there?

A. Yes; Mr. Keating was there.

Q. Do you remember any more now?

A. Well, I don't recall.

Q. Can you remember how soon after the acquisition of the control of the Southern Pacific by the Union Pacific that meeting was held?

A. I didn't know that they had acquired the Southern Pacific until this meeting was called; that is, I don't think I did. I think that was the first I knew of it.

Q. Who was Mr. Ransom, who had he been prior to that time?

A. He was clerk in the general freight department, handling Asiatic business.

Q. Of the O. R. & N.?

A. Yes.

Q. Who was Mr. Lounsberry?

A. Mr. Lounsberry was connected with the Southern Pacific Company at the time, traveling freight agent, I believe.

Q. Who was Mr. Wilde?

A. Mr. Wilde was chief clerk of the general agent in San Francisco of the O. R. & N.

Q. Who was Mr. Ellis?

A. General agent at Seattle.

Q. Of what company?

A. The O. R. & N.

4464 Q. Who was Mr. McCusker?

A. Mr. McCusker was city man of the Southern Pacific.

Q. And who was Mr. Miller?

A. I think his title was general freight agent.

Q. He was a subordinate of Mr. Campbell?

A. Of Mr. Campbell—next to Mr. Campbell.

Q. General freight agent of the O. R. & N.?

A. Yes.

Q. Who was Mr. Skinner?

A. He was chief clerk in the general freight agent's office.

Q. Of the O. R. & N.?

A. Of the O. R. & N., yes; chief clerk to Mr. Miller.

Q. Who was Mr. Jenkins?

A. Mr. Jenkins was city man for the O. R. & N.

Q. Who was Mr. Keating?

A. Mr. Keating was a clerk in the office.

Q. Do you remember any other Southern Pacific men present except Mr. Lounsberry and Mr. McCusker?

A. I don't know. Mr. Markham might have been there, but I don't know.

Q. What did you find out that Mr. Campbell called you together for?

A. It was to give instructions in regard to soliciting business.

Q. What were the instructions that he gave you?

A. They covered quite a field.

Q. Give the substance of it as nearly as you can remember. I don't suppose you can give his exact words.

A. The substance was that we were to work friendly with the Southern Pacific representatives; to work for—in fact, as nearly as I can express it, the whole system then, the Southern
4465 Pacific and Union Pacific and Oregon Short Line and O. R. & N. were considered a system, and the idea in working business was to work for the greatest revenue for the system—for that system of roads.

Q. Was anything said as to the territory that should have the traffic over the different parts of the system?

A. Yes; the Atlantic seaboard was to go by the Sunset Route as far as possible without antagonizing anybody.

Q. And how was the business west of Pittsburg and Buffalo to move, north of the Ohio River?

A. Union Pacific via Omaha.

Q. Do you remember any further instructions given at that time?

A. I don't remember the specific instructions, but that is the trend of whatever instruction was given us then. I don't remember of any further details; that is it in a general way.

Q. Do you remember whether Mr. Campbell at that time had received any appointment from the Southern Pacific?

A. I don't remember whether there was a circular issued or not. I don't think so.

Q. Did Mr. Campbell have with him at that time any written communications from any superior officer with reference to that matter?

A. At the time of this meeting?

Q. Yes.

A. Yes; I think he did.

Q. From whom?

A. At the time of the meeting—I am not sure—I think he had a letter then from Mr. Stubbs.

Q. Mr. J. C. Stubbs, the traffic director?

A. I am not sure whether—well, he must have been traffic director at that time.

4466 Q. He is now traffic director of the whole system.

A. Yes; I understand so.

Q. Did Mr. Campbell have this letter before him when he was talking to you and giving you these instructions?

A. It is my impression that he had some papers before him; I presume that he had this letter.

Q. Did you ever see that letter?

A. Yes, sir.

Q. Do you remember what it contained, in substance?

A. The instructions which were given to us, as I have outlined them, were contained in the letter; that is the substance of it.

Q. After that time, when those instructions were given, what was the situation in Portland as to competition continuing between the O. R. & N. and the Southern Pacific?

A. Well, we were not working against each other; we were working friendly with each other. We were working——

Q. According to instructions?

A. Yes; certainly we followed instructions.

Q. You followed instructions. And did that continue up to the time you left the service of the company?

A. Yes.

Q. I believe you said you went out of the service about four years ago?

A. It was in September, 1905.

Q. Three years and a half ago?

A. Yes.

4467 Cross-examination by Mr. COTTON:

Q. Mr. Sweek, you stated that the Portland & Asiatic Company at one time had its traveling men. They had Mr. George J. Mohler at one time and Mr. Hamilton Campbell at another?

A. Yes, sir.

Q. Mr. Mohler was Mr. A. L. Mohler's brother and Mr. Hamilton Campbell was Mr. B. Campbell's son?

A. Yes. At different times—not at the same time.

Q. They were not employed at the same time, but they were expected to cover the entire east?

A. Yes.

Q. And that was the extent of the solicitation, practically, of the Portland & Asiatic Steamship Company by traveling men in the east?

A. By traveling men; that was the extent of it; yes.

Q. How long did this solicitation by these traveling men continue, do you remember?

A. I can't remember the length of time.

Q. Mr. Hamilton Campbell at the time was covering the entire portion of the eastern United States, and was about how old?

A. About 23, I guess.

Q. And he covered the entire eastern portion of the United States?

A. Yes.

Q. Now, you spoke about the kind of goods that you handled from here to Asia. The bulk of the stuff that was handled by the Portland & Asiatic Steamship Company from here to Asia was flour and wheat and barley, originating locally along the lines of the O. R. & N. or at Portland, was it not?

4468 A. Yes; that was the bulk of the cargo.

Q. And the steamship line was put on practically for the purpose of handling that class of traffic?

A. Yes, I think it was.

Q. As a matter of fact, the other commodities which you handled were very small in volume, westbound particularly?

A. Comparatively small.

Q. And the revenue on them, particularly on cotton and tobacco and stuff like that, was very very thin to the steamship line or to the railroad? The revenue was very small?

A. Cotton was thin; yes.

Q. What did you get on this cotton?

A. I can't recall the rates now.

Q. The flour men had a preference call on the space for the steamers, had they not?

A. Up to a certain time. The space was allotted to certain eastern agents until a certain time. It had to be cancelled off so many days ahead of the sailing or engaged definitely.

Q. How much space was allowed to these eastern men as compared with the entire ship?

A. Oh, altogether it wouldn't have made up a third.

Q. And the other two-thirds you turned over to the flour men here?

A. Unless it was asked for far ahead of the sailing.

Q. And these eastern agents were expected to cancel their space how many days before the sailing date?

A. I think they had to let us know about 20 to 30 days.

Q. Then, for 20 or 30 days prior to the sailing you held a
4469 third of the ship for eastern business; then received a cancellation and allowed the local people here to fill her up with flour?

A. Yes.

Q. What?

A. Well, we wouldn't engage flour up to that space unless it had been cancelled off. We might wire the eastern agent to find out whether he was likely to want it.

Q. Did you ever have anything like one-third of the space of the ship for eastern business? I mean anything like an average proposition.

A. Oh, no; I wouldn't count it an average proposition.

Q. About what space do you think the eastern business would average?

A. That is hard for me to say. You understand I was not on this Asiatic business so very long, only while Mr. Ransom was away.

Q. But it was a comparatively small quantity?

A. Yes.

Q. And regarded as an insignificant part of the business?

A. Yes, it was; they tried hard to work it up, but they didn't seem to get the business.

Q. And these eastern agents were expected to cancel their entire space 20 days before the sailing date?

A. I think about that; yes.

Q. But the flour which you desired to ship out of Portland was stored on docks right here in town, was it not, practically all the time?

A. Yes; a great deal of it.

Q. But they had to get out of the road 20 days ahead so that the flour people could make their engagements?

A. So as to know what to figure on.

Q. So as to cable over to China and get the space, so they would know whether they would be able to ship their stuff on
4470 a particular or special steamer?

A. Yes.

Q. And at all times two-thirds of the entire space was reserved for the flour men here, locally?

A. Yes; it could be had at most any time.

Q. And that was the situation of the Portland & Asiatic Steamship line as long as you knew it?

A. Yes, as long as I had any knowledge of it that was about the situation.

Q. And your knowledge commenced when?

A. At the beginning of the line.

Q. That was in what year?

A. I can't say. I remember the organization of it, but I can't give the year.

Q. How many years prior to 1901?

A. It couldn't have been very much prior to that. It might have been in 1900.

Q. How long did it continue after 1901, that is, the knowledge of it?

A. Until I left the company. Of course there were different ships, different charters made.

Q. That was in 1904?

A. In 1905.

Q. Did the situation with reference to this cargo space change to any extent at all? Flour always had preference, had it not?

A. Flour always had the preference.

Q. That is, this local flour?

A. Yes.

Q. Now, when you received your instructions from Mr. Campbell about what I will for convenience term the 100 per cent route, were those instructions that the 100 per cent route must be forced upon the shipper?

A. No; it was simply solicitation.

4471 Q. That is, suppose you tried to solicit some freight and you couldn't get it over the 100 per cent route, were you expected to turn around and leave it alone and let it go some other way?

A. Let it go by Omaha. Give the Southern Pacific the first chance, and if they couldn't get it, then take it by Omaha.

Q. And if you couldn't get it by Omaha, which way would you get it?

A. Take it Great Northern, by Spokane, or any way, so as to get a haul out of it.

Q. And if you couldn't get it via the Great Northern, you would take it by Wallula, wouldn't you, if you had a route?

A. Yes, we might, but of course we never solicited that route to amount to anything.

Q. In other words, you were simply a friendly connection and regarded the institution as a system?

A. Yes.

Q. And that was the sum and substance of your instructions?

A. Yes.

Q. You solicited freight by the Great Northern too, that is, to go out by the Great Northern?

A. Well, we worked that way, but we wouldn't solicit that way primarily.

Q. Supposing you had freight going up to Montana?

A. We would be apt to solicit it by Pocatello.

Q. And if you couldn't get it by Pocatello?

A. It might go via Wallula in some cases.

Q. Or by Spokane?

A. Yes. Not much by Spokane; a little bit but not much.

Q. But if it was on a point on the Great Northern which
4472 you could reach you would naturally solicit it by Spokane?

A. Yes.

Q. This situation with reference to the Southern Pacific was no more peculiar than the situation which existed with regard to friendly connections anywhere? Isn't that right, in your experience?

A. I don't understand just what you mean. You mean the same as we worked with the Union Pacific?

Q. Yes. When you were working for the Union Pacific you tried to solicit everything by Omaha, didn't you?

A. Yes.

Q. And if you couldn't get it to Omaha and you could get it to Denver, you would take it to Denver?

A. Yes.

Q. And if you couldn't get it to Denver, you would take it to Ogden?

A. Yes; that is right.

Q. And if you couldn't get it to Ogden and it would go out by Spokane, you would let it go that way?

A. Yes.

Q. And the only addition, therefore, to the situation was this: that on certain classes of traffic destined to the Atlantic seaboard, if you could get it over the Southern Pacific without antagonizing anybody, and the Southern Pacific agents could get it that way, why, you would let it go?

A. Yes.

Q. You weren't to solicit it that way, were you?

A. No, we weren't to compete with them or antagonize them.

Q. I mean the O. R. & N. agents were not to solicit it for the Southern Pacific?

A. No. Well, I don't know about that.

Q. You were just to stand by and give them a little whack at it if they could get it?

A. Yes.

Q. In the same way, if you saw a Northwestern agent trying
4473 to get stuff by Omaha, you would give him the first show, wouldn't you?

A. Well, that is not quite the same. It would not be quite the same thing.

Q. Why?

A. Just let me think a minute. Because we would work with anybody via Omaha—any of the lines east of Omaha; but we wouldn't—of course there was no other line but the Sunset; that was the only one, the only one in that connection.

Q. That related to a very limited amount of business, did it not, which the Sunset could hope to get?

A. Yes; but the business was not so large. It was quite a bit of tonnage, too, but it wasn't as large as one might think.

Q. And covered only what articles?

A. Such articles as could be transferred to the steamer.

Q. Articles moving out of here would be mainly what?

A. That we worked Sunset Route?

Q. Yes, that could be worked Sunset at all.

A. There were hops and prunes and canned salmon—that is, to my knowledge.

Q. Those were about the only commodities that——

A. That I had anything to do with, that went that way; I think that covers it all.

Q. That could be at all hoped for or induced to go Sunset Route?

A. Yes, sir.

Q. Now, you spoke about hauling hops out of the Willamette Valley to the boat-lines in competition with the Southern Pacific. About what did you pay for the cartage charge?

4474 A. Let me think. It ran, I think about 15 cents a bale; I couldn't say definitely; it is hard to remember those records.

Q. About 15 cents a bale?

A. Yes.

Q. That would be in the neighborhood of, say, $3 a ton?

A. Yes, sir.

Q. The rate then used to be $2 a hundred?

A. Yes. I wouldn't say that that is positive. Of course refunds were made at that time. That is a long time to remember a definite rate.

Q. Well, it would be about a dollar and a half or two dollars a ton, something like that?

A. Not over 25 cents a bale, I am pretty sure.

Q. And the farmer had to perform the service of hauling, hadn't he, or whoever did the hauling?

A. Yes, they did that service. Sometimes it was the farmer himself; sometimes the hop man if he had teams.

Q. And sometimes it was an independent man?

A. Yes, if he wasn't busy and there was money in it for him.

Q. And that never amounted to over 25 cents for a very long haul?

A. I don't think so. That is my recollection.

Q. The rates in those days were $2?

A. Yes.

Q. Had been $2.20 or were $2.20? When were they $2.20?

A. I believe that was changed about the time I came to the O. R. & N.

Q. The rates are now a dollar and a half, are they not?

A. I understand so. I believe that was changed after I left them.

Q. So they cut out the cartage charge and made a deduction of $10 a ton? That is about the effect of the merger, then, on the hop business, isn't it?

4475

A. Well, of course I don't know when this rate was made $1.50. I wasn't there then. This other was cut out sometime before.

Q. Now, in those days, the hops, some of them, were situated right along the river?

A. Yes.

Q. Do you know how those hops now move out of the valley?

A. They come into Portland and I presume are worked out of here Southern Pacific; that is, they were for a while. The O. C. T. Company handled quite a few. We used to handle some on our boats even after that time.

Q. You interchanged some of this hop business with the Great Northern at Spokane?

A. They did get some of it.

Q. You spoke about a Mr. Keating. Who is he?

A. He is now connected with the Lumbermen's National Bank.

Q. And Mr. Jenkins is Mr. Ralph Jenkins?

A. Yes, and is now with what is called the North Bank Route.

Q. Keating's name is John?

A. J. E., I believe.

Q. And Mr. Miller is Mr. R. B. Miller?

A. Yes, sir.

Q. Mr. McCusker is Mr. Thomas McCusker?

A. Yes.

Q. And Mr. Ellis is Mr. E. E. Ellis?

A. Yes.

Q. And Mr. Lounsberry is Mr. Harvey Lounsberry?

A. Yes.

Q. And Mr. Ransom is connected with the Portland & Asiatic now?

A. Yes. Walter.

By Mr. SEVERANCE:

Q. Mr. Cotton was asking you if there was any difference in your relations after this conversation in Mr. Campbell's office—any difference in your relations to the Southern Pacific than as applied

4476 to any friendly connection. I don't know that I understood exactly your answer to that. What did you mean to testify by your answer, or what did you answer to that?

A. I think he asked me if we worked the same as we did with the Northwestern. Is that the question you mean?

Q. As I have the question noted down, he asked you if there was any difference in your relation with the Southern Pacific than with any other friendly connection.

A. I think I asked him what he meant, and then he spoke of the Northwestern. It was a friendly connection, but——

Q. Something more, wasn't it?

A. It was the biggest friendly connection we had; that is, the biggest revenue was obtainable that way.

Q. Did you intend by anything you said in answer to Mr. Cotton to modify your statement made on direct-examination, that Mr. Campbell told you, in substance, to treat with all these lines as a single system and to send business to the Atlantic seaboard over the Sunset Route if it could be done without offending anybody?

A. No, I didn't mean to modify that.

Q. That was the fact?

A. That was the fact.

Q. Counsel also asked you if you didn't solicit business in connection with the Great Northern by Spokane. Did the Great Northern have agents down in the valley, in this hop business?

A. Yes, they used to go from here; they covered that from Portland.

Q. Was the hop traffic that moved by Spokane, traffic that they secured?

A. Yes, they secured that. We worked the other way if we could.

4477 Q. What had been the attitude of the Southern Pacific soliciting force and your soliciting force toward each other as regards traffic in and out of Portland and the Willamette Valley to the east, previous to this talk in Mr. Campbell's office?

A. Well, we took whatever we could away from each other.

Q. As to business coming from New York to Portland, for Portland merchants and jobbers, where was that business routed?

A. Coming from New York to Portland?

Q. Yes. Where was it routed? Who controlled the routing?

A. It depended on what the goods were. Some of it was controlled here and some in New York or at eastern points where it was shipped from.

Q. Portland has been for a good many years a very large distributing point, hasn't it?

A. Yes, sir.

Q. Over a large territory?

A. Yes.

Q. And what would you say as to the tonnage brought here from the east by the Portland merchants? What percentage of it would

you say is routed locally here, and what percentage is routed in the east, in your experience?

A. That changed very rapidly at that time. The large companies or trusts—or trust goods as we called them—were principally routed in the East. Anything else or most everything else they shipped was controlled here unless some local condition forced it on to another line.

Q. Was it part of the duty of yourself and the other solicitors of traffic in this city to call on those local merchants and endeavor to secure the routing of business?

A. Yes.

Q. And had that been done by your agency and by the Southern Pacific agency previous to the talk in Mr. Campbell's office?

4478 A. Previous to that, understand, I was a clerk in the general freight department; I wasn't——

Q. You weren't on the street?

A. I wasn't on the street then, no.

Q. So you personally didn't have to do with that?

A. Not with the local business, no.

Q. Does the American Hawaiian Line run boats here now, do you know?

A. I don't think they call here now unless there is some extra large shipment. I believe one came in not long ago, but I am not sure.

Q. Do you know whether they take business out of here by way of San Francisco?

A. I understand they do.

Q. Do you know what boat-line runs in connection with them?

A. I do not, no.

Q. Do you know whether this reduction in the rate on hops occurred before or after the establishment of the American-Hawaiian Line?

A. It occurred afterward.

By Mr. COTTON:

Q. When did this $1.50 rate go into effect?

A. After I left the company, I believe.

Q. When did the American-Hawaiian become established?

A. It was running while I was with them. I don't know just when, but it was running at that time.

Q. It was not changed, then, on the advent of the American Hawaiian into the Pacific Coast business at all, was it?

A. I don't understand that question.

Q. I say the rate was not changed on account of the advent of the American-Hawaiian into business?

4479 A. That I don't know. It wasn't changed immediately, I know; it was changed, I believe, after I left them.

Q. Now, I understood you (and I think I am correct in that) that Mr. Campbell didn't give you any instructions to solicit business for the Southern Pacific—that is, O. R. & N. agents.

A. Well, I don't know what you would call it, exactly.

Q. I mean were you expected to go out here on the street and solicit business from merchants via Sunset?

A. Yes.

Q. You were?

A. Yes.

Q. You O. R. & N. agents?

A. Yes. I was supposed to let the Southern Pacific man know about it, put him next to it and help him out, help him to get it.

Q. I mean, you go out and personally solicit.

A. Yes.

Q. You were expected to?

A. Yes.

Q. An O. R. & N. agent?

A. Yes. I was expected—if a man came to me, for instance, with a shipment of hops——

Q. I am not talking about hops; I am talking about merchandise. I am talking about soliciting merchandise.

A. I didn't solicit any merchandise until I went on the street.

Q. I mean after you went on the street.

A. But at that time we had a man—then the offices were consolidated—we had a man in there that handled that part of it. Mr. McCusker handled that for quite a while. The Southern Pacific office was abolished here at the time I went on the street.

Q. But you were on the street for the O. R. & N.?

A. No, I was on the street for all of them.

Q. Were you soliciting business from merchants by the Sunset Route?

A. When I was representing them all?

4480 Q. Yes.

A. You see at that time, Mr. Cotton, I represented the O. R. & N., the Southern Pacific, the Short Line and the Union Pacific. My card had that on it.

Q. Did you solicit business from merchants via the Sunset Route then?

A. Yes.

Q. What?

A. Yes, we did.

Q. I mean you personally.

A. Yes, I did, after I went out.

Q. Did you ever get any?

A. Not very much, that is, not west-bound. I don't know of ever securing a car west-bound. I might have, but I don't recall.

Q. Did you ever secure anything east-bound from merchants?

A. Not from merchants, I don't believe.

Q. Then, you couldn't influence merchandise either east-bound or west-bound via the Sunset Route into Portland? In fact, it was not a practicable route for that class of business at all, was it?

A. It wasn't for merchandise as a general class, in less than carloads. There were not many things that that route was suitable for. It had to be transferred from steamers up. It had to be only such things as would stand that.

Q. I mean in carloads.

A. Any such thing that would stand that transfer, that it was suitable for.

Q. I am speaking of stuff that moved in and out of Portland for the general jobbing trade here, outside of hops and prunes and truck like that. It was practically impossible to move that business via the Sunset Route?

A. No, there was very little of it as I recall: there was very little of it moved that way, that is right.

4481 Q. And about the only thing you ever could induce to move was a few shipments of hops from the valley?

A. Yes, and some canned goods.

Q. And some canned goods?

A. Canned salmon.

Q. Now, about the west-bound business. Did you get any west-bound business to come into Portland by the Sunset Route?

A. I don't remember very well. I don't think so. I don't remember of securing any business to amount to anything by the Sunset.

Q. You did the best you could to carry out those instructions?

A. Yes.

Q. And you couldn't get the stuff to move?

A. No, sir.

By Mr. Severance:

Q. Are you aware that the testimony in this case, of Mr. Hawley and others, shows that 85 per cent, at times, of the business out of New York City proper is moved to California ports by the Sunset Route as against the all-rail line?

A. I don't know anything about California business.

Q. Can you think of any reason why traffic which could move in such volume to California points could not be moved also to Portland?

A. There is quite a difference in time.

Q. Boat and rail.

A. There is quite a difference in time.

Q. Yes: the time may be longer, but there is nothing in the nature of the traffic that renders it impracticable?

A. You are competing against the northern lines, and the time by those lines is shorter.

Q. And that is the reason why you found difficulty in moving it south by the Sunset Route?

4482 A. The great trouble was the time and the transfer at New Orleans.

Q. Did the transfer cut much figure, or was it a matter of time?

A. I think they both cut quite a figure.
Q. You are aware that traffic has moved that way?
A. Oh, yes.
Q. And in very considerable volume?
A. That I don't know of my own knowledge.
Q. That was before your day?
A. It might have been before my day; yes. In my time I don't know of any considerable volume.
Q. At the time you first became contracting freight agent here in the city you represented all the lines?
A. Yes.
Q. You had always been an O. R. & N. man up to the time you represented all the lines?
A. Yes; up to the time of the consolidation.
Q. And your heart was still with the O. R. & N. I suppose, wasn't it?
A. I had a kind of a feeling that way; yes.

4483 THOMAS McCUSKER,

being duly sworn as a witness on behalf of the Complainant, testified as follows:

Mr. SEVERANCE. Mr. Cotton, you will remember that I examined Mr. McCusker before, and I have put his evidence into the record. I want to examine him now in regard to certain matters that I did not examine him about then.

Direct-examination by Mr. SEVERANCE:

Q. Mr. McCusker, how long were you with the Southern Pacific Railroad here?
A. About sixteen years with the Southern alone, and about a year, I think, as assistant general agent of all the lines.
Q. By all the lines you mean?
A. The Harriman system—the Southern Pacific, the Short Line, the O. R. & N., and the Union Pacific.
Q. Do you remember a time when there was a war of rates on between the boat-line here and the Southern Pacific Railroad?
A. Yes, sir.
Q. Plying between San Francisco and Portland?
A. Yes, sir.
Q. When was that? How long did it last?
A. I am not certain how long it lasted. I think it was a part of two seasons, but I would not be positive about that.
Q. Do you know how low the rates got?
A. $2.50 and $5 by steamer, and $5 and $10 by rail, which included the berth, I believe, but I am not positive.

Q. $5 and $10 by rail; that is, 1st class and 2nd class?
A. 1st and 2nd class; yes.
Q. What kind of accommodation would the 2nd-class pas-
4484 sengers get?
A. Well, it was a little better than a freight car, I think.
Q. Did they have a berth, too?
A. Yes; I believe they had a berth.
Q. And the 1st-class passengers who paid this $10 rate traveled in Pullman?
A. Yes.
Q. And what did the boat rate include, as you recall?
A. The boat rate included meals and berth.
Q. Now, at that time what happened to freight rates between here and San Francisco?
A. The freight rate by boat, I believe, went down to a dollar a ton, if I am not mistaken.
Q. By boat?
A. Yes; and I think we had a rate of 12½ cents, but I am not positive about those cut rates there.
Q. You had a cut rate that you think was 12½ cents?
A. I think so.
Q. Now, this cut rate that was put in by the Southern Pacific, was that a flat rate or a graduated rate?
A. I wouldn't be positive about that; I couldn't say.
Q. What was the reason that the Southern Pacific put in this very low cut rate at that time?
A. To meet the competition of the boat-lines.
Q. Previous to putting in that cut rate, could traffic move all-rail to Portland or San Francisco from interior points and come by boat and still the rate be less than the rail rate previous to the cut?
A. You mean by——
Q. By paying the local in. Did the freight pay the local in to
San Francisco or Portland and then the rate on the boat-
4485 line to the other point and still be less than the rail rate before
the cut? Had the steamer rate been cut to that extent?
A. I don't believe I get the point you want to make.
Q. The steamer rate applied locally between Portland and San Francisco, didn't it?
A. You mean the cut rate of a dollar?
Q. Yes.
A. Yes.
Q. Any rate that was in applied locally between those points?
A. Yes.
Q. Now, you say the Southern Pacific put in their low rate to meet the competition of the boat-line?
A. Yes.
Q. Was traffic being drawn from interior points before the Southern Pacific put in that low rate? Was traffic paying the local into the port and then the boat rate up?

A. It was paying, I believe, some; yes. The competition, of course, wasn't as heavy without a differential.

Q. Is that a thing that is at all unlikely to happen if two lines are in competition, the boat-line putting down rates sufficiently to absorb a local?

A. Why, they would get the business.

Q. That is a thing that could easily be done, isn't it?

A. Yes; certainly.

Q. There was ordinarily a differential, wasn't there, between the two lines?

A. There has been a differential since. I don't know much about the differential then, but I believe there was a differential, always has been a differential, between the boat and the rail line to San Francisco.

Q. Was that a regular, established differential?

A. Yes.

Q. Or was it fluctuating?

4486 A. It was an established differential in the rates, when the rates were maintained.

Q. When they were maintained?

A. Yes.

Q. What did you find in your experience in soliciting business for the Southern Pacific, previous to the amalgamation, as to whether the boat-line maintained rates at that differential?

A. The O. R. & N. boat-line?

Q. Yes.

A. Well, I don't know whether they maintained rates or not.

Q. You didn't know whether they maintained them or not?

A. No. I know this, that they had a system of rebates from San Francisco on sugar. For instance, they would charge 15 cents, and rebate 2½ to the merchant. In other words, they would cut their own rates, and I believe they had that system locally, too: I was so told by the merchants.

Q. Previous to the amalgamation, how did lumber move from Portland to Salt Lake—over what route?

A. Usually over the Southern Pacific.

Q. Did it also move by the Oregon Short Line?

A. I believe so; yes, sir.

Q. And the O. R. & N.?

A. Yes.

Q. Was that traffic the subject of competition at that time?

A. Yes; it was.

Q. How was it as to Denver and Colorado common points?

A. I think there was some business moved to Colorado common points. The lumber business I did not solicit, for the reason that arrangement was made with the mills as a rule. On some busi-

4487 ness I would see the mills. But I have solicited shingles that came from points on the Cowlitz River. I would solicit that

from the Kellogg Transportation Company for Colorado points or Utah points. I am not positive about the Colorado points.

Q. The Cowlitz River empties into the Willamette, doesn't it?

A. Into the Columbia.

Q. I should say the Columbia; I didn't mean the Willamette. How far from here?

A. I don't know the distance. It is Carl's Point, I believe, down here near Kalama, about 40 miles, I should say.

Q. And did shingles move both by the O. R. & N., the Short Line, and your route?

A. Yes, sir.

Q. And by Southern Pacific you mean what route?

A. I mean by Sacramento and Ogden.

Q. What about the movement of hops previous to the amalgamation?

A. Largely Sunset; all Atlantic seaboard business, Sunset.

Q. The Atlantic seaboard hops via Sunset?

A. Yes. The Cincinnati hops by Sunset-Gulf. That is, by New Orleans and Queen & Crescent or Louisville & Nashville.

Q. That is, they would move by the Southern Pacific as far as New Orleans?

A. Yes.

Q. And then up from there to Cincinnati by the Queen & Crescent or the Louisville & Nashville?

A. Yes; that was the traffic route that we solicited.

Q. And did hops move that way?

A. Yes, sir.

Q. Did hops move to Cincinnati also by the O. R. & N. and the Short Line and Union Pacific?

A. Yes, sir.

4488 Q. Now, Mr. McCusker, what do you remember, if anything, about the time that the road which is now the Corvallis & Eastern ran in connection with boat lines to San Francisco from Yaquina Bay?

A. It was the Oregon-Pacific at that time, and they had one or two boats; had a weekly boat from San Francisco.

Q. To Yaquina Bay?

A. To Yaquina Bay, and they got a large part of the business to valley points, say from Salem south.

Q. Did they do business into Portland, too?

A. I don't think they did so much business into Portland; I wouldn't say positively about that.

Q. They had boats on the river, hadn't they?

A. They had boats on the river, yes.

Q. As to the business which they did from that point, with what lines was it competitive?

A. It was competitive with the Southern Pacific and of course with the O. R. & N. and river boats.

Q. Do you remember the character of traffic that was handled by this Oregon-Pacific—I think you called it?

A. All classes of merchandise for stores throughout the valley.

Q. Coming from San Francisco?

A. Coming from San Francisco.

Q. What do you know, if anything, about the movement of business between San Francisco and Montana and Idaho points?

A. I don't know.

Q. You had nothing to do with that?

A. I had nothing to do with that.

Q. Your business was confined to Portland and vicinity?

4489 A. Yes, sir.

Q. Did you ever know of any shipments from the Orient being brought up from San Francisco by the O. R. & N. boat-line and sent east over the O. R. & N. Railroad and its connections?

A. Yes, I remember one shipment.

Q. What was it?

A. A carload of sulphur.

Q. What makes you remember that?

A. Well, we had a telegram or letter from Mr. Smurr, who was general freight agent of the Southern Pacific at that time, to ascertain if a carload of sulphur for Chicago had come in by the O. R. & N. boat, and he said, "I presume you have a fund for getting this information, as we do here." Well, the fund was in my pocket, and it cost me two cigars—I think it was half a dollar. I used to work for the O. R. & N. when I first came here. I went to the Albina dock, and of course it was my business to find out whether that sulphur was on, and I knew the stevedore, the foreman. I went down through the boat and incidentally got inquiring about the class of freight he was bringing up, and he mentioned they had a car of sulphur to the coast, but it was covered up. That is, it had to be taken from Ainsworth dock (it was loaded in a wharf boat) over to the steamship dock, Albina dock, rather, and there loaded in cars and distributed to eastern Oregon and the east. So I went over there and got in conversation with the foreman.

Q. I don't care about the details of it.

A. Well, that is the way I got it, and incidentally saw the bill and got the information, and found there was a car of sulphur. I

4490 believe they had some arrangements that they were not to take business via Portland; I think it was with the Union Pacific.

Q. And they looked after it to the extent of looking after one car of sulphur, did they?

A. Yes.

Q. About any understanding, you know nothing about that at all?

A. I know nothing about that at all. I believe the correspondence showed something of that kind. I can't recall it.

Q. Do you remember a time when the Union Pacific and the Short Line had some trouble?

A. Yes, sir.

Q. Did the Union Pacific work very sharply by your route into Portland?

A. Yes.

Q. Tell what you know about that.

A. I don't recall how long ago that was, but there was a time, for a few months—it may not have lasted more than two or three months—when the Union Pacific made extra time to Ogden, and all business that they controlled came by the Southern Pacific, Ogden and Sacramento to Portland.

Q. Do you remember what time that train made from Chicago to Portland?

A. Yes, it made exceedingly good time, for I recall one particular car that we put in here in seven days and a half.

Q. From Chicago?

A. From Chicago. That was humping it. We had a four-days' service from Ogden to Portland at that time.

Q. While that situation existed and the Union Pacific and the Short Line were at outs, with what line to the east from Ogden did the Short Line people work?

A. I don't know.

Q. You don't know about that?

A. I don't know.

Q. Now, you have already stated that previous to the merger the Southern Pacific people were soliciting Portland business
4491 by the Sunset Route, New Orleans, for points like Cincinnati. Did that also apply to Pittsburg?

A. No. I am not positive. I think there was some business for Pittsburg solicited via New Orleans.

Q. How about business from Pittsburg this way?

A. That came via Ogden, as a rule.

Q. And the Shasta Route?

A. Yes. When I say Ogden, that was the gateway. Sacramento was not a gateway.

Q. I understand. That was your gateway?

A. Yes.

Q. Now, after the merger here, how did your agency endeavor to route business to Cincinnati?

A. Via the Union Pacific.

Q. Oregon Short Line?

A. Oregon Short Line.

Q. And O. R. & N.?

A. Yes, sir.

Q. How does lumber now move out of Portland for Utah, or how did it after the amalgamation?

A. My impression is that it went largely Short Line—O. R. & N., Short Line—all that business.

Q. You remember that the rates were taken out by the Southern Pacific, don't you?

A. The divisions, I believe, were taken out, yes.

Q. So that everything goes by Short Line that goes to Utah points?

A. Yes.

Mr. Cotton. Do you mean "everything"?

Mr. Severance. No, lumber.

Mr. Cotton. You said "everything."

Mr. Severance. I didn't mean "everything." All lumber shipments, I meant—shingles.

Q. Who is Mr. Morse?

4492 A. He is the special agent, I believe, for the O. R. & N. now. He was contracting freight agent and general agent for the O. R. & N., and he was general agent for the merged lines, and soliciting freight agent or contracting agent for the O. R. & N.

Q. He was your superior officer, was he?

A. Yes, sir, after the lines consolidated.

Q. Did you have any instructions from Mr. Morse after that with reference to the business between here and San Francisco, the relations between the Southern Pacific and the boat line?

A. The only instruction was that the boat line was supposed to be separate and that we were not to solicit any business for the boat line, but if we knew of any business going against what I call the O. R. & N. boat line, of course we would try to influence it that way.

Q. For the O. R. & N. boat line?

A. Yes; but we were not to solicit it unless we did know it.

Q. Did you continue to solicit business by the Southern Pacific Railroad, after the merger, between here and San Francisco?

A. Yes.

Q. But where it was going by boat you tried to get it to go by O. R. & N.?

A. I didn't run across that at all.

Q. I say, were you given those instructions?

A. We were given those instructions, yes.

Q. You testified before about this meeting in Mr. Campbell's office, I think?

A. Yes.

Q. Is your recollection about the same as that of Mr. Sweek?

A. With this exception, that my impression is that the instructions were positive as to the route, as to the soliciting of

4493 business via Sunset.

Q. What do you mean by that?

A. I mean that the O. R. & N. people—Mr. Morse had his instructions to solicit New York business or Atlantic seaboard business via Sunset while he was an O. R. & N. man and I was still a Southern Pacific man, and I had instructions to influence any other business west of there by Union Pacific.

Q. I think that is substantially what he said.

A. Yes.

Q. Those instructions were given by Mr. Campbell?

A. By Mr. Campbell, yes.

Cross-examination by Mr. COTTON:

Q. Did this last statement of yours apply to Pittsburg and Cincinnati, about your being instructed?

A. All business west of Atlantic seaboard was instructed via Union Pacific.

Q. You said at one time you were instructed to solicit freight by the Union Pacific, and then if you couldn't get it going by boat——

Mr. SEVERANCE. No, Southern Pacific.

Q. Southern Pacific—and if you couldn't get it going down to San Francisco by rail, then let the O. R. & N. people have a chance for the boat line.

A. No, I didn't say that.

Q. Well, what was it?

A. I simply said we were instructed not to solicit any business by boat, but if we found it going by an opposition boat we were to influence it by this O. R. & N. boat.

Q. Who are "we?"

4494 A. We the freight men on the street. These instructions, rather, were from Mr. Morse.

Mr. SEVERANCE. That is after the consolidation, Mr. Cotton.

Q. The steamships had their agents, had they not?

A. Yes, sir.

Q. That is, their boat line?

A. Yes, sir.

Q. And they were actively soliciting stuff for the boat?

A. Yes.

Q. And you were actively soliciting stuff for the rail?

A. Yes, sir.

Q. And each was expected to look after his own business, but in addition to that there were opposition boat lines here?

A. Yes.

Q. And if you heard of business that was going to move by boat, that you could not get all rail, then you were to notify the O. R. & N. boat line of the business?

A. Yes, sir.

Q. Now, this car load of sulphur: when did that move?

A. I think that was about 1890. It is a good while ago.

Q. 1890?

A. Somewhere along that time, yes, sir. I had been with the company but a short time.

Q. That was a carload of sulphur that moved from where?

A. From the Orient, as I recall it now.

Q. To San Francisco?

A. Yes; at least for Chicago.

Q. For Chicago; came in over the Pacific Mail?

A. I don't know what boat it came from San Francisco on.

Q. It got into San Francisco in some way or other by boat, and then was moving up here in 1890 on the O. R. & N. boat, going east?

A. Yes, sir.

Q. Over the O. R. & N. Railroad?

A. Yes, sir.

4495 Q. The Short Line and Union Pacific?

A. I can't recall the line—that part of the routing.

Q. In 1890 that was practically the only connection there was, wasn't it?

A. So far as I know it was; yes.

Q. The Great Northern was not connected——

A. No. Well, when you say that, of course it had to be Union Pacific, I suppose.

Q. Yes; it had to be Union Pacific.

A. It could go to Denver and go over one of the other lines.

Q. But if it got into the hands of the Short Line in 1890 it would never have gotten out again except over the Union Pacific; that is true, isn't it?

A. I dare say that is true; yes, sir.

Q. And you were instructed to investigate that circumstance by Mr. Smurr, the general freight agent of the Southern Pacific?

A. No; I said Smurr; I am not positive whether that was Gray or Smurr. I think it was Smurr.

Q. Well, one or the other of them?

A. Yes.

Q. That is, a high traffic officer of the Southern Pacific?

A. Yes.

Q. And why were they interested in investigating that?

A. That, sir, I couldn't tell you.

Q. Isn't it the fact that they intimated that they had some kind of an understanding with the Union Pacific at that time that freight should not move that way?

A. That was my understanding of it. They had an agreement that that business would go the other way, via Ogden.

Q. That is, the Southern Pacific to Ogden, and then the Union Pacific from there east?

A. Yes, sir.

4496 Q. And that was your understanding as to why you were investigating this matter in 1890?

A. Yes.

Q. Now, did you ever hear, from 1890 down to your entire connection with the roads, of any other Oriental shipments moving eastward from San Francisco by Portland, other than this one carload of sulphur?

A. I can't say that I have original knowledge of anything else.

Q. Did you ever hear of any or ever have your attention called to any?

A. No, my attention was not called to it, and I don't know.

Q. Did you ever hear of any shipments moving locally from San Francisco to points east of the Missouri River via the boat lines and the Union Pacific?

A. No. That would have been the business then of the people in San Francisco to look after.

Q. I mean you never heard of any?

A. No, sir.

Q. And you were never called upon to make any investigation of any?

A. No, sir.

Q. When you solicited business for the Sunset Route, to the Atlantic seaboard, your heart was very strongly in that work because you were a Southern Pacific man?

A. I presume that is true, yes.

Q. And what class of business did you get out of here of this traffic for the Atlantic seaboard via the Sunset?

A. The business that went from here was principally hops and prunes and canned goods and hides.

Q. Now, that was after the merger and before, wasn't it?

A. No, that was before.

4497 Q. Before?

A. Yes; that is, at all times.

Q. And it was practically only that class of business that you could induce to move?

A. Well, it is practically that class of business that did move there.

Q. You tried to induce all classes to move, didn't you?

A. All classes, anything I could get hold of. Of course no buggies moved east-bound. Anything bulky like that would have to be transferred. The transfer embargo only applied against buggies or like class of freight, wagons, and stuff of that kind.

Q. West-bound what did you get?

A. West-bound we got everything that could be had from that territory.

Mr. SEVERANCE. What?

WITNESS. Everything; all classes of merchandise—again, except buggies and wagons.

Q. Did you induce stuff to move at equal rates?

A. Yes, sir; and at unequal rates, too.

Q. After the merger what did you do?

A. After the merger we solicited all classes of Atlantic seaboard business via Sunset.

Q. Did some move by the Union Pacific, too?

A. Yes, sir.

Q. Was there much, if any, difference in the amount of business? Did you get more business after the merger by the Sunset than you did before?

A. No, sir.

Q. The business moved along in just about the same channel?

A. Moved along in about the same channel when the rates were equal for the reason—the principal reason—of time.

Q. So, the solicitation of all these agents, the Southern

4498 and Union Pacific, practically produced little or no effect on

the movement of business at all: it was only classes of stuff that could or would or did move?

A. The classes of freight that could move, say, anything except the class I have mentioned: and, as a matter of fact, I believe that rubber goods are still moving Sunset, carloads—have moved.

Q. But the volume of business moving by Sunset didn't change as the result of the merger to any appreciable extent?

A. No: I can't say that it did.

Q. And just about as large in volume as it had been before?

A. So far as I know.

Q. You were not able to get much more out or in here after the merger than you did prior to the merger?

A. Well, not of merchandise: but so far as hops were concerned, I guess there wasn't any question about getting it all.

Q. The hop business right after the merger was rather a peculiar business, wasn't it? The Southern Pacific ran open warehouses for the benefit of the hop men?

A. Yes: they always had warehouses and they had mileage books and they forced the business via their own lines.

Q. There are only about four or five hop people really in the business?

A. Oh, there are more than four or five: there is quite a bunch of them.

Q. I mean at the outside there were only about five who were really large shippers, outside of the country? There were more buyers, but before the stuff actually moved it got down to about four or five hands, didn't it?

A. Oh, I suppose it would narrow down to possibly that many: something more, maybe.

4499 Q. Well, not very many more than that?

A. Possibly not.

Q. Ten at the outside would absolutely cover it?

A. I presume ten would. Sometimes the grower himself would undertake to ship.

Q. But that was comparatively an isolated case?

A. Yes.

Q. And only represented a couple of hundred bales at the outside?

A. Yes. More than that.

Q. Who?

A. Well, I recall a case of Mr. Tait of Hillsboro who tried to move five cars by the Northern Pacific, and I was told to tell him to go to hell—couldn't get the cars.

Q. That is, to move by the Northern?

A. Yes.

Q. He wanted to ship it out by Portland and then send it east by the Northern Pacific?

A. They couldn't give him the cars. The Harriman System didn't have the cars, and he had an arrangement whereby he had to have his stuff in in 21 days or in three weeks, otherwise he would lose, and

he applied for cars via the Northern, and they simply said they would not give them to him.

Q. Who would not give them to him?

A. The Southern Pacific would not.

Q. Did they have any?

A. They wouldn't give him Northern cars.

Q. Well, did they have any Northern cars.

A. They could get them, but they wouldn't ask for them.

Q. That was in what year?

A. That was in 1905.

Q. Was that a year when cars were comparatively short?

A. Cars were short, yes. Every year they are short along about hop time.

4500 Q. How did they ultimately move east?

A. I don't know.

Q. Outside of this isolated instance, the growers did not send their hops east?

A. No, the growers don't; they sell.

Q. Take the hop business for the last twenty years; the shipments out of this territory, of the entire hop crop, have been made by, say, from five to ten men, largely?

A. That is true largely of all products when you come down to that—your potatoes and your hops and your wool.

Q. These men were hop buyers as such?

A. Hop buyers, yes.

Q. And in ancient days they had mileage books and warehouse privileges?

A. Yes, sir.

Q. And had more or less privileges extended to them in the way of consolidating carloads?

A. Yes.

Q. Taking up a part of a carload at one local station, another at another point, and finally consolidating and shipping at the through rate?

A. No, the through rate applied from all points. They could ship in here to Portland and consolidate and the locals were absorbed. That was also true of prunes for a while.

Q. That is what I meant. They could ship in a less than a carload, into Salem, couldn't they?

A. Yes.

Q. From Brooks?

A. Yes.

Q. They could ship less than a carload into Salem from Independence and then they could consolidate the two shipments and ship out on the carload rate?

A. For the reason that there was a flat rate on hops from all points. Carloads and less were the same. There was a time when the

4501 less than carload was $2.20. I don't know just exactly what the conditions were then. But when the rate on the carload

and the less than carload is $2, it doesn't make any difference whether you have got a carload or less. The carload was then merely a matter of convenience for bill of lading.

Q. Prunes were handled in the same way, largely?

A. Prunes were handled in the same way. They were shipped in and processed.

Q. And they were shipped out of the country by a comparatively few men?

A. Very few men, yes, sir.

Q. And the prune business and the hop business were about the only thing you were ever able to really control by the Sunset Route?

A. There were the prunes and the hops, and we shipped a good deal of salmon, and sometimes we competed very strongly for wool. Of course the valley wool——

Q. Take it as a general proposition: about the only thing that the Sunset Route was ever able to control or ever attempted to control was the hop and the prune business? I mean from the Willamette Valley proper.

A. Yes.

Q. And that was about the only thing that they could ever influence, either before or after the merger, to move that way, east?

A. What other volume of busines would go? Of course not stock. You can't ship stock or lumber via Sunset.

Q. I mean there was a merchandise movement.

A. Not so very much of a merchandise movement east-bound.

Mr. SEVERANCE. You are talking about east-bound, Mr. Cotton.

4502 Q. Now, you spoke about the Oregon Pacific having boats.

A. Yes.

Q. That only lasted a very short time, did it not?

A. I don't know how long that lasted. I know they were on the river and they interfered a little with our local business.

Q. We are talking about Yaquina?

A. I understand. Oh, the boat business?

Q. Yes.

A. You mean from San Francisco?

Q. Yes, to Yaquina Bay.

A. I don't know how long that lasted.

Q. Not very long?

A. Well, I couldn't say as to that. I do know that they got quite a volume of the valley business.

Q. It lasted only about one summer, didn't it, when the wagon roads were good?

A. What do you mean by that?

Q. They hauled, didn't they, to points in the valley?

A. No.

Q. Wagon hauls?

A. No, sir. We shipped it from Albany. On steamer day our agent down there was flooded, in fact. I was sent down there one

time to see whether he needed the help that he asked for to handle the business out of there.

Q. How long did that last?

A. I couldn't tell you.

Q. Well, it didn't last a year?

A. I think it did. I think it lasted more than that. I think that this was for more than one season.

Q. But you are not positive about that?

A. No, I am not positive about that, but I know that they were put out of business by reason of advancing what we call the
4503 mileage tariff. The basis of rates from inland points was the same as from Portland, so far as the mileage was concerned, and they allowed the Oregon Pacific to ship via Yaquina and Albany at a lower rate than we shipped direct from either Portland or San Francisco.

Q. When was this competition—what year?

A. I couldn't say that. It was a number of years ago.

Q. It was prior to 1901?

A. Oh, yes. This was prior to the time that they went into the hands of a receiver; in fact their business was knocked out when we raised the rates.

Q. They went into the hands of a receiver in 1892, did they not?

A. Well, when were their boats knocked off?

Q. They went into the hands of a receiver in 1892, and were sold out in 1893.

A. Well, they went into the hands of a receiver immediately after the Southern Pacific advanced the rates so as to shut them out of business.

Q. It was when they were in the hands of the receiver that they operated these ocean steamers, and not after they got into the hands of Mr. Hammond?

A. Oh, it was prior to Mr. Hammond, yes.

Q. They went into the hands of the receiver in 1892, and sold out in 1893.

By Mr. SEVERANCE:

Q. Just one question. You stated that you formerly moved business here from Cincinnati by New Orleans, in connection with the Sunset Route.

A. Yes.

Q. After this amalgamation, and the instructions were given to send business west of the Atlantic seaboard west by the Union
4504 Pacific, did you continue to endeavor to work business from Cincinnati here by the Sunset?

A. No, sir.

Q. You abandoned that, did you?

A. Yes, sir.

Q. Then, there was some change in the movement of traffic westbound?

A. Oh, yes; I stated that—Atlantic seaboard points.

Q. You were referring only to Atlantic seaboard business when you were answering Mr. Cotton?

A. Yes.

Q. As to there being no change?

A. Yes. The business was not solicited. Hops go Union Pacific now. We forced as much hops as we could for Cincinnati by the Sunset Route, but since the merger the instructions are the other way.

Q. Cincinnati is quite a brewing town, isn't it?

A. Yes.

Q. It is a hop market?

A. Pretty fair hop market, yes, sir.

Q. And there used to be pretty active competition between the O. R. & N. and the Southern Pacific for that traffic?

A. Yes, sir.

Q. You spoke of vehicles moving here.

A. I say we wouldn't solicit vehicles via Sunset because of their bulky nature.

Q. You wouldn't solicit them by the boat-line, you mean?

A. By the boat-line, no.

Q. Did vehicles move here from Ohio by way of New Orleans?

A. No. Well, I wouldn't say as to that now. I wouldn't say positively.

Q. You don't remember?

A. My impression is that they did, but I wouldn't say positively.

By Mr. COTTON:

Q. Isn't it a fact that larger cars for vehicles and furniture
1505 moved by the northern lines than by either one of the southern lines, and that therefore the vehicle and furniture business you never touched at all, never got near?

A. My impression is that we handled furniture, chairs, from Atlantic seaboard points via New Orleans, the Seaboard Air Line and the Sunset Line.

Q. That is, knocked down stuff?

A. Knocked down stuff, yes.

Q. I am talking now about vehicles?

A. Oh, vehicles? Well, we could handle vehicles from Cincinnati points around via New Orleans in large cars. We could get just as large a furniture car from the east as any other line could get.

Q. You could?

A. Yes.

Mr. SEVERANCE. That is, the Sunset Route could.

Q. The Sunset Route could get as large a car?

A. Why couldn't we? I don't know that the tunnels would stop it.

Q. I didn't say why you couldn't, but I asked you whether you could.

A. As far as I know, yes.

Q. That is, as large as the Northern Pacific or the Great Northern?

A. So far as I know, yes.

Q. And that you had rates in on as large vehicle cars——

A. Oh, there was a difference in 50-foot cars, yes. They had a penalty for 50-foot cars for a while; in fact there was a time, I believe, that they prohibited 50-foot cars, but I am not positive about that.

Q. Don't you know as a matter of fact that they always pro-
4506 hibited 50-foot cars?

A. No, I don't know that they always did, but I know there was a prohibition against 50-foot cars and a penalty for cars in excess of 40 feet, I think, or 42.

Q. What do you mean by a penalty?

A. I mean an additional charge.

Q. That is, an additional charge per hundred pounds for attempting to load that kind of a car?

A. I am not positive about that, but I have a recollection of a penalty being charged on those cars. I wouldn't say what it was now.

Q. That is, an increased rate or something or other?

A. Yes.

Q. Which practically prohibited the business?

A. Yes.

Q. And for quite a long time the business was actually prohibited, in moving in larger than a 40-foot car?

A. Naturally it would be. Whenever the rate is against a commodity it won't move in that direction.

Q. And you know that that prohibition existed against anything in excess of 40-foot cars?

A. I believe it did, yes.

Q. That is all, sir.

A. When I answered I meant that they could get it, but I had forgotten about the penalty. I thought you had reference that they could not be handled on that line.

By Mr. SEVERANCE:

Q. Is the difficulty chiefly in the movement of large cars between Ogden and Sacramento, or is it Sunset?

A. No, Sunset.

Q. What?

A. Sunset.

Q. I didn't know but what the snow-sheds made trouble.

A. Well, they might.

(A recess was here taken until 2 p. m.)

4507 F. P. BAUMGARTNER,

being duly sworn as a witness on behalf of the Complainant, testified as follows:

Direct examination by Mr. SEVERANCE:

Q. Mr. Baumgartner, where do you live?

A. At Seattle, Washington.

Q. What is your business?

A. I am now in the wholesale postcard business.

Q. How long have you been in that business?

A. Two months.

Q. Previous to that time what was your business?

A. I was agent at Portland for the California & Oregon Coast Steamship Company.

Q. What was the California & Oregon Coast Steamship Company?

A. It is a California organization, engaged in business between Portland and San Francisco and way ports, operating a line of steam schooners.

Q. How many boats?

A. They now own two, but until recently they had a fleet of nine steamers.

Q. How many years were you with that company?

A. Eleven years.

Q. What was your position with the company?

A. General agent at Portland for the past ten years.

Q. Was there any other line of steam schooners operated between here and San Francisco other than your line?

A. No other regular line.

Q. In 1898 how many boats were run?

4508 A. 1898 was the organization of our company; we only had one steamer operating on this run.

Q. How is that?

A. One steamer in 1898; that was the time our company was organized—eleven years ago.

Q. How fast did you enlarge your fleet?

A. We added a steamer about every year until about 1903, when we had a fleet of nine steamers.

Q. And you say you only have two now. Did you decrease gradually or suddenly?

A. About two years ago steamer property was very valuable, and the company had an opportunity to sell them at a high figure, and sold.

Q. In 1898 did you enter into any arrangements with the Oregon Railroad & Navigation Company with reference to your business?

A. I am not definite whether it was 1898 or the first day of 1899. I took charge of the office here in 1899. At that time there was an agreement between our company and the O. R. & N. Company.

Q. How long did that agreement continue?

A. Either four or five years.

Q. And what was the nature of that agreement?

A. Why, it was a subsidy. The O. R. & N. Company subsidized our company to maintain their rates.

Q. Up to what time did that arrangement continue?

A. I think it was about 1903.

Q. Did you during that period, up to 1903, maintain the O. R. & N. boat rates between here and San Francisco?

A. Yes, sir; we did.

Q. You said that you stopped at way ports. What way
4509 ports did you make between here and San Francisco?

A. Coos Bay and Humboldt Bay, commonly called Eureka.

Q. What kind of traffic did you take out of Humboldt Bay and Coos Bay?

A. Principally redwood lumber and shingles.

Q. In which way did you handle that traffic—to San Francisco or to Portland?

A. We handled it both ways. Southbound was local business for San Francisco, and eastbound business we handled northbound.

Q. Eastbound business handled by Portland?

A. By Portland.

Q. When was it you handled that eastbound business from Portland?

A. That was from previous to when I came to Portland up to 1905, when we discontinued making Eureka or Humboldt Bay.

Q. That was lumber and shingles bound for the east?

A. Yes, doors, lumber.

Q. What is that?

A. Manufactured products—doors, shingles.

Q. And did you issue through bills of lading, or was it rebilled at Portland?

A. No, the O. R. & N. Company issued the through bills of lading from Eureka.

Q. From Eureka clear through to points in the east?

A. Yes.

Q. Did the Southern Pacific have any soliciting agents at Eureka at that time?

A. Yes, sir, they did.

Q. How were they endeavoring to route lumber out of Eureka for the east?

A. By San Francisco.

Q. Did lumber move both ways out of Eureka?

A. Yes, sir.

Q. Did the O. R. & N. maintain a soliciting agency there,
4510 or did you handle that for them?

A. No; their traveling freight agents made the territory occasionally. We had a local agent there who solicited business, and the O. R. & N. agent would make occasional trips there.

Q. What business did you do in and out of Coos Bay?

A. Similar business: lumber—not any shingles from there; white cedar lumber, that is a lumber that grows there and only there. It is used considerably in the east for finishing purposes.

Q. That is cedar lumber?

A. White cedar.

Q. Is that a product peculiar to that region?

A. Yes, sir.

Q. To what parts of the country is that shipped?

A. To the Atlantic seaboard, and there are some lumber concerns in Chicago that handle it.

Q. Were there any lines of boats that were taking that traffic to San Francisco——

A. Yes, sir.

Q. ——the same as from Eureka?

A. Yes.

Q. How is that?

A. They were.

Q. Did the Southern Pacific have agents at Coos Bay?

A. Not at that time.

Q. Did they at any time?

A. They have the past two years.

Q. That is since they bought the Spreckels line?

A. Yes, sir, since then. They may have had traveling agents making the territory before, but not to my knowledge.

Q. How long has this cedar lumber been moving to San Francisco from Coos Bay?

A. Why, I think ever since the day of Coos Bay.

Q. Ever since you had connection with the business?

4511 A. Yes, sir.

Q. That was going both ways to the east, wasn't it?

A. No, it has only been going east in recent years, but it has been going to San Francisco for a great many years.

Q. You are speaking of the shipments of cedar from Coos Bay to points in the east, Chicago and the seaboard. How many years ago did that begin?

A. That business began probably four years ago.

Q. And does that traffic move both ways?

A. Yes, sir.

Q. Both by San Francisco and by Portland?

A. Yes, sir.

Cross-examination by Mr. Corrox:

Q. You continued to operate the steamship line and be connected with it after 1903?

A. It is still operating.

Q. Yes, it is still operating. This arrangement that you testified to was one whereby the O. R. & N. guaranteed you a given amount of up tonnage, wasn't it, substantially?

A. You can call it that if you like.

Q. Well, what was it?

A. They guaranteed us $1,200 a month whether we carried any freight or not: that was the sum and substance of it.

Q. They had the use of the space? They could load in it if they wanted it?

A. Yes.

Q. That was up tonnage?

A. Up tonnage only.

Q. That arrangement was made in 1898?

A. Yes, sir.

Q. Prior to the merger?

A. Yes, sir.

Q. Continued until 1903?

A. Yes, sir.

Q. And then stopped?

A. Yes, sir.

4512 Q. During the time this arrangement was in effect you were expected to maintain O. R. & N. rates?

A. Yes, sir.

Q. On the ocean?

A. Between San Francisco and Portland.

Q. Between San Francisco and Portland?

A. Yes.

Q. After the arrangement ceased you were privileged to make any kind of rates you saw fit?

A. Yes, sir.

Q. And as a result the competition then became more strenuous than it had been prior to 1903?

A. Yes, sir.

Q. They guaranteed you, didn't they, a hundred tons of freight on each trip?

A. Yes, sir.

Q. They could fill the space or not as they saw fit?

A. Yes, sir.

Q. If they had the freight, they gave it to you and you carried it?

A. Yes, sir.

Q. And if they didn't have the freight, why, they paid you the freight rate?

A. Yes, sir.

Q. And that arrangement ceased and the steamboat line has still been in operation—that is, your steamship line?

A. Yes, sir.

Q. Before 1903 you didn't cut the O. R. & N. rates?

A. No, sir.

Q. Since 1903 you have cut the O. R. & N. rates?

A. We made a tariff of our own.

Q. Yes; and varied from it whenever it was necessary to get the business?

2745

A. Not any more than the regular line did.
Q. The regular line varied, too, did it not?
A. Yes, sir.
Q. And you varied from it?
A. We didn't vary from our tariff.

Q. But you changed your tariff whenever it was necessary
4513 to get the business?

A. Yes, sir.

Q. And you would vary several times on the same ship, wouldn't you?
A. No, we didn't.
Q. Did the O. R. & N.?
A. Yes, sir. They carried freight cheaper than any outside line ever did.
Q. Then, the O. R. & N. since 1903 really competed more strongly for Portland and San Francisco business than it did prior to 1903?
A. Not Portland business as much as interior business.
Q. Now, prior to 1903 you had to observe tariffs?
A. Yes, sir. As a matter of fact we didn't carry any freight.
Q. But you were not allowed to solicit freight except at tariffs which were practically fixed and agreed upon by the O. R. & N. Company?
A. Yes, sir.
Q. Since 1903 you have made your own tariffs?
A. Yes, sir.
Q. And have been competing in business ever since?
A. Yes, sir.
Q. With the Southern Pacific and the O. R. & N.?
A. Yes, sir.
Q. And have been aiming to solicit and get as much business as you possibly could?
A. Yes, sir.
Q. Prior to 1901 did this lumber that you referred to move east?
A. Yes, sir; from Eureka.
Q. From Eureka?
A. Yes, sir.
Q. The rates were equal both ways were they not—either way?
A. Either way; yes.
Q. After 1901 the same rate adjustment prevailed, so that they were equal either way?
A. Yes, sir.

Q. And to-day the rate adjustment prevails so that they are
4514 equal either way?

A. Yes, sir.

Q. Or were when you last knew of them?
A. Yes, sir.
Q. That was about how long ago?
A. Two months ago.

Q. So lumber from Eureka could move by your steamboat or any other steamboat, outside or not, either to San Francisco or to Portland; thence be transported by rail to the east?

A. Well, I don't think it could be handled on any other steamer; I think the only steamer line at that time that had a tariff in effect via our company and the only company via San Francisco was the Pacific Coast Steamship Company.

Q. But there was no difference in the rates?

A. No.

Q. And no change took place after 1901 that made any change in the circumstances or conditions?

A. No; not concerning that business.

Q. Isn't it true that as a matter of fact these rates applied at one time via any steamer line?

A. I don't know.

Q. Aren't there proportional rates at the present time; that is, an arbitrary from here up, an arbitrary to be added to the through rates—up to the time that you quit two months ago?

A. I don't catch that.

Q. Well, what kind of tariffs were made on this lumber, say, two months ago?

A. Why, there hasn't been a tariff made, to my knowledge, in a year or such a matter.

Q. Wasn't there a tariff which went into effect January 1st this year which established a proportional rate on this lumber?

A. Well, I couldn't say there was a new tariff or not. The last tariff I have knowledge of the O. R. & N. Company specified a rate from Coos Bay and absorbed ten cents of our charge, and that
4515 arrangement has practically been in effect there for years.

Q. Ever since January 1st this year hasn't the tariff applied via any line?

A. I couldn't say. I presume so, because the Southern Pacific owns the only other line.

Q. Won't it apply to any boat?

A. I couldn't say as to that.

Q. Any boat that brings the lumber in?

A. I couldn't say.

Q. To any port?

A. I haven't seen that tariff. The last tariff I have seen specifies the California and Oregon Coast Steamship Company and no other steamship company.

Q. When was that? What was the date of that tariff, about?

A. I couldn't say.

Q. During what time was that tariff in effect?

A. It has been in effect for probably ten years past.

Q. Didn't that same tariff give representation to this N. P. Steamship Company, the "Elder?"

A. From Coos Bay?

Q. Yes.

A. They don't operate into Coos Bay.

Q. Coos Bay or Eureka.

A. We haven't been operating to Eureka for four years now.

Q. Oh!

A. I think they took our place, so far as the Eureka business is concerned, after we quit operating there in 1905.

Q. Then, you are testifying only as to the Coos Bay business recently?

A. Since 1905. Previous to that we operated principally to Eureka.

Q. So your testimony is confined to that; that is since 1905?

A. Yes.

Q. To Coos Bay?

4516 A. I haven't been in touch with the Eureka business since 1905.

Q. And on that Coos Bay business you can take it either way—either to San Francisco or to Portland—and send it east by rail at equal rates?

A. Why, I wouldn't be positive about that. The Eureka business, yes. We are not operating from Coos Bay south, and have not been for some years, but from Eureka we were operating both ways while we were operating there.

Q. And that you could take either way?

A. Either way; yes, sir. No, we couldn't take it either way, but it could be handled either way. As I said before, the Pacific Coast Steamship Company had a southbound tariff and we had a northbound tariff out of there.

Q. And shippers could send it either way?

A. Yes, most assuredly.

Q. Your loading southbound was fairly heavy all the time, was it not?

A. From where?

Q. From Portland and Astoria.

A. Why, at times. It varied in different seasons of the year. Sometimes the northbound business was heavier, and sometimes the southbound.

Q. When did this Coos Bay cedar business open up, in what year?

A. Why, it was either 1903 or 1904, when they first commenced to ship east.

Q. And you could send that either way; that is, that could be shipped either way?

A. I am not sure whether there was a tariff applying via San Francisco or not; I know there was this way.

Q. You know there was this way. And what rates there 4517 were via San Francisco you don't know?

A. I don't know, no, sir.

Q. Now, since 1903, or shortly prior to that, there has been another steamship line operating more or less regularly on the ocean, has there not?

A. Where to?
Q. Between San Francisco and Portland.
A. No, not since 1903; since about 1905.
Q. 1905?
A. Yes, sir.
Q. That is this North——
A. North Pacific Steamship Company. I think they commenced to operate here about January 1, 1905, or thereabouts. It may have been in the fall of 1904. It wasn't sooner than that, though.
Q. Now, in 1898, how many steamers were operating between here and San Francisco, regularly?
A. I won't say about 1898; I came here in 1899. The O. R. & N. Company operated two steamers and we operated one or two or three at different times, as the lumber business warranted.
Q. You were largely engaged in carrying lumber south?
A. Yes, sir.
Q. Now, since that, the steam schooners which have been engaged in business, carrying lumber south and merchandise up, have largely increased in number, have they not?
A. Yes, sir.
Q. In those days, in 1899, there were very few steam schooners engaged in business.
A. Very few on the coast.
Q. And you and the O. R. & N. were operating the only regular line of steam vessels?
A. Yes, sir.
Q. Now, when you quit the business, the North Pacific Steamship Company were operating how many vessels?
A. Two.
Q. You were operating how many?
4518 A. I am not positive whether we had three or four running to Portland at that particular time.
Q. In 1906 how many did you operate?
A. Three, four, or five, at different seasons of the year.
Q. How many did the North Pacific?
A. Two.
Q. Two?
A. Two at all times.
Q. They were regular lines, both of them?
A. Yes, sir.
Q. Had soliciting agencies in Portland and soliciting agencies in San Francisco?
A. No, we didn't. They did, I think. We were not soliciting any business.
Q. In 1905 and 1906?
A. No; at no time until the past year were we soliciting any San Francisco business whatever, or any other steam schooners. It is only the two past years.
Q. Why?

A. Because the lumber rates got so low we had to——

Q. I mean northbound.

A. We don't carry any northbound.

Q. You run light northbound?

A. Yes, sir.

Q. You took what merchandise you could get?

A. No; we didn't advertise for it; had no solicitors, and haven't any now.

Q. What about the number of steam schooners that were operating here in 1906, 1907, and 1908?

A. In 1908 there were probably a dozen carrying freight; in 1907 perhaps one or two; in 1906 I doubt if there were any—carrying northbound freight. The lumber rates were too high to warrant anybody to engage in general merchandise cargo at that time.

Q. They couldn't stop and lose the time?

4519 A. They couldn't afford to lose the time.

Q. They couldn't afford to stop and lose the time loading?

A. No, sir.

Q. But since the lumber rates have gotten down, there have been about nine schooners in addition to the regular liners that have been engaged in trying to carry merchandise from San Francisco up here, north?

A. Yes, sir.

Q. And at any old kind of a rate?

A. Almost.

Q. Anything that they could get?

A. Anything they could get and make money at.

Q. And your subsidy, or any attempt to subsidize you or anybody else that you know of, ceased in 1903?

A. Yes, sir.

Q. Since that time the competition has been absolutely unrestrained on the part of the Harriman lines?

A. Between San Francisco and Portland?

Q. Yes.

A. Yes.

Q. Now, that related to merchandise up, largely. In going down, did the schooner lines carry merchandise, potatoes, wheat, or anything in addition to lumber?

A. The past two seasons I think they carried wheat. I don't know as they have carried any potatoes. I know we have not. Some of them may have. There has been considerable wheat carried, or grain, rather, on the steam schooners, the past two years.

Q. So that the aggregate number of vessels that were probably operating here engaged in carrying merchandise from San Francisco north, the last year say, amount to about how many?

A. Oh, I would say that aside from the regular lines there

4520 were probably eight or ten, perhaps twelve, sailings a month by steam schooners.

Q. And the regular line boats about how many?

A. About four steamers, North Pacific two, and the O. R. & N. two, or the San Francisco & Portland.

Q. In 1898 there were just the two, the O. R. & N. and yours, and you were subsidized?

A. Yes.

By Mr. SEVERANCE:

Q. How did you happen to stop getting that subsidy in 1903?

A. Well, now, I don't know whether it was—it seems to me that the subsidy was in process of being renewed when somebody's attention was called to the fact that there was such a thing as the Elkins law, I think.

Q. The negotiations ceased then?

A. And which side refused to sign I am not positive, at any rate it was not signed.

Q. Fear of the law on the part of somebody, was it, that prevented it from being renewed?

A. Yes, sir.

Q. They didn't discover that until 1903. Now, with reference to the movement of traffic to the east, how was the matter of your charges handled?

A. Why, on this Coos Bay or Eureka business, the O. R. & N. Company would take up our advance charges.

Q. Collect them at the other end?

A. Yes.

Q. The same as connecting railroads?

A. Yes.

Q. How long did they continue to do that?

A. Why, they still do it on that business.

Q. They are still doing that?

A. That is, so far as I have knowledge, up to the time I left two months ago. I don't know whether they do now or not. But
4521 on San Francisco business they do not.

Q. On San Francisco business they do not?

A. No, they absolutely refuse to take up anybody's advance charges except the Portland & San Francisco Steamship Company's.

Q. You are supposed to bring stuff north?

A. Yes; but what I meant to say, if the freight we bring from San Francisco here is destined beyond Portland, we have got to turn it over to the O. R. & N. Company absolutely without any charges. If there are any charges they will refuse to advance the charges.

Q. How do you get them finally? You get them when they collect them?

A. We don't carry the freight. It just cut us out of that business.

Q. Declining to do it for nothing, you ceased?

A. Unless the freight is prepaid to Portland.

Q. What is that?

A. If the freight is prepaid to Portland we still handle it.

Q. What was the nature of your northbound cargoes when you carried northbound cargoes to Portland from San Francisco?

A. General merchandise.

Q. And did you carry general merchandise to Eureka and Coos Bay from San Francisco?

A. We did when we were operating there; yes, sir.

Q. That is what I mean.

A. Yes.

Q. And also southbound from here to those points?

A. Yes, sir.

Q. Do the merchants of San Francisco and the merchants of Portland both wholesale into those points?

A. Yes, sir.

Q. Carry passengers or only freight?

A. Both.

4522 Q. Did this agreement in reference to the maintenance of rates apply to passengers as well as to the freight business?

A. I believe it did.

4523 W. H. HURLBURT,

being duly sworn as a witness on behalf of the Complainant, testified as follows:

Direct examination by Mr. SEVERANCE:

Q. Mr. Hurlburt, where do you live?

A. Portland.

Q. What is your business?

A. Just at present I am damming the Clackamas River—in more ways than one; developing a power plant.

Q. How long have you been damming this river?

A. For the past three years.

Q. Were you ever in the railroad business?

A. Yes, sir.

Q. When did you go into the railroad service?

A. I went into the railroad service in 1871.

Q. Whereabouts?

A. At Omaha.

Q. In what position?

A. I was then passenger agent of the North Missouri Railroad.

Q. Where did that run?

A. Between Kansas City and St. Louis. It is now a part of the Wabash system.

Q. And how long did you continue there?

A. About eight months, when I went with the Burlington railroad as its traveling agent in the west for about a year; was transferred to Chicago; remained with the Burlington until 1876.

Q. Then where did you go?

A. I went with the Canadian Southern road at Buffalo.

Q. What was your position with the Canada Southern?

A. I was its western representative at Chicago for some two years—three years, and I was then made General Passenger
4524 agent of the road at Buffalo, and remained with them until 1883.

Q. You were engaged in the passenger traffic exclusively at Buffalo?

A. Yes, sir.

Q. Did the Canada Southern participate in transcontinental business at that time?

A. Yes, sir.

Q. Where did the Canada Southern run to?

A. From Buffalo to Detroit, with a branch line into Toledo.

Q. And in connection with what lines did it work into Chicago?

A. Michigan Central.

Q. The Canada Southern, in connection with the Michigan Central, made a through line, didn't it?

A. Yes, sir, from Buffalo to Chicago.

Q. And always has?

A. Yes, sir.

Q. And does still?

A. Yes, sir.

Q. At that time which way did you work transcontinental traffic, in connection with what lines west of the Missouri River?

A. Any route west of the Missouri River via St. Paul, or via Omaha, or via Kansas City.

Q. When the business went via Kansas City which route would it take to the coast?

A. Possibly what was then the Kansas Pacific, or Union Pacific, or it might take the Santa Fe.

Q. Did the Southern Pacific participate in any of that traffic by way of its southern route?

A. Not at that time. A line was established afterwards by way of St. Louis and San Francisco, out of St. Louis, through by way of El Paso. A route was established that way.

Q. And where were you at the time that route was established?

4525 A. I was at Buffalo.

Q. And did you participate in that business also?

A. Yes, sir.

Q. Did the various lines have representatives in Buffalo at that time; or did they work through the agents there?

A. Most of the western roads, the Northwestern, the Rock Island and the Burlington, were represented there, and I believe the Santa Fe. The Union Pacific had a representative there. It covered a territory making Buffalo the central point. The Southern Pacific had no representative there.

Q. Had no representative there?

A. No, sir.

Q. During that time did passenger business move to the coast by all these various routes you have spoken of?

A. Yes, sir.

Q. And during what years was that?

A. That was 1881 to 1883. I left there in 1883.

Q. After leaving there where did you go?

A. I went to Chicago as the western representative of the Erie Railroad.

Q. And what were your duties there—freight and passenger both?

A. Entirely passenger.

Q. Did you have anything to do with transcontinental traffic then?

A. No, sir.

Q. You were working between New York and Chicago?

A. I was working eastbound from the transcontinental lines through to the Atlantic coast—eastbound.

Q. Over what lines did the passenger traffic move that you secured in Chicago—over all the lines?

A. Over all lines, yes, sir.

4526 Q. From the south to the north?

A. Clear through.

Q. How long did you remain with the Erie?

A. Until 1890.

Q. Then what did you do?

A. I went to San Francisco as assistant general passenger agent of the Union Pacific Road.

Q. At that time, when you were in San Francisco, what was your business chiefly?

A. Working the business eastbound over the Union Pacific railroad.

Q. Was the Southern Pacific engaged in that same business there at that time?

A. They were, yes, sir.

Q. Were they working their Sunset route to the east at that time?

A. Yes, sir.

Q. Had they at that time put on what was known as the Sunset Limited train?

A. No, sir.

Q. Was that put on later?

A. That was put on later.

Q. Which way did that business move that went by the Sunset—as far as New Orleans?

A. Oh yes, by New Orleans, most of it by New Orleans.

Q. If it was to the Atlantic seaboard, did it go by boat or by rail from New Orleans, ordinarily?

A. Most of the passenger business went by rail.

Q. At that time what was the situation as between the O. R. & N. boat line between Portland and San Francisco and the Southern Pacific line between Portland and San Francisco?

A. The conditions?

Q. What were they doing? Were they each trying to get the business?

A. Sure.

Q. How long did you remain in San Francisco with the Union Pacific?

A. One year.

4527 Q. Then where did you come?

A. Came to Portland.

Q. In what capacity?

A. Came here as assistant general passenger agent of the Union Pacific in charge of the O. R. & N. local business.

Q. At that time the Union Pacific owned the O. R. & N line, didn't they?

A. They did; yes, sir.

Q. Or controlled it?

A. Yes, sir; by lease, as I understand it.

Q. That was in 1891?

A. That was in 1891.

Q. How long did you continue in that position?

A. Up to the time the road went in the hands of a receiver in 1894, and at that time I was made general passenger agent of the O. R. & N. Company's lines.

Q. Under the receivership?

A. Under the receivers.

Q. What happened after the receivership terminated? Did you remain with the company?

A. I remained with the company; yes, sir; in charge.

Q. In what capacity?

A. General passenger agent.

Q. Up to what time?

A. I left the company in 1901.

Q. And were all the time general passenger agent?

A. Yes, sir.

Q. During the time that you were here in Portland as general passenger agent or as assistant general passenger agent in charge of the O. R. & N. lines, did you have jurisdiction over the boat line as well as the railroad line?

A. Yes, sir.

Q. What was the fact as to the O. R. & N. being actively in the field for passenger business to the east and to San Francisco?

4528 A. We were using our endeavor to secure the business to the east. While the business was tacitly competitive so far as the public was concerned, there was practically no competition so far as we were concerned with the Southern Pacific on eastbound business. Their route was too long, their train service was not good, and the additional expense——

Q. That is to say, you had the short line?

A. We had the short line. Our competition was practically with the Northern Pacific Railroad up to the time that we connected with

the Great Northern at Spokane. After their line was built, then we became a connection of the Great Northern Railway, the same as we were with the Oregon Short Line.

Q. Now, after the receiverships terminated and the O. R. & N. again became a part of the Union Pacific system, how did you endeavor to work the passenger traffic to the east in spite of this Spokane connection with the Great Northern?

A. Our through service was all by the Union Pacific road, and we naturally worked the business over the line in which we were interested, but the Great Northern secured considerable business. If the Great Northern representative called attention to any through business—it had always been the custom to work in connection with the line that brought the business to your attention, and that was done.

Q. That is so everywhere, isn't it?

A. Yes, sir.

Q. Now, as to passenger business between here and San Francisco, who was your competitor?

A. We had no competition except the Southern Pacific road. We didn't regard that as competition. We agreed upon rates. We were supposed to have a differential in our favor.

4529 Q. You didn't regard it as competitive, but you were both trying to get passengers?

A. We did, but we only had sailings every five days.

Q. And you were moving all the passengers you could by those boats?

A. We did; yes, sir.

Q. And they were moving all they could by the rail line?

A. Yes, sir.

Q. At an agreed difference in rates?

A. At an agreed difference in rates.

Q. When you say you did not regard it as competitive, what do you mean by that—because of the difference in rate or because of the infrequency of your sailings?

A. Infrequency of sailings.

Q. That is, you didn't go every day?

A. No, sir; every five days.

Q. Did you usually carry a pretty good boat load of people when you did go?

A. At certain seasons of the year; yes, sir.

Q. Did the reduced rate at which you were able to do business in some measure compensate you for the infrequency of your sailings, in getting business?

A. I think it did; yes, sir.

Q. They had the advantage of a daily service?

A. Yes, sir.

Q. At a higher rate?

A. At a higher rate.

Q. Do you recall any time during your incumbency of that office, as general passenger agent here, when there was a lively scrap on passenger rates between here and San Francisco?

4536 A. Oh, yes; I remember that pretty well.

Q. How long did that last?

A. It extended over a period of a year, I should say, practically a year; maybe a little over.

Q. How low did your rates get?

A. Five dollars.

Q. First class?

A. Yes, sir; including meals and berth. That was the only time we felt privileged to issue transportation, because our meals and berth were six dollars.

Q. If a man rode on a pass he paid a dollar more than if he didn't?

A. Yes, sir.

Q. That was rather an interesting situation.

A. We were very liberal with them at that time.

Q. I suppose the gentlemen with annuals kept them inside their pockets in those days, didn't they? How low did the rates get on the Southern Pacific at that time?

A. About ten dollars, including sleeper.

Q. That was first class?

A. Yes, sir.

Q. How low were second class?

A. I have forgotten now. I think it was about five dollars. I haven't refreshed my memory very much on that.

Q. What are the principal methods employed by passenger departments of railroads to secure traffic, to secure passengers? I am speaking of when the business is conducted on published rates.

A. Advertising and soliciting.

Q. You mean personal solicitation?

A. Yes, sir.

Q. Your agents call on people proposing to make trips?

A. Yes, sir.

Q. And ask for the business?

A. Yes, sir.

4531 Q. And advertisements are employed to a very large extent?

A. Yes, sir.

Q. And magazines and newspapers?

A. Yes, sir.

Q. Was that so with the Union Pacific and the Southern Pacific when you were in San Francisco?

A. Yes, sir.

Q. And all other places, I suppose, where you have been?

A. Yes, sir.

Q. Now, after the rates were restored at the end of this war, was there any cessation in the efforts of your company and the Southern

Pacific to try to influence passengers to take their route to San Francisco and return?

A. The conditions were practically the same as they were before they went into the war of rates.

Q. That is, when you operated under the differential?

A. Yes, sir.

Q. But you were each trying to get the business?

A. Yes, sir; just the same.

Q. Now, Mr. Hurlburt, what about the independent boats, so called, between San Francisco and Portland? Were they important from a passenger standpoint?

A. No, sir; paid very little attention to them. Their sailings were infrequent, very uncertain; we paid no attention to them whatever.

Q. Will you please state how many passengers you can carry on the boats you were operating at the time you quit the service in 1901?

A. How many passengers on each boat?

Q. Yes, if you can remember.

A. Practically on the "Columbia" we could carry 300 cabin passengers. I think that was our license, if I remember. I
4532 think 350.

Q. What ship?

A. On the steamer "Columbia."

Q. You say 300 cabin passengers?

A. Yes, sir.

Q. What did you say about 350?

A. I think it was 350 they were allowed. The steerage accomodations would run about a hundred passengers. That was the total.

Q. On that steamer "Columbia"?

A. Yes, sir.

Q. What other boat?

A. The "State of California" ran about the same. The "Elder" was less; I think she would run about 225.

Q. How long did it take to make the trip from one place to another?

A. Usually leaving here at night, got there the third morning.

Q. Sixty hours, something like that?

A. Yes, sir.

Q. What ports of call did you have?

A. None but Astoria.

Q. Only Astoria?

A. Yes.

Q. You never stopped at Coos Bay or Eureka?

A. No, sir.

Q. I think you said a few moments ago that at times these boats ran pretty full?

A. Yes, sir.

Q. What time of the year would that be?

A. The summer season, during the pleasant weather.

Q. How many months in the year?

A. Practically from April to November.

Q. There has been some testimony here with reference to boat lines owned by the O. R. & N. on the Willamette River. Were they under your jurisdiction so far as passenger business was concerned?

A. Yes, sir.

Q. Did they participate in the transportation of through
4533 passengers?

A. Yes, sir.

Q. Where did they bring them from?

A. Brought them from Salem, Albany, Independence; those were about the only points where any business originated. The passengers would get on locally. These boats were stern-wheel boats, that dropped in anywhere, wherever you put up a flag, and people would drop on locally and come into Portland. They were booked for Portland.

Cross-examination by Mr. COTTON:

Q. You say these Willamette River boats participated in the carriage of through passengers; that is to the east, is that what you say?

A. Yes, sir; at Salem and at Albany we maintained an agency. We had our own tickets.

Q. Prior to 1901, I understood you to say, during the whole time of your connection with the company, the business of the opposition lines in regard to passengers was not regarded as important at all? You paid no attention to that from a passenger standpoint—the opposition line business; that is, boats?

A. Boats?

Q. Yes.

A. Between here and Frisco?

Q. Between here and Frisco.

A. Oh, we paid some attention to it, yes.

Q. But I mean it was not regarded as an important proposition?

A. No, sir.

Q. What was the character of the passenger accommodations on these opposition boats during your connection with the company?

A. They were very inferior.

4534 Q. They were not really passenger boats?

A. No, sir.

Q. Or regarded as such?

A. No, sir; they carried very few passengers. They carried a few of what would be steerage passengers, that is about all.

Q. Presented no attractions at all for first class passage?

A. No, sir.

Q. Did they carry any first class passengers?

A. Very few.

Q. By "a very few," can you give us generally——

A. They might pick up three or four, Mr. Cotton, but that is all.

Q. Do you know anything about the character of the opposition now of the North Pacific Steamship Company?

A. I understand it is very much improved, though I don't know personally.

Q. Do you know that they maintain an agent here on Third Street, with a passenger ticket office up here?

A. I know they do at present, yes, sir.

Q. That is on Third Street, between——

A. Alder and Washington, as I recall it.

Q. Alder and Washington?

A. Yes, sir.

Q. As most of the people who read this testimony may not know what Third Street is: Third Street is one of the prominent retail streets in this city, is it not?

A. Yes, sir.

Q. What would you say as to its comparative importance?

A. I would say that it stood about first in importance.

Q. The Northern Pacific Railway Company have their ticket office at Third and Morrison?

A. At Third and Morrison, yes, sir.

4535 Q. The O. R. & N. has its ticket office at Third and Washington?

A. Yes, sir.

Q. They are both on the east side of the street?

A. They are.

Q. The Great Northern has its ticket office where?

A. Directly south of the O. R. &. N.

Q. That is, between the O. R. & N. and——

A. Between the O. R. & N. and the Northern Pacific.

Q. On the same side of Third Street?

A. On the same side of the street.

Q. The Burlington has its ticket office at the corner of Third and Stark: that is one block north of Washington?

A. Yes, sir.

Q. Now, between Morrison and Washington, on the east side of the street: Mention what railroad companies have agencies on that side or are there.

A. The Chicago & Rock Island, the Chicago, Milwaukee & St. Paul, the Great Northern, the New York Central Lines, the Illinois Central, the Canadian Pacific, the Chicago & Northwestern—well, that is farther to the north, but it should come under the same head, probably.

Q. Yes.

A. The Pennsylvania. Those are all that I recall offhand.

Q. They are all there in two blocks?

A. Yes, sir, on the same side of the street.

Q. On the east side of the street?

A. On the east side of the street.

Q. And the North Pacific Steamship Company have their
4536 office in that same block?

A. Yes, sir.

Q. Occupy a room, do they?

A. Yes, sir.

Q. And have signs out, and actively engaged on one of the most prominent streets, in soliciting passengers?

A. Yes, sir.

Q. There wasn't anything of that kind in your time, was there?

A. No, sir.

Q. When you were in San Francisco as assistant general passenger agent of the Union Pacific, you worked your business east what way, over what line?

A. Over the Southern Pacific Railroad.

Q. To what point?

A. Over the Union Pacific Railroad from Ogden, either via Denver or via Omaha, or we took business from Denver that went over the Rio Grande roads and from Denver east, either via Kansas City or Omaha.

Q. But you had to handle all your business between San Francisco and Ogden over the Southern Pacific?

A. Except on the Pacific Coast round-trip tickets, returning, or if the business wanted to go by the Sunset Route then we had to send to the Southern Pacific office and secure the going portion over the Southern Pacific by New Orleans, returning by Omaha or Kansas City and Ogden, or by Denver and the Union Pacific.

Q. But each time you had to work over a portion of the Southern Pacific?

A. Had to work over a portion of the Southern Pacific; they were the initial line; they furnished us with their tickets and we had in our office an issue of the Southern Pacific Railroad tickets and we reported to them.

Q. Your one-way business you handled entirely between
4537 San Francisco and Ogden? You had no other route?

A. No; we had their issue of tickets, handled their tickets and reported to them.

Q. Did the Southern Pacific work closely with you for that business?

A. Very.

Q. That was the shortest and the best route?

A. Oh, yes. We had the best through car service.

Q. At the time they had the Sunset Limited on, did they have good service between San Francisco——

A. The Sunset Limited, Mr. Cotton, was established after I left San Francisco and came to Portland.

Q. Did they also solicit business—the Southern Pacific—by the way of New Orleans and also by the El Paso Route?

A. Oh, yes.

Q. And via St. Louis?

A. Yes, via St. Louis; all routes.

Q. They worked all routes?

A. They worked all those different routes.

Q. And worked quite actively and closely with you?

A. Yes, sir.

Q. Which way did the bulk of the business move in those days?

A. By Ogden; of the through business I should say out of San Francisco probably eighty per cent; eighty per cent of the business went via Ogden.

Q. Now, you said that the Southern Pacific was not much of a competitor from this territory. What did you mean by that—in competition with the Union Pacific?

A. I meant to say that the time consumed in making the
4538 trip via Sacramento was a day and a half longer; that a passenger must ride a day and a half to the south before he started to go east, and the time from Sacramento was just as long as it was from Portland; and he must also pay the additional sleeping car fare between this point and Sacramento.

Q. And then, of course, the additional expense in the way of meals and incidental traveling expenses?

A. Yes, sir.

Q. Did much, if any, business move that way?

A. No, very little, except on round-trip tickets where people wanted to go into San Francisco. The one-way tickets, however, did not include the privilege of going into San Francisco except as they paid the local fare between Sacramento and San Francisco.

Q. The competition from all of this territory was really between the Northern Pacific and the Union Pacific?

A. Oh, entirely so, on passenger business.

Q. And the Southern Pacific did not figure substantially as a competitor at all?

A. No, sir.

By Mr. SEVERANCE:

Q. You were speaking of the business out of San Francisco. The preferred route of the Southern Pacific out of San Francisco to the east was by New Orleans, wasn't it? They got the long haul?

A. Yes, they would prefer to send their business that way, but the service was in favor of the Ogden route.

Q. Yes; it is a shorter route.

A. The shorter route and better service. I assume to say that they have increased their business to a considerable extent.

Q. What is that?

A. I assume to say they have increased their business via
4539 the Sunset Route to a considerable extent by the adoption of the good service which has been put on in the last few years.

Q. At the time you were there they hadn't put on their Sunset Limited?

A. No, sir, they didn't have that on.

Q. And didn't have their new ships?

A. No, sir.

Mr. COTTON. Their what?

Mr. SEVERANCE. Their new ships to the Gulf ports.

Q. The business you secured had to go over the Southern Pacific to Ogden?

A. Yes, sir.

Q. It had no other way?

A. No, sir, no other way.

Q. If they were able to control the business themselves, they could send it the other way and get the whole revenue?

A. Yes, sir.

Q. And that is the way they worked it if they could?

A. Yes, sir.

Q. Now, this business by the way of Sacramento. Did the scenery along the Shasta Route and the advertising of that turn any traffic that way, or didn't it?

A. I think it attracted some little business, but it was the class of business of travelers on round-trip tickets.

Q. Who went one way and back the other?

A. Who went one way and back the other, yes, sir. It was not what would be considered strictly competitive business.

Q. I understand. Now, Mr. Hurlburt, there were in those days, and still are, quite a number of transcontinental lines. Was it or was it not customary to sell round trip tickets good over any of the lines and back over the other?

A. Yes, sir.

Q. All the roads united in that, did they?

A. Yes, sir.

4540 Q. In what way did the various passenger departments put forth their efforts to secure that kind of traffic for their lines, the passenger having a choice of so many lines and having to select two, one going and one coming, out of quite a number, half a dozen or so? How did your department and other passenger departments work to induce passengers to select their particular road as the one to go on or come by?

A. It is done by personal solicitation very largely. For instance, a man going from here would be called upon perhaps by the Northern Pacific. He would want to return by some other route. The Northern Pacific representative might say to the Rio Grande road that he knew of a party of people, and the representative of the Rio Grande would call upon these people to get them to return by his route instead of over the Union Pacific route, or vice versa. The representatives were kept busy soliciting the business in that way.

Q. Was that the way the work was done by all these lines?

A. Yes, sir.

Q. The Great Northern and Northern Pacific, the Union Pacific and Southern Pacific and the Rio Grande and all of them?

A. Yes, sir, all of them.

Q. The Santa Fe?
A. Yes, sir. Personal solicitation.
Q. And advertising?
A. And advertising.

By Mr. COTTON:

Q. In regard to this business east from San Francisco, during the period that you were there, did the Southern Pacific seek to prevent that business moving from San Francisco to Ogden?

4541 A. No, sir, not at all. They accorded us all the privileges possible to do business. As I said before, the Southern Pacific provided us with a full issue of tickets via Ogden, reading over the Union Pacific lines, which permitted us to book either via Ogden and direct to Omaha, or via Ogden and Cheyenne, or we could book in by the Rio Grande to Cheyenne, and then from Cheyenne to Denver, and Denver to Kansas City, or Denver to Omaha.

Q. Did you have through train service?

A. Through train service direct over the Chicago & North-Western Railroad to Chicago.

Q. That was via the Union Pacific?

A. That was via the Union Pacific from Ogden.

Q. Did they run any through train service by any other route into Chicago?

A. They did not at that time, no, sir; they have since established service, since I left there.

Q. To what other point did they run any through train service to San Francisco?

A. There was no other through service—first-class service. They had a through tourist car, which ran by the Rio Grande road; and, as I recall it, that car on special days went by the Burlington and special days by the Rock Island; but the regular service, both first class and tourist, was over the Chicago & North-Western from San Francisco to Chicago.

Q. Did their solicitors assist you in getting business?

A. Yes, sir.

Q. Very much the greater proportion of passengers went by your road?

A. Yes, sir.

Q. And the Southern Pacific?

A. A very large proportion of them.

4542 Q. Then, I am wrong in catching the impression that the Southern Pacific wanted to force the business by the Sunset line?

A. You are wrong in so far as the volume of business going by the Sunset line is concerned. They would gladly take passengers by the Sunset Route because that was their long haul.

Q. Yes, but it was a difficult route to work passengers for.

A. It was a very difficult route to work passengers against the service.

Q. And in view of the other competition which they had, they very earnestly supported your line?

A. They did.

Q. Did they have solicitors out on the street, in addition to yours, for business of that kind?

A. They did.

Q. Working it about as hard as you did?

A. Yes, sir.

Q. Do you know whether there has been any change in the ticket arrangements in regard to these through routes which Mr. Severance spoke to you about, that is, these round-trip excursions, at the present time?

A. The change in the rates?

Q. I mean the manner in which they can be sold going by the different routes?

A. No, I think the same conditions prevail.

Q. There has been no change that you have ever heard of or known of?

A. No, sir.

Q. The passenger can avail himself of just as many of these routes now as he ever did?

A. Yes, sir, and even more.

Q. You think there are more now?

A. Yes, sir.

Q. That is, in connection with the Southern Pacific and the Harriman lines?

A. Yes, sir.

4543 By Mr. SEVERANCE:

Q. How was it about passenger business from San Francisco or to San Francisco, to and from points like Memphis or southeastern points? Did that business move both ways?

A. Both ways, yes, sir; either via Ogden or via the Sunset Route.

Q. That was quite a considerable traffic from the Southeastern States?

A. The proportion of that traffic was not so large as it was north of the Ohio River.

Q. Now, as to that traffic, which way did the Southern Pacific endeavor to work it if they controlled it?

A. Which way would they if they controlled it?

Q. Yes, when they controlled it.

A. On the southern business they would work it the Sunset Routes as far as possible into the southern states.

Q. Isn't it a fact that on any business, where they controlled it independent of you, they worked it via New Orleans unless there was some special reason to the contrary?

A. They would work the long line, yes.

4544 **J. D. OLWELL,**

being duly sworn as a witness on behalf of the Complainant, testified as follows:

Direct examination by Mr. SEVERANCE:

Q. Where do you live, Mr. Olwell?
A. At Medford, Oregon.
Q. What is your business?
A. I am in the fruit business and the real estate business.
Q. How extensively are you engaged in the fruit business?
A. At the present time I am interested in a couple of hundred acres of young orchard and about 100 acres of bearing orchard.
Q. What is your annual output for a normal year?
A. Well, up to this last year I haven't had really any output. The properties that I had previously owned, about four years ago, I had sold; they were producers. Our output at the present time is probably from 30 to 50 cars.
Q. How was it previous to selling out your other orchards three or four years ago? How large was your output?
A. The output from our holdings at that time ran from ten to forty cars, but I handled a great deal of fruit on the outside.
Q. How much fruit did you handle there?
A. Well, that varied with the year. Some years probably twenty cars, some years it would run up to 100 or 150 cars.
Q. How many years have you been in that business at Medford?
A. For the last fifteen or sixteen years.

4545 Q. To what parts of the country do you ship your product, your apples?
A. Largely to New York and to Europe.
Q. Your crop is an apple crop, isn't it?
A. Apple and pear.
Q. Apples and pears both?
A. Yes.
Q. Do you ship pears to Europe also?
A. Not so much; some.
Q. Your apple traffic to Europe moves out of what port in the United States, chiefly?
A. New York altogether.
Q. Previous to the amalgamation of the Union Pacific and Southern Pacific systems, how did your traffic from Medford move to the Atlantic seaboard?
A. Largely, if I remember correctly, by Sacramento and out over what was called the Central Pacific, I believe.
Q. Now, how does it move, at the present time?
A. By Portland and O. R. & N., Oregon Short Line and U. P.
Q. Any of it move by the Sunset Route?
A. Practically none of it.
Q. Has any of it ever been sent that way?

A. There has been some sent around by New Orleans, but that has always been where there was an object in connection with it, possibly in disposing of it en route through the southern country.

Q. Is there any advantage in shipping one way or the other, having in view the matter of changing the destination of fruit en route?

A. Well, that will apply to pears but not to apples, as a rule, from our district.

Q. What is the fact with reference to the pears?

4546 A. Everything is really billed to Chicago, and then possibly diverted from there.

Q. Suppose it is routed by the Sunset Route, as you say you have shipped some in former years by New Orleans, would that be billed to Chicago just the same?

A. No.

Q. How would that be billed?

A. That would be billed by the Sunset.

Q. Billed to what point, to what destination?

A. Generally billed to New York, with the idea of stopping wherever convenient.

Q. Has any of your fruit ever moved by the Sunset and the water lines to New York?

A. No. Well, I have had a car move in that way, but we never ship in that way for the reason that it is not practicable, ordinarily.

Q. When was it you had any move that way? How did it happen?

A. I don't remember exactly, but I think about six years ago. I had a car, through a mistake, move Sunset and go to New York.

Q. Is the Sunset Route a practicable route—I mean the water-and-rail line a practicable route to ship through?

A. We don't regard it so, no.

Q. You want to ship all rail?

A. Yes.

Q. What is the reason that that is not a practicable route?

A. It is so much longer time, and it is a perishable article—too much time.

Q. Well, suppose you are shipping abroad?

A. In shipping abroad we get to New York in two or three week's time; we go aboard the steamer there, and it is our direct route,

4547 while if we go the other way it really goes around to New York anyhow. And then we meet warmer climates going by the south.

Q. At the present time, you say, the traffic all goes up here to Portland and the east?

A. Practically everything, yes.

Q. And formerly it moved by Sacramento?

A. By Sacramento, yes.

Q. All of it?

A. Everything that was eastern shipment might move by Sacramento.

Q. Did the Northern Pacific ever come up in there soliciting business?

A. Not to my knowledge, no.

Q. And in those days the O. R. & N. did not?

A. No, sir, I think not.

Q. How long ago was that change made, do you remember?

A. No, I do not know exactly. Really I wouldn't be able to answer that intelligently.

Q. How far is Medford from here?

A. A little over 300 miles.

Q. A little over 300 miles south?

A. Yes.

Q. When the traffic originates at Medford and is moved up here to Portland, how does it go to the east?

A. It goes by O. R. & N., Oregon Short Line, Union Pacific to Omaha.

Q. And thence over connecting lines from there?

A. Yes.

Q. Does any other line of road go in there and get any of that business?

A. No other line.

Q. Don't even have soliciting agents?

A. There are soliciting agents for eastern roads.

Q. East of the Missouri River?

4548 A. East of the Missouri River, but practically nothing this side.

Q. How was it years ago? Was there ever a time when the soliciting agents of the Northern lines came in there?

A. No; the only one I remember of is the Denver & Rio Grande. They used to solicit some in there.

Q. Has he disappeared too now?

A. Yes; I have not seen him for some time.

Q. Did you ever ship over the Denver and Rio Grande?

A. In some cases.

Q. In connection with what—the Southern Pacific by Sacramento?

A. Yes, and I think also by the north if I remember correctly.

Q. Do you know anything about the reason why the Denver & Rio Grande man ceased to solicit that territory?

A. No, I really do not.

Q. When business moved over the Denver & Rio Grande, in what cars did it move—any special cars?

A. All of this business from our country is really handled in the refrigerator car, and it was formerly the Armour car.

Q. Does your business all go under refrigeration or ventilation?

A. Well, both refrigeration and ventilation, but the refrigerator car is used exclusively.

Q. That is the Pacific through express, isn't it?

A. That is the name of it, I believe, yes.

Q. It says "Bohn Patent" on the car—a white car—doesn't it?

A. The last year or two I haven't noticed the car that we are using. We used to use the C. F. X. and the F. G. E. car exclu-
4549 sively. But there is a new line on now, it is a different car altogether, and I expect probably you are right.

Cross-examination by Mr. COTTON:

Q. Mr. Olwell, your distance from Medford east to Omaha, Denver, in fact any point east of Ogden, is shorter by Portland than it is by way of Sacramento, is it not?

A. Yes, we regard it the most practicable way to ship; we get better time.

Q. You get better service by Portland and better time than you do by Sacramento?

A. Yes, we do.

Q. The distance is shorter, is it not?

A. Yes, sir, I think it is.

Q. Then you are on this side of the Siskiyou Mountains?

A. Yes.

Q. And as a result you avoid the mountain haul over the mountain?

A. Yes.

Q. From here to Medford the road of the Southern Pacific runs down in the Willamette Valley to Roseburg?

A. Yes.

Q. And then through Cow Creek Canyon into your territory?

A. Yes, sir.

Q. It crosses no mountain range as such?

A. No, no important divide.

Q. Nothing like the Siskiyou Mountains?

A. No, nothing like the Siskiyou Mountains.

Q. What about your rates in the territory that you can reach with your apples now as compared to 1901? Do you know how your rates compare?

4550 A. I don't think there has been any change whatever in the rates. We in our little valley feel that the rates are very satisfactory on eastern shipments, on Atlantic coast shipments.

Q. We make the same rate from Medford and your territory down as far south as Ashland, I believe, to eastern points, Atlantic seaboard points, as we do from Portland.

A. Yes, sir.

Q. That is, equal rates?

A. Yes, sir.

Q. And you are how far south from Portland?

A. We are something over 300 miles.

Q. The Denver & Rio Grande, was that a good fruit carrying road or not, or did you ever use it?

A. We have used it in some cases, largely on cars going into the middle west, and I can't say that the service over the road was

favorable enough for us to use it. We have done it largely to favor people who were soliciting for the road; I don't know that it was a good business proposition, but they had some very clever boys who were soliciting freight, and in some instances we felt very kindly to them and favored them in that way.

Q. Can you ship that way now if you want to, via Portland?

A. Well, I don't know. We really haven't tried to. We have made no effort to ship in that way, and the D. & R. G. people haven't solicited of late years.

Q. So, you haven't even had occasion to observe what the rate situation is with reference to the D. & R. G. via Portland?

A. No. Take it on eastern shipments: I am satisfied it would not be as practicable as to follow the direct routes.

Q. Why?

A. For the reason—take it on our pear shipments: What we
4551 require is quick time. And when those cars get on to the Union Pacific my understanding is that there are other cars from California and through fruit trains made up that give us very rapid service to New York, and it gives us good service in that way.

Q. You refer to these new cars. Are they satisfactory cars as compared with the old ones?

A. The Pacific Fruit Express. There has been no complaint. They are comparatively equal. I haven't heard a word of complaint in connection with them. I think they are about equal to the car we have been using.

Mr. SEVERANCE. What do you refer to?

Mr. COTTON. The Pacific Fruit Express.

Mr. SEVERANCE. They are very fine cars. A client of mine makes them.

Q. If you had your preference, as a matter of fact, to ship by Sacramento or by Portland, which way would you ship to-day?

A. Under present conditions by Portland is the most direct route, and I would prefer the Portland route.

By Mr. SEVERANCE:

Q. You regard yourself as fortunate in preferring the Portland route in view of the fact that it is the only route by which you can ship to Ogden?

A. Well, I don't know about that. If we had our choice to-day, though, personally I would take the Portland route.

Q. Then, your choice happens to coincide with that of the railroad officials who have adopted that as the route.

A. Yes, I guess that is correct.

Q. How far south does that Hobson's choice continue, as
4552 far as you know?

A. Really, I don't know anything about it farther than where we are.

By Mr. COTTON:

Q. Just describe the route, as you understand it from your town to Ogden, via Sacramento. Explain what you understand the route to be.

A. In our class of business, that is, a perishable article, the northern routes are more favorable than the southern routes.

Q. Why?

A. On account of climatic conditions.

Q. You ship during what season of the year?

A. Generally the pears move in the months of August and September; the apples move in early October.

Q. Do they deteriorate as the result of heat?

A. Yes.

Q. What is the character of the weather in the Sacramento Valley in the time when you are shipping pears?

A. It is a great deal warmer than it is by the northern routes.

Q. What about the distance?

A. Really I don't know what the difference in distance might be. I believe there is a difference in distance.

Q. What about the time?

A. Our time by the north was quite an improvement over what it was by the south.

Q. That is, you actually know that as a matter of fact?

A. Yes; it was quite an improvement.

Q. How much of an improvement?

A. I really don't remember at this time how much of an improvement, but still it was quite an improvement.

Q. I mean hours or days.

4553 A. I am really not able to answer that intelligently, but there is very much of an improvement.

Q. What about the character of the grades and the road? Do you know anything about that, or are you interested in that?

A. Well, nothing more than what I have traveled over it. Of course, I realize that the grades by the south are very much heavier than by the north. I realize that part of it, yes.

Q. Then, as an actual fact, from point of time and the point of climatic conditions and your actual experience, you regard the Portland route as very much to be preferred in actual practice for fruit shipments from your territory than the route via Sacramento?

A. Very much so.

Q. Then, it is not simply because you are forced to use it?

A. No, sir.

Q. Have you fruit shippers ever applied for an opening of the Sacramento gateway, or ever sought it down in that country?

A. Yes.

Q. You come in contact with the fruit shippers down there generally, do you not?

A. Yes, sir.

Q. That is, you know the general sentiment of the territory?

A. Yes, I am associated with them all the time.

Q. Is there any sentiment in favor of opening the Sacramento gateway?

Mr. SEVERANCE. I object to that as hearsay and as calling for a conclusion.

Q. That is, on your shipments?

A. No. No, I never heard anything about it at all.

Q. How long have you been buying and shipping fruit down in that territory? Have you been in that business practically
4554 all the time?

A. Not all the time; for a period of, I think, eight or nine years, though.

Q. Are you devoting your time now entirely to fruit raising?

A. No, sir, I am raising and also representing. I have bought very little in the last two years. I am representing European houses and New York houses and California houses.

By Mr. SEVERANCE:

Q. You say the fruit moves in refrigerator cars. That is true particularly as to peaches, isn't it?

A. Yes, in fact all of our green fruits, while with us we grow very few peaches.

Q. A uniform temperature is maintained in the cars in transit?

A. Comparatively so.

Q. So, the fact that you go a few hundred miles down south, over the mountains, rather than coming up north of Portland, doesn't make any difference with the inside of the car?

A. Well, only in this way: The longer your car is in transit and the warmer weather you have, the more ice you have got to buy.

Q. I understand, but so far as the deterioration of the fruit is concerned, there isn't any difference?

A. As long as the temperature is maintained, yes.

Q. And so far as you know it is maintained in the refrigerator cars used by the Southern Pacific?

A. There are variations at times, due to extreme warm weather. You take a car and you have it in a temperature of 100 degrees of heat, and it is natural that it is going to make it warmer than if it is a day like to-day.

Q. It never gets warm out here on the desert, on the Oregon
4555 Short Line, does it?

A. Yes, it gets pretty warm. I have found it pretty warm myself.

Q. I thought from Mr. Cotton's questions that that was quite an ice-berg out there in August.

A. No.

Q. That is about as hot as any place, isn't it?

A. I have found it very warm, indeed.

Q. Then, we will cut out the question of climatic conditions. What is the difference in the length of the route?

A. I really don't know; that is something I never figured out.

Q. Then, we will cut that out. Now, what is the advantage of shipping this way instead of the other way? The climatic conditions are eliminated, and you don't know that the length of the route is any different.

A. Well, as I said before, we all realize that the southern country——

Q. I am not speaking about the Sunset Route. I am talking about the shipment by Ogden, understand.

A. In the first place, it requires a longer time to go out via Sacramento, around that way.

Q. How much longer?

A. I am not able to answer the question. It is something I never went to work and figured out.

Q. Are you sure that it really requires any longer time?

A. I feel quite sure. I may be misled in regard to it, but I feel quite sure.

Q. If it goes by Sacramento it is, at least ostensibly, hauled by one company, isn't it—the Southern Pacific, all the way to Ogden?

A. Yes.

4556 Q. If it comes up here it is transferred to three different companies, ostensibly, isn't it—from the Southern Pacific to the O. R. & N., and from that to the Short Line?

A. Yes.

Q. That is true, isn't it?

A. Yes.

Q. Does that naturally make any difference in time?

A. I will tell you what I am governed by. I am governed by time that we used to have years ago and the time that we have to-day.

Q. Do you know whether that difference in time was this side of Ogden or the other side, on New York shipments?

A. No, I am not able to say.

Q. From Ogden to New York is about 2,500 miles, isn't it?

A. Somewhere there, I think.

Q. So that a large part of the journey is off the line between here and Ogden, whichever line may be chosen. And you are unable to state whether the improvement in service that you get is on account of the fact that the traffic is all forced around by Portland or whether it is because the lines east make better time?

A. What I am figuring on or basing my idea on is our time between here and Omaha or Council Bluffs. That is what I am basing my remarks on.

Q. And you are unable to state, as you said to Mr. Cotton, whether it is shorter in hours or days?

A. I am sure it is shorter in hours, but to go to work and state exactly, where I haven't gone to work and figured it out exactly, I couldn't do it.

4557 By Mr. COTTON:

Q. What season of the year do your pear shipments begin?

A. Along about the middle of August, generally.

Q. And your apple shipments?

A. Along in the fore part of October.

Q. And your pear shipments continue until what time in the year?

A. Until about the 1st of October.

Q. That is, they run from about the middle of August until the first of October?

A. Until the first of October.

Q. The bulk of them move when?

A. The bulk of them at the present time are moving in the latter part of August and the fore part of September.

4558 W. W. WILDE,

being duly sworn as a witness on behalf of the Complainant, testified as follows:

Direct examination by Mr. SEVERANCE:

Q. Mr. Wilde, where do you live?

A. In Astoria.

Q. What is your business?

A. In the fish and cold storage business.

Q. How long have you been in the fish and cold storage business?

A. About two years and a half.

Q. Previous to that what was your business?

A. I was chief clerk in the Union Pacific Railroad offices in San Francisco.

Q. How long did you stay there?

A. I had worked for the company eighteen years.

Q. And you were chief clerk up to what time?

A. November, 1906.

Q. Were you present at a meeting that was called here in Portland by Mr. B. Campbell? He was mentioned in the testimony of Mr. Sweek this morning.

A. Yes, sir.

Q. What do you recall about that meeting? Or, let me ask you in the first place, how did you happen to be at the meeting?

A. I came as the representative of the general agent in San Francisco, who was unable for some reason to attend.

Q. The general agent of the O. R. & N. at San Francisco?

A. Yes, sir, general agent of the O. R. & N. and Union Pacific.

Q. O. R & N. and Union Pacific?

A. Yes, sir.

4559 Q. What was his name?

A. T. M. Schumacher.

Q. And you were his chief clerk?

A. Yes, sir.
Q. And came as his representative?
A. Yes, sir.
Q. Did you know what you were coming for before you came up?
A. No, sir.
Q. It was sprung on you as a delightful surprise, was it?
(No answer.)
Q. Will you state, as nearly as you can recall, what Mr. Campbell said at that time?
A. The discussion in a general way was with regard to closer relations between the Union Pacific and Southern Pacific.
Q. And in that connection what instructions or suggestions were given as to the handling of traffic or the routing of traffic?
A. We were instructed to work with the Southern Pacific more closely and harmoniously than we had done in the past.
Q. You hadn't been over-harmonious in the past, had you?
A. Not particularly so among the solicitors.
Q. That is what I mean. What was said, if anything, if you recall, with reference to the way traffic should move, if it could be moved without difficulty or getting into trouble? For instance, how was Atlantic seaboard business to move?
A. That traffic was to move via the Sunset so far as it was practicable to do so.
Q. And west of the Atlantic seaboard zone and north of the Ohio River, how was it to move?
A. The same general instructions applied to all territory; that is to say, the business was to move Sunset or Union Pacific as
4560 seemed to be more advantageous.
Q. Advantageous to whom—to the system, taken as a whole?
A. Yes, the system, the service, and so on.
Q. Do you remember which way you were told to endeavor to move the business west of the Atlantic seaboard zone?
A. As I recall it, I don't think we were given any specific instructions as to territories; that is, I don't think any particular territories were outlined. We were told in a general way that we were to work for the interests of the two lines, and the matter was left largely to our discretion.
Q. You have already stated that you were instructed to work the Atlantic seaboard business Sunset.
A. As far as it was possible.
Q. That is what I mean—as far as it was possible.
A. Yes, sir.
Q. Now, what territory was to be worked by the Union Pacific? The balance of the country except the seaboard?
A. Some seaboard business had to be worked Union Pacific.
Q. Well, what?
A. Business that might be controlled to a certain extent by the trunk lines.

Q. Yes; by connections.
A. That it would not be policy for us to work against them.
Q. Certainly. You were not to offend your friendly connections?
A. No, sir.
Q. That is right, isn't it?
A. Yes, sir.
Mr. LOVETT. We object to these questions as leading.
Mr. SEVERANCE. They are leading, I admit.

Q. Leaving out of question business that is controlled by
4561 your connections, business that you were able to control and route yourself, which way were you told to route the business west of the Atlantic seaboard, where you could control it yourself and it was not controlled by connections?

A. Whichever way it was most advantageous for either the Southern Pacific or the Union Pacific.
Q. What do you mean by that?
A. For instance, if it was more profitable to move business from a certain territory by the Union Pacific, that is, if the Union Pacific earnings were greater, we were supposed to use our efforts first in that direction. If the Southern Pacific would earn more money we were not supposed to make very strenuous efforts to get it. We were not instructed, however, to solicit for the Sunset.
Q. That is, you still remained, as I understand it, an O. R. & N. agent; didn't you?
A. Yes, sir. But of course I was located in San Francisco, and I am speaking largely of the conditions as they existed there.
Q. What was the position of your superior, what road was he with?
A. He was the general agent of the Union Pacific, the Oregon Short Line and O. R. & N.
Q. And the Southern Pacific had a separate agency there?
A. Yes, sir.
Q. And, as I understand you, you were not to solicit directly for the Sunset Route?
A. No, sir.
Q. But if the Sunset Route was after business which could be moved by the Sunset, what attitude were you to take as to that?
A. We were supposed to keep our hands off.
4562 Q. Let them have it?
A. That is, if we thought they could get it.
Q. Previous to this time had the Southern Pacific had an agency there?
A. Yes, sir.
Q. They were working seaboard business?
A. Yes, sir.
Q. Were you engaged in the seaboard traffic too?
A. Yes, sir.
Q. What was the attitude of the Union Pacific agency, previous to that time, towards the Southern Pacific?

A. Well, of course we worked much harder against them than we did afterwards.

Q. Which way did you endeavor to move Atlantic seaboard business to San Francisco or from San Francisco to the east previous to the amalgamation of the two lines?

A. Via the Union Pacific.

Q. And which way did the Southern Pacific, where they could control it, endeavor to move that business?

A. By the Sunset Route.

Q. Your present business, as I understand you, is fish and cold storage?

A. Yes, sir.

Q. Do you ship to the east now?

A. Yes, sir.

Q. Over what road?

A. Our shipments from the Columbia River here move very largely by the A. & C. to Portland and the O. R. & N. and Union Pacific.

Mr. LOVETT. What was that?

Mr. SEVERANCE. The A. & C., he says.

WITNESS. That is the line that runs from Astoria to Portland.

4563 Q. What system does that belong to now?

A. The Hill system—the Northern Pacific-Great Northern.

Q. The North Bank?

A. Yes, sir.

Cross-examination by Mr. LOVETT:

Q. This transcontinental business, particularly the business to and from the Atlantic seaboard, that you and Mr. Schumacher tried to control in San Francisco, prior to the amalgamation of the agencies or prior to this conference at Mr. Campbell's office, moved out by way of Ogden, didn't it?

A. Yes, sir.

Q. Everything that you controlled for the Union Pacific necessarily passed over the Southern Pacific to Ogden, didn't it?

A. Yes, sir.

Q. The Southern Pacific worked with you for that business?

A. Yes, sir.

Mr. SEVERANCE. What was that last question? The Southern Pacific did what?

Mr. LOVETT. Worked with them for that business.

Mr. SEVERANCE. Worked with them for the business?

Mr. LOVETT. Yes; and he said yes.

Mr. SEVERANCE. Did he say yes to that?

Mr. LOVETT. Yes; naturally.

Q. The Southern Pacific preferring the Sunset Route whenever it would move that way?

A. Yes, sir.

Q. For business to the Atlantic seaboard. That was true, wasn't it?

A. I beg pardon?

Q. I say for the Atlantic seaboard, the Southern Pacific
4564 preferred the Sunset Route whenever it could move the business that way, didn't it?

A. Yes, sir. I misunderstood your previous question. I answered incorrectly there, Mr. Lovett.

Q. What was that?

A. You asked me if the Southern Pacific worked that way. You mentioned Atlantic seaboard business, and I said yes.

Q. Yes.

A. No, I didn't mean to say that. I meant to say no.

Q. Didn't the Southern Pacific work with you as against the Atchison?

A. They did as against the Atchison, but I thought you meant in a general way.

Q. The Southern Pacific would naturally prefer the Sunset Route for Atlantic seaboard business? That is true, isn't it?

A. Yes, sir.

Q. But wasn't there a great deal of transcontinental business that would not move by the Sunset lines—that went by rail?

A. That wouldn't——

Q. Move by the Sunset line. Isn't there a vast amount of transcontinental business moving between San Francisco and the Atlantic seaboard that wouldn't move by way of New Orleans or the Gulf—in other words, that would move all-rail?

A. Yes, sir, there is a good deal of business moves by the Gulf.

Q. And that might move either by the Atchison and its connections or by way of Ogden?

A. It might move by the Atchison, yes, sir, if they secured it.

Q. Now, as against the Atchison, didn't the Southern
4565 Pacific work with the Union Pacific for transcontinental business? That is the question.

A. Yes, sir, they did.

Q. I believe you have already testified that everything that the Union Pacific secured between California and points east of the Missouri River had to pass over the Southern Pacific between San Francisco and Ogden?

A. Yes, sir.

Q. And then from Ogden it might go over either the Denver & Rio Grande and its connections or the Union Pacific?

A. Yes, sir. There were divisions both ways.

Q. And the Southern Pacific would work with either the Denver & Rio Grande or the Union Pacific for that business, wouldn't they?

A. Yes, sir.

Q. Then, at that time—I am still speaking of conditions prior to 1901——

A. Yes, sir.

Q. —most of the eastern lines had agencies in California, had they not?

A. Yes, sir.

Q. Actively soliciting this transcontinental business?
A. Yes, sir.
Q. The Chicago, Milwaukee & St. Paul had an agency, hadn't it?
A. Yes, sir.
Q. The Chicago & Northwestern?
A. Yes.
Q. Those two lines worked mainly with the Union Pacific, didn't they?
A. Yes, sir, mainly.
Q. The Burlington had an agency there?
A. Yes, sir.
Q. The Rock Island?
A. I wouldn't be sure as to the dates. The Burlington had, I know, and the Rock Island I am pretty sure had at that time.
4566 Q. Prior to 1901?
A. Yes, sir.
Q. All of those lines were actively soliciting the business for the Atlantic seaboard, weren't they?
A. Yes, sir, for all territory they could reach.
Q. Weren't all of them working in connection with the Southern Pacific by the way of Ogden?
A. Yes, sir, all working in connection with the Southern Pacific.
Q. The trunk lines, the lines east of Chicago, nearly all of them had agencies in San Francisco, hadn't they,—the New York Central lines, the Pennsylvania——
A. I think not at that time, all of them.
Q. The New York Central had?
A. Some of those agencies were established later, but I don't remember the dates.
Q. The New York Central had an agency there prior to 1901, hadn't it?
A. Most all of them had passenger agencies, but some of the freight agencies were established later. I think they had freight agencies too, in 1901.
Q. Didn't the New York Central, the Pennsylvania, the Baltimore & Ohio, and the Erie all have freight agencies in San Francisco prior to 1901?
A. I think they all had.

By Mr. SEVERANCE:

Q. Did the Queen & Crescent, the Louisville & Nashville, the Illinois Central and other lines leading up from New Orleans have agencies in San Francisco?
A. The Illinois Central had, yes, sir, but not the Queen & Crescent and L. & N.
Q. Was the Illinois Central soliciting business there by way of New Orleans, into the interior of the country, in connection with the Southern Pacific?
A. Yes, sir, I believe it was.

4567 J. H. KELLY,

being duly sworn as a witness on behalf of the Complainant, testified as follows:

Direct examination by Mr. SEVERANCE:

Q. Mr. Kelly, where do you live?
A. Portland.
Q. What is your business?
A. Land business.
Q. Have you ever been in the railroad service?
A. Yes, sir.
Q. What company?
A. I worked for the O. R. & N. the last eighteen years.
Q. What was your position?
A. I was clerk and agent for the O. R. & N. Company.
Q. Where?
A. Portland and other points out on the line.
Q. During what years?
A. Since 1890.
Q. Up to what time?
A. Up to the latter part of 1907.
Q. Were you chief clerk at the dock here?
A. Yes, sir.
Q. During what time?
A. From 1894 until 1901.
Q. What were your duties at that time?
A. I had charge of the transfer of freight from the steamers and river boats to the cars, delivery and receipt of the freight on the docks.
Q. Were you in a position to know how freight was moving, by what lines it moved?
A. Pretty well, yes.
Q. What lines of steamers were the O. R. & N. running during that time?
A. They had the San Francisco line and they had some ships to the Orient that they had a working agreement with; also the river boats—the Willamette and Columbia rivers.
Q. Did they have steamers to Coos Bay?
A. For a while, yes.

4568 Q. What class of business was handled between here and Coos Bay?
A. Principally lumber and shingles.
Q. Coming this way?
A. Coming this way, yes.
Q. What became of the lumber and shingles that came in? Were they exported from here by some route or other?
A. They went east. I don't remember now whether the shingles and lumber were the Eureka or the Coos Bay. They called at both

places, as I remember it. It is sometime ago and I have forgotten just exactly. They only operated for a short while.

Q. What kind of traffic was taken to Coos Bay from here?

A. Merchandise from Portland.

Q. How was it as to Eureka?

A. I don't remember whether the boats operated to Eureka or not. The California & Oregon Coast called at the dock and did a great deal of business there.

Q. What did?

A. The California & Oregon Coast Steamship Company.

Q. Is that the line that the gentleman who was testifying a little while ago represented?

A. Yes, sir; Mr. Baumgartner.

Q. What moved to Eureka and Coos Bay by those boats from your dock?

A. They didn't get a great deal of freight going to those points. They left considerable freight coming from Eureka and some from Coos Bay.

Q. What was the nature of such freight as they did get going down? Was it lumber, merchandise, or what?

A. Some small shipments of merchandise.

Q. What did the boats bring in to your dock?

A. Hops, salmon, paper, shingles, prunes, pickled fish, lumber.

Q. How far up the Willamette did the boats go at that time
4569 and bring in stuff?

A. They went to Salem, Albany, Corvallis, McMinnville, sometimes as far as Eugene.

Q. Was there any of this traffic brought in from the Willamette Valley carried by the boat line to San Francisco?

A. A great deal of it, yes, sir.

Q. What class of traffic?

A. Why, spuds—that's potatoes—onions, paper. (They call them spuds in this country.)

Q. What else besides spuds?

A. Spuds and onions and paper, some prunes moved that way, but the principal freight was the paper and the potatoes—spuds.

Q. Did any traffic that was brought in by that boat line from up the Willamette River move to the east all-rail?

A. Yes, sir.

Q. What?

A. The prunes and the hops.

Q. Which road did they move over—the O. R. & N.?

A. The O. R. & N., the Southern; the Northern got some of the freight.

Q. Did the Southern Pacific get some of that?

A. The Southern Pacific, yes, sir.

Q. What?

A. Yes, the Southern and the O. R. & N.

Q. And the Northern Pacific got some?

A. And the Northern Pacific got some, yes, sir.
Q. Did any of it go by the Great Northern?
A. The O. R. & N. to Spokane, yes, sir, and the Great Northern.
Mr. COTTON. What is this business?
Mr. SEVERANCE. Hops.
Q. You had nothing to do with the solicitation of freight, as I understand?
A. Nothing.
4570 Q. You simply observed the movement of freight?
A. Yes, sir, in the operating department.
Q. How frequently did the boats run to San Francisco?
A. There was five days' service; at one time we had a three days' service, and one time a four days' service, during the time I was there.
Q. Upon what was the frequency of the service dependent—upon the amount of traffic or what?
A. On the traffic, yes.
Q. What was the ordinary service in those days?
A. The five days' service lasted the longest.
Q. Do you remember how long the three days' service and the four days' service lasted?
A. The three days' service lasted quite a while, I think two or three years; the four days' service about six months, as I remember it now; it is a good while ago.
Q. Do you remember the names of the boats they had in those days?
A. The "Columbia," the "Elder," the "Oregon," the "State of California."
Q. Do you know how many boats they have now on that service?
A. They have two.
Q. And what is the service?
A. Seven days.
Q. Did you observe whether there was any freight from San Francisco received over this boat line, going to Butte and other Montana points?
A. Yes, sir.
Q. What classes of freight?
A. Sugar and canned goods, some merchandise—miscellaneous.
Q. What way did that traffic move out of Portland?
4571 A. It went by Spokane and the Great Northern, some of it via Wallula and the Northern Pacific, some via the Short Line and Huntington—all three ways.
Q. Do you know anything about any boats on the Cowlitz River?
A. They used to land at the wharf there, yes, sir.
Q. What kind of traffic did they bring down?
A. Shingles; some potatoes—spuds.
Q. Where did these spuds and shingles move to?
A. The spuds to San Francisco and the shingles went east.

Cross-examination by Mr. COTTON:

Q. The O. R. & N. didn't own the Cowlitz River boats?

A. No, sir.

Q. Boats also landed there from Vancouver and other places, did they not?

A. Yes, sir.

Q. On which side of the river were you?

A. On the Ainsworth Dock.

Q. You say three days' sailings. When was that?

A. It seems to me there were three days' sailings in 1895 or 1896—in there some place.

Q. 1895 and 1896?

A. 1896, it seems to me; I am not positive of dates.

Q. You spoke about the "Columbia," the "Oregon," the "Elder" and the "State of California" running. They did not all run at the same time?

A. At times they did, yes, sir.

Q. The two regular steamers were what?

A. The "State of California" and the "Columbia."

Q. And these other boats were used only to help out?

4572 A. Principally to help out, yes, sir.

Q. How long did you remain on the dock?

A. I was there until 1901, and I was gone two or three years, and came back again.

Q. From 1896 down to the time you left, the sailings were about five days?

A. The five days' service was the longest of any.

Q. Was there any four days' service or shorter, from 1897 down to date?

A. Yes, sir.

Q. When?

A. 1897?

Q. Yes.

A. I don't remember when it was. There were several changes there. They attempted to change the service several times while I was there, but I don't know whether——

Q. Do you think there was any shorter service any time from 1897 down to date than five days?

A. I think there was one time.

Q. What was that?

A. I think there was a four days' service attempted there at one time with three boats.

Q. You say it was attempted?

A. Yes, it was not a success.

Q. Why not?

A. The difference in the speed of the boats.

Q. Do you know how long it lasted?

A. I don't think it lasted over four to six months, if I remember rightly.

Q. You don't know quite when that was?

A. I don't know quite when it was, either.

By Mr. SEVERANCE:

Q. Has this country grown any since 1897?

A. Yes, sir.

Q. Have population and traffic both increased?

A. Yes, sir.

4573 Q. What is the difference in the size of Portland now and what it was in 1897? Now, remember that you are under oath, although you are a real estate agent.

A. I suppose a hundred thousand more people here.

Q. Is that all?

(The witness laughs.)

Q. And has the territory tributary to Portland increased during that time?

A. Yes, sir.

Q. How is the amount of traffic moving one way or another now as compared with 1897?

A. I think there is a much larger volume of traffic moving, from my observation.

Q. Both between here and San Francisco and in every other direction?

A. I think so—in every direction.

Q. And still the boats now run every seven days, and then they ran every three or four days?

A. Yes, sir.

By Mr. COTTON:

Q. How does the steamship business out of this port compare now with that of former days, that is, the desire to patronize the line and the general notice to which the line is brought to the public? Do you think the public seek the line now, since the loss of the "Columbia," as much as they did before—that is, by ocean?

A. I have been away from the dock, you see, for nearly two years now, Mr. Cotton; I don't know.

Q. For a long time this line was operated without the loss of any vessel or any serious accident. Wasn't it a notorious fact that that line had never lost the life of a passenger?

A. Yes, sir.

Q. Then they had a bad accident with the "Columbia" here sometime ago?

A. Yes, sir.

4574 Q. How long ago was that?

A. That was about two years ago.

Q. And you don't know what effect that had on the coastwise steamship travel?

A. I don't know.
Q. They also lost the "St. Paul," didn't they?
A. Yes, sir, the "St. Paul."
Q. Prior to that the line had been operated without the loss of a vessel?
A. Without the loss of a vessel, I believe.
Q. For how many years, do you know—that is, according to reputation?
A. About twenty years.

4575 P. F. DuFLON,

being duly sworn as a witness on behalf of the Complainant, testified as follows:

Direct examination by Mr. SEVERANCE:

Q. Where is your home, Mr. DuFlon?
A. Portland.
Q. What is your business?
A. I am representing several grain houses—not grain houses but jute houses, Calcutta and San Francisco.
Q. Were you ever in the steamboat business here?
A. Yes.
Q. When?
A. I think it was in 1892.
Q. For how long?
A. Four or five years.
Q. What was the name of your company?
A. The original one was called the George Dietrich Steamship Company.
Q. What was the next one?
A. That went out of business and then it was succeeded to a certain extent—I suppose they took over the contract or took over the steamer (I was the only one that remained in it) of the North Pacific Steamship Company; and then they dropped out and it was succeeded by the California & Oregon Coast Steamship Company. That is the time I quit it.
Q. What year was that?
A. Well, I don't remember. These dates are all very hazy in my mind; I have not thought of it for a great many years, but I think it was in 1894, 1895, or 1896; I couldn't tell you very well.
Q. Where did those boats run?
A. They originally started running boats from San Francisco up here, soliciting freight north.
Q. What is that?
4576 A. Soliciting general freight from San Francisco to Portland, and I had a contract with the lumber mills to load back lumber. That was the inception of the idea, originally.

Q. Then what happened afterwards?

A. Well, a great many things happened. The lumber market kind of slumped, we couldn't get our return cargoes of lumber; some of the owners of the boat wouldn't stand for it—the losses were very heavy—and began soliciting general freight both ways. And then—let me see what did happen afterwards——

Q. Did you carry passengers as well as freight?

A. We didn't solicit passengers. They were a nuisance. We could make more money out of the freight.

Q. More money out of the log?

A. More money out of the log. That is, going back to San Francisco. At that time we didn't want any passengers. We went in from Portland to Tillamook and there loaded spruce lumber for San Francisco. These boats originally were owned by the Truckee Lumber Company, and then we had another boat, called the "Homer." I owned a portion of that boat. We lost our lumber contracts and had to solicit down-freight. And then the money was lost—kept on losing it, and the Dietrichs got out, were forced out, and to try to save myself I made another connection—a little worse than the one before, and we started out, and I was bucking a pretty hard proposition all the way through, but I managed to get along somehow or other. I got to a certain point one time where I had to buy cordwood to get down-freight.

Q. Do you remember a time when this rate war, that has
4577 been testified to, was going on?

A. You mean the dollar a ton?

Q. Yes.

A. Oh, yes, I remember that very well indeed.

Q. Did your line participate in that scrimmage?

A. We met the rate, met it at a dollar a ton. They said we cut the rate on lumber down to a dollar a thousand. That was done also. Spruce lumber.

Q. How long did that war of rates continue?

A. That lasted quite a little while; how long I don't remember exactly, I forget what time it was, but at that time, as I tell you, the Dietrichs had gone out, and Mr. Doe was then trying to run the "Alice Blanchard" and a tub called the "Empire City"—both of them tubs, horrible things, and he was up at that time and I proposed that we see Mr. Woodworth. I could always get along better with Mr. Woodworth than I could with Mr. Campbell.

Q. Was that Mr. James Woodworth?

A. Yes, sir.

Q. Of the O. R. & N.?

A. Yes, he was of the O. R. & N.

Q. He is now with the Northern Pacific?

A. We had a conference, and the trouble was fixed up then in reference to this contract that Mr. Baumgartner spoke to you about.

Q. Was that the same company with which you were connected?

A. No, that wasn't, this was called the North Pacific Steamship Company.

Q. That is what I thought. Did you make a contract also?

A. No, that was the contract that the California & Oregon Coast Company succeeded to. At the time of the Alaska excitement,
4578 Mr. Doe—I took his boats, the control of them and sent them to Alaska because he could make more money out of them. That left me flat without any boats. Mr. Mitchell was alive in those days—Gray & Mitchell the firm was—Mr. Mitchell was alive and he had the "Alliance." I had the loading up of lumber and freight and bringing up combustibles at that time. He came in and took that contract. The same was made with the North Pacific Steamship Company, with the "Alliance" and the other boats that were running, and I was the one that made that contract.

Q. Now, when you were running this steamship line did you bring up freight from San Francisco that was destined to points beyond Portland?

A. Oh, yes; sometimes, but not very much.

Q. To what points beyond Portland?

A. To points on the North Pacific I could bring up a good deal of freight from San Francisco, but I had to start at Kalama and load it on the Northern Pacific because any freight I brought up on the line of the O. R. & N. they wouldn't accept unless it was prepaid to destination.

Q. The Northern Pacific took freight for what points from you?

A. For points all over their line.

Q. From San Francisco?

A. No; I delivered them the freight at Kalama.

Q. But, I say, freight delivered at San Francisco as far as you were concerned——

A. Yes.

Q. —was delivered to the Northern Pacific and went forward to what points?

A. Spokane, Walla Walla, Pendleton; those are the points
4579 I happen to remember at the present time.

Q. Did any go to Montana points?

A. No, none of it ever went to Montana points.

Q. How long were you delivering business to the Northern Pacific from San Francisco for these points on their line?

A. I think about until such time as we made our agreement with the O. R. & N.

Q. What is that?

A. Until we made our contract with the O. R. & N.

Q. When you made your contract with the O. R. & N., what happened, if anything, to that business which you had been doing in connection with the Northern Pacific?

A. We didn't want it any more.

Q. You didn't want it any more? You retired from it?

A. Yes, sir.

Q. Did any business ever move to San Francisco, from points in the east, over your boat line?

A. How far east do you mean?

Q. Anywhere east of the Missouri River or east of St. Paul.

A. Only once.

Q. How was that?

A. I don't know how that was. The freight was evidently solicited by some agent in Cincinnati or Pittsburg and that was brought over I think by the Northern Pacific. I didn't know anything about it until it came to my hands. I was to ship it down by one of our boats, which was I think probably eight or ten days late in the schedule—didn't have any schedule but it was late in coming up, and I had the stuff stored here and I got a telegram from
4580 San Francisco to ship it on the Oregon. I thought they had made a mistake in the cipher, couldn't possibly want me to ship it down by the O. R. & N. boats, you know, and I didn't pay any attention to it, and I got another one after the "Oregon" had gone. I think it went by the O. R. & N. boat ultimately. My boat was anywhere from five to ten days late. I might get freight in Portland and none in San Francisco, and vice versa. Never could tell anything about it.

Q. What about business from points along the line of the Northern Pacific? Did you take business for San Francisco from points along the line?

A. No, not often. No, we didn't after that, because the Northern Pacific would rather take that business and put it to Tacoma, you know.

Q. And send it by the other steamship line?

A. Yes; they would rather do that. We have had some of that business—very little. It didn't pay. It displaced lumber, and lumber was probably more valuable.

Q. Do you know anything about whether in those days the O. R. & N. made contracts with large shippers?

A. Oh, yes.

Q. To handle all their business?

A. Yes, they always did.

Q. I mean between San Francisco and Portland.

A. Oh, yes. That was perfectly open.

Q. How is that?

A. That was always open; everybody knew of it—should have known it if they didn't.

Q. How is that?

A. They should have known it if they didn't, if they were in business.

Q. At what rates did they make those contracts?

4581 A. I couldn't tell you that, because those were private rates. They had their different classifications, 75 cents I think first class, or 65 or 55—correct me, Mr. Skinner, or Mr. Coman—I have

forgotten those things now; those were their first class rates. And then they had contracts with different shippers at less rates than that.

Q. What classes of traffic moved up and down by boat?

A. Up, pretty much all kinds; down, not so very much. I used to take a good deal of grain—took a great deal of potatoes at one time.

Q. Take the up-business from San Francisco——

A. I got a little of everything.

Q. I was going to say: Was there any difference in the character of the commodities carried by boat and by rail?

A. I didn't pay very much attention to the rail at that time?

Q. You didn't keep in touch with that?

A. I didn't keep in touch with it at all.

Q. But on the boats most all kinds of commodities were carried.

A. Most all kinds. I suppose the principal commodities were salt and sugar; they were a very large business; California canned goods, leather. But you must remember this is a good many years, and I haven't paid any attention to this business for fifteen or sixteen years, consequently these things are very hazy in my mind.

Cross-examination by Mr. COTTON:

Q. When was this period about which you are testify-
4582 ing—about what date?

A. Oh, I was just saying I couldn't exactly remember. I think it was 1892, tracing back.

Q. 1892, 1893, 1894, and 1895?

A. '5 and maybe '6.

Q. And '6?

A. Yes. I don't remember particularly.

Q. At that time were there many steam schooners operating between here and San Francisco?

A. When I first started in?

Q. Yes,

A. No; very few.

Q. There were just a few old boats, like the "Alliance," and one or two others.

A. The "Alliance" wasn't built at that time. She was regarded as one of the best boats they had. The boats I had were the "Truckee," an old boat; the "National City" was a very old one. I was trying to remember the different names of them, but they were all old; they are all out of date now. They would carry anywhere from 250 to 300 thousand feet of lumber; probably 350 was a big load.

Q. And the schooners that are now operating carry about how much?

A. I read in the paper they carry from 750,000 to a million feet.

Q. What about the schooners now as compared in number with the schooners then?

A. As I understand it, they have trebled and quadrupled the number. There is any quantity more now than then. You see the only knowledge I have of these things is occasionally reading the shipping news.

Q. You have always been interested in shipping?

A. Yes.

Q. You have a general knowledge?

A. Yes.

Q. I am not asking for specific knowledge. Now, you made
4583 this first subsidy contract; that originated with you?

A. Originally, yes.

Q. And they guaranteed they would furnish so much space or else pay you for it?

A. Yes, as I remember, it was four boats a month; not to exceed four boats a month, with a guaranty of $300 per trip.

Q. And they could take the space if they could find any use for it?

A. Yes, they had the privilege of taking the space.

Q. That related to what business?

A. Up-freight only.

Q. You provided your own loading going down?

A. Yes.

Q. And that was due to the fact that the up-freight was very light in quantity, wasn't it?

A. No, not particularly; due to the fact that you were taking freight that would get anywhere from 50 to 60 a hundred—you were taking it at a dollar a ton—5 cents a hundred. It was better for all hands to get some decent kind of a tariff out of it, although, if I remember rightly Mr. Campbell had an average made of it, what it amounted to per ton, up-freight, and it didn't come very heavy, taking into consideration all the low class freight you had to take.

Q. Before that and after that there really wasn't any profit in the business particularly, from your operations?

A. No.

Q. It was a losing venture practically all the time you were engaged in that business?

A. All the time, except one time when you made that dollar rate on spruce lumber; I shipped my lumber on your boats for a
4584 dollar. That was the only time I made any money. Did it under another name.

Q. That was during the whole of your operations?

A. I think that was the only money I made, Mr. Cotton. That was personal—not the company.

Q. The steamship business in those days wasn't particularly attractive to anybody?

A. Not at all; no, sir.

Q. And the opposition which you had in the passenger business was absolutely nothing. The best boat that you had was the "Alliance." Was she the "Alliance" that was built by young Harry Corbett?

A. The "Alliance" was built by Gray & Mitchell.

Q. Corbett built the "Willapa?"

A. I don't know.

Q. How big was the "Alliance?"

A. I have forgotten now—they have changed the "Alliance" so often. She was originally a steam schooner with a deck, and they changed her to a boat for that Coos Bay freight. I think she would carry about 600 tons, if I remember.

Q. I remember at one time that Harry Corbett built an "Alliance." Gray & Mitchell built this "Alliance."

A. The "Willapa"—that was George Strong, wasn't it, or Fred Strong?

Q. Wasn't she here then and operated?

A. She used to operate between here and Coos Bay. That was before I went into the business. I remember the "Willapa." I haven't thought of her for years, but I remember something about her. I have forgotten who had her.

Q. Now, this "Alliance," what kind of passenger accommodation did she have?

4585 A. Her passenger accommodations were all up. She had very good accommodations as compared with some schooners.

Q. How many passengers did she carry?

A. About 60 or 70.

Q. Did she carry any between here and San Francisco?

A. No, it didn't pay.

Q. And never engaged in the passenger business?

A. Yes, she was engaged in the passenger business, but it wasn't worth while to solicit passenger business.

Q. The O. R. & N. didn't operate boats to Coos Bay?

A. Not at that time.

Q. Did they at any time, to your knowledge?

A. During the time I was in the business?

Q. Yes.

A. No, not to my knowledge.

Q. Have you known anything about the business since you quit in 1896?

A. No, I have tried to forget it as fast as I possibly could.

4586 J. ALLEN HARRISON,

being duly sworn as a witness on behalf of the Complainant, testified as follows:

Direct examination by Mr. SEVERANCE:

Q. Mr. Harrison, where do you live?

A. In Portland.

Q. And what is your business?

A. I am assistant superintendent of the Vancouver & Lewis River Transportation Company.

Q. Where do your boats ply?

A. One boat to Astoria and one on the Lewis and Lake rivers, and one to Vancouver, Washington.

Q. How long have you been in the boat business here?

A. Located in Portland here since August, 1896.

Q. What kind of traffic do you bring in from Astoria?

A. We bring in salmon, very little of that; general merchandise, junk, fish, and shingles.

Q. When you brought in salmon from Astoria, to whom did you deliver it?

A. We delivered it to whomever the shipper directed—to the O. R. & N., or to the Northern Pacific.

Q. And sometimes to the Southern Pacific?

A. Very little, I think, to the Southern Pacific, as I remember.

Q. And that was all routed by the shipper, was it?

A. Yes, sir; routed by the shipper.

Q. You had nothing to do but to transport it?

A. Transport it; that is all.

Q. And who was the shipper of the salmon, usually—the canneries?

A. The canneries at Astoria, yes; and way points.

4587 Q. Did you have any facilities for knowing anything about the solicitation of that freight by various railroads at Astoria, or did you know anything about that?

A. Nothing particular. I know they had solicitors along the river.

Q. All the lines?

A. Yes. I don't know whether the Southern Pacific ever had any solicitors along there or not, but I know the Northern Pacific and the O. R. & N. had.

Q. At Astoria?

A. Yes; and along the way.

Q. Did the O. R. & N. boats bring any of the same kind of traffic from Astoria?

A. Yes, sir.

Q. They stopped there?

A. Yes.

Q. San Francisco boats?

A. Not the San Francisco boats. I mean the local Astoria and Portland boats.

Q. Did the O. R. & N. boats to San Francisco stop at Astoria?

A. Yes, sir.

Q. Did they take on that kind of cargo there or not?

A. I couldn't say as to that.

Q. Previous to the consolidation of the O. R. & N. with the Southern Pacific, do you know anything about any boats on the Yamhill River?

A. Yes, sir; I know there were some boats running on the Yamhill River.

Q. What company ran those boats?

A. I am not sure, but I think perhaps the O. R. & N. might have had a boat there; and Hosford, I think, ran a boat in there, and Captain Geer ran a boat. I think that was before the consolidation.

Q. Do you happen to know whether the O. R. & N. boats are now on the Yamhill River?

4588 A. I don't think they have any boat there now.

Q. Do you know anything about the class of traffic they brought in from there?

A. Potatoes, hops, wheat, and general farm products.

Q. The same as from the Willamette River?

A. Yes, sir, practically the same.

Q. Did you work any business in connection with the Northern Pacific for the east? If so, when and what classes?

A. Did we work any, you mean?

Q. Yes, in connection with the Northern Pacific road.

A. I think somewhere about in the spring of 1903 we became the connecting line with the Northern Pacific at Kalama. Of course then their shipments moved by us, coming from the east for down-river points; and also, when freight was consigned by them, we delivered it at Kalama.

Q. Did the O. R. & N. boats still continue on the river, taking up traffic of the same kind that you had?

A. On the lower river, you mean?

Q. Yes.

A. Yes, sir.

Q. And their business was turned over to their own company?

A. Yes, sir, I think so.

Cross-examination by Mr. COTTON:

Q. The Vancouver Transportation Company has been operating boats on the Columbia and the Willamette Rivers between Portland and Astoria for how many years, about?

A. I don't know exactly. I know they have been operating boats since about 1892; that is when I first came to the coast.

4589 Q. Do you do business in connection with the O. R. & N.?

A. Yes, sir.

Q. That is, business going out over their line?

A. Yes, sir, any business that is routed by them.

Q. The O. R. & N. are still operating boats between Astoria and here?

A. Yes, sir.

Q. And you are still operating boats?

A. Yes, sir.

Q. And you send your freight out over the O. R. & N. or Northern Pacific, just as it may be consigned?

A. Yes, sir, any way, or even by the steamship line; any way it may be routed.

Q. No restriction of any kind placed on your business?

A. No, sir, none whatever.

Q. And the O. R. & N. boats are still operating on the lower Columbia River?

A. Yes, sir.

4590 H. HOLMAN,

being duly sworn as a witness on behalf of the Complainant, testified as follows:

Direct examination by Mr. SEVERANCE:

Q. Mr. Holman, what is your business?

A. Operating a little passenger steamer on the Columbia River.

Q. How long have you been in the steamboat business here?

A. The last time, 22 years.

Q. Were you connected with the line known as the Kellogg line?

A. I was their agent and managed their business for 21 years, until the first of February.

Q. Where did that line of boats run?

A. Ran up the Cowlitz River, about eighty miles from here.

Q. At the present time what are the boats that you are running?

A. They are small passenger boats; they carry no freight; little rural boats, milk boats.

Q. What time did you cease your connection with the Kellogg line?

A. I am still a stockholder in the company, but I ceased active operation with them the 1st of February this year.

Q. You have been connected with them 21 years?

A. Since December, 1887.

Q. How many boats did you have?

A. Two.

Q. What kind of traffic did those boats handle?

A. We ran into rural communities. We carried supplies for the logging camps, merchandise for the general stores in the little country villages, and we brought back oats and hay and shingles and potatoes and some few hops in season.

4591 Q. Did you work in connection with any particular railroad line?

A. We had no joint traffic with any line. The potatoes we brought down, most of them went to San Francisco over the O. R. & N. They were bought by the dealers here in Portland and forwarded to San Francisco. We collected our freight of the dealer, and as an accommodation to them we delivered the freight on the Ainsworth dock, to save them cartage.

Q. Is the Cowlitz a tributary of the Columbia?

A. Yes, sir. It flows into the Columbia about 46 miles west of here, and we can navigate it eight months in the year, and about 45 miles up there.

Q. The shingles that you brought in, where did they move?

A. What did not go to the local trade here in town were shipped east. They were shipped down by Salt Lake and Denver.

Q. Over what routes?

A. The O. R. & N. or the Southern Pacific, whichever the shipper desired.

Q. They moved both ways, did they?

A. Yes; the brokers in town here handled them. They would order their cars and give the routing to the railroad people themselves, and they would be set into Mr. Kelly's dock down here, the gentleman who just testified; we would land them at the dock.

Q. And these would go to Salt Lake?

A. Down into that territory. Some went via the O. R. & N. and some via the Southern Pacific. We had nothing to with that part of it. That was done by the shingle broker here.

Q. Except you knew how they moved?

4592 A. Yes, we knew the cars we loaded; that is all.

Q. Do you know whether any went to Denver?

A. Yes, we loaded several for Denver.

Q. Which road did they take out of here?

A. They went via both roads, I think; I can't remember. The routing was furnished by the broker here.

Q. You were familiar with the routing at the time?

A. At the time, yes; in fact, they used to give it to me sometimes because I knew when the boat was going to arrive.

Q. Now, about the hops that you brought in: Where were they delivered?

A. They were shipped to the hop dealers here. I think there was a firm by the name of Russell, and some came to Balfour Guthrie; some were loaded on the Ainsworth Dock; some were loaded on our dock and hauled to storage; some were loaded in the Southern Pacific warehouse, on the east side, and stored.

Q. The Southern Pacific warehouse is along their track?

A. Well, they weren't using it then, and it was detached and vacant, and I think the Southern Pacific rented them storage room there. They were held there two or three months. It would depend on the hop market, about shipping them.

Q. Do you know how those hops moved out of here?

A. I couldn't tell you a thing about it. Our service ceased when they were ashore and we collected our freight from the broker.

Q. Has your line ever delivered business to the Northern Pacific, either here or at Kalama?

A. No; in fact the Northern Pacific paralleled our route on
4593 the Cowlitz, and we hustled to get business away from them.

(No cross-examination.)

## NICOLAI PAULSEN,

being duly sworn as a witness on behalf of the Complainant, testified as follows:

Direct examination by Mr. SEVERANCE:

Q. Mr. Paulsen, where do you live?
A. Portland.
Q. What is your business now?
A. I am working for Allen & Lewis, wholesale grocers.
Q. Have you ever been in the railroad service?
A. Yes, sir.
Q. When?
A. Until March, 1907, with the O. R. & N. Company.
Q. For quite a number of years?
A. Since 1897—ten years.
Q. What positions?
A. Various positions in the local freight office. The last position I had was chief clerk on the Ainsworth dock.
Q. You were on the dock?
A. Yes, sir.
Q. Do you remember how frequent the service was by boat to San Francisco when you went to work at the dock?
A. We had a regular five day schedule and occasionally an extra steamer. The "Oregon" would occasionally run, and the "Elder" was off of the service at that time; the "Elder" was in the Alaska service.

Q. It appears by the testimony that the service is now 4594 weekly. How long has that been so?

A. As far as my knowledge is concerned about a year or a little bit longer than a year. Since I left the dock they have put a weekly service in.
Q. I didn't catch that.
A. Since I left the dock they have put in a weekly service, within the last two years.
Q. Do you remember a time when they had very cheap rates in, boat and rail, between here and San Francisco?
A. We had a dollar a ton rate at one time.
Q. On what kind of commodity?
A. I remember particularly sugar. I don't remember any other commodity particularly. Perhaps salt was included. We had a two dollar rate—that was a special commodity rate—on paints and oils for one firm in this city.
Q. How is that?
A. We had a two dollar rate on paint and oil for one particular firm in this city. I don't believe that was a published tariff.
Q. Now, about the ordinary cargoes that those boats carried to San Francisco: What did they consist of?

A. Mostly potatoes and flour, which came into Portland off the lines of the O. R. & N.

Q. Some grain?

A. Yes; not so much grain as, you might say, mill feed; some wheat.

Q. Were there any mill products, any wood products, carried by boats?

A. We occasionally had shipments of lumber of a certain kind, certain hardwood lumber, that came down from up in the Willamette Valley. I don't know just where it came from. I
4595 don't know what it was used for.

Q. What about manufactured articles, like sash, doors, blinds and that sort of thing? Did they ever move to San Francisco? Box shooks?

A. A good many box shooks moved at that time. They also originated on the lines of the O. R. & N., at Bridal Veil and up near Baker City; I think Haines, some place up in there.

Q. Did they originate at Portland also?

A. Yes, sir. There were box shooks factories in Portland.

Q. Do you know anything about the products coming down the Willamette on the boats and going east?

A. Hops, particularly.

Q. Since the boat line of the O. R. & N. was taken off the river, do you know how those hops usually move east now?

A. I don't know how they move east, no. I don't know how they get them here at all. Of course, since two years ago, since I left the service——

Q. Oh yes, you are out of it.

Cross-examination by Mr. COTTON:

Q. When did you say you were in the service?

A. From 1897 to 1907.

Q. When was this low rate of freight, during what period?

A. That was about in 1901, I think. We had a special rate there on sugar.

Q. I am talking about this $1 a ton.

A. That is on sugar. We had a five cent rate on sugar at
4596 that time. At that time I was revising clerk on the Ainsworth Dock, and if my memory serves me right we had a rate of five cents.

Q. You don't know anything about the condition of the service at the present time, I mean since you left the dock, or what the boats are doing?

A. Of course I am looking after freight matters for my present employers, and naturally I know somewhat about it.

Q. They are jobbers here?

A. They are jobbers.

Q. Ship both rail and water between here and San Francisco?

A. Mostly water, because the rates are unequal against the——

Q. But they ship both ways?

A. Of course if we can't get out of it we bring it up on the Southern Pacific, but rates are cheaper on the water now, with the competition we have.

Q. Is the competition greater now than it was when you were in the business?

A. It is to a certain extent: yes.

Q. What do you mean by "to a certain extent?"

A. They have the established line; the North Pacific Steamship Company has regular sailings, and the outside schooners under the George J. Richardson people.

Q. And then the O. R. & N. boat?

A. And then the O. R. & N. boat, yes; the S. F. & P. boats——

Mr. SEVERANCE. They don't run under that name now—the O. R. & N.?

A. The S. F. & P.: they are usually known as the O. R. & N. boats even yet.

Q. To San Francisco and Portland. So you have two regular lines and a whole lot of steam schooners?

4597 A. Yes: there is quite a number of steam schooners.

Q. The competition by water is greater now than it ever has been, is it not?

A. Of course I couldn't say as to whether it is greater than it has ever been. There is considerable competition at this time.

Q. It is greater than you have ever known it since 1897?

A. At that time I didn't pay particular attention to the competition that was against the O. R. & N.; I was simply there on the dock, looking after their business; and, of course, the men in the traffic department or the general freight office looked after the competition.

Q. You knew in a general way what boats were running out of the ports?

A. Yes: naturally.

Q. There was no regular line running then in opposition, was there?

A. The only line that was regular was the California & Oregon Coast, and they never brought any San Francisco cargo up. They would bring the products from——

Q. And how are steamers operated now by this regular line compared with the steamers of the California & Oregon Coast?

A. I don't understand that.

Q. I mean in character.

A. Of the regular line and the California & Oregon Coast?

Q. Yes: that is, the present regular boats.

A. The S. F. & P. boats, you mean?

Q. No: the North Pacific.

A. They have the "Roanoke" at present, and the "Elder" is laid up. They are practically the same steamers, or better steamers than the California & Oregon Coast had.

4598 Q. Very much better?

A. Yes, sir.

Q. No comparison between them at all?

A. The California & Oregon Coast steamers are still running.

Q. Those are very much better boats now—the "Roanoke" and these other two boats—than the "Alliance," aren't they?

A. In my judgment, yes.

Q. And so far as passenger accommodations are concerned, they carry passengers as a regular thing?

A. Yes, sir.

Q. And have good passenger accommodations?

A. I believe so; I have never had practical experience.

Q. That is their reputation?

A. Yes; they are fairly good, as I understand it.

Q. And their freight-carrying capacity is larger?

A. Yes.

Q. They have a freight-soliciting agent here who solicits your business—has an office?

A. No; they have an office at Third street, but they have no solicitor on the street.

Q. Do you inquire about their rates, or do you have charge of the shipping?

A. I know their rates; yes.

Q. Do you keep posted as to their rates?

A. Yes, sir; we usually ask them for a rate if we have anything to move.

Q. And they run regular boats?

A. Yes.

Q. They aim to run on a regular schedule and keep to the schedule quite regularly?

A. Yes, sir.

Q. In other words, they are a real, solid, substantial steamship line running between here and San Francisco?

A. Yes.

4599 Q. And in addition to that there is quite a large number of schooners which bring freight up.

A. They bring freight up and take lumber down, I believe.

Q. And you know where to ascertain the rates on these schooners, do you?

A. We do.

Q. And do inquire from time to time what rates they are making?

A. Yes, sir.

Q. And ship some by them?

A. Considerable; yes, sir.

An adjournment was then taken until the morning of Wednesday, May 5, 1909, at 10.30 o'clock.

4600 CONVENTION HALL, COMMERCIAL CLUB BLDG.,
*Portland, Ore., Wednesday, May 5, 1909, 10.30 a. m.*

The hearing was resumed before the Special Examiner, Hon. Sylvester G. Williams.

Present: On behalf of the Complainant, Mr. C. A. Severance. On behalf of the Defendants, Mr. R. S. Lovett, Mr. W. W. Cotton.

## SAMUEL ELMORE,

being duly sworn as a witness on behalf of the Complainant, testified as follows:

Direct-examination by Mr. SEVERANCE:

Q. Where do you live, Mr. Elmore?
A. Astoria, Oregon.
Q. What is your business?
A. I am a salmon canner.
Q. How long have you been a salmon canner?
A. 28 years.
Q. To what parts of the country do you ship your product?
A. All over the United States.
Q. Have you also shipped abroad at times?
A. Yes, sir.
Q. Do you recall the times previous to the consolidation of the management of the O. R. & N. and the Southern Pacific lines? I don't mean the date, but you remember the circumstance that they used to be separate?
A. Yes, sir.
Q. At that time did various lines of road leading to the east have soliciting agents who came after the traffic?
A. Yes, sir.
Q. Which company solicited your business?
4601 A. All the coast companies, and practically all the connecting lines east.
Q. Speaking of the trans-continental lines, which ones had agents soliciting your business?
A. The Northern, Great Northern, the Southern, Union Pacific.
Q. The Northern Pacific?
A. The Northern Pacific, yes, sir. I thought I mentioned that.
Q. You said the Northern, and I thought you meant the Great Northern.
A. No, the Northern Pacific and the Great Northern, both.
Q. How did your traffic in those days move to the Alantic seaboard territory?
A. Over all the routes; not very much by the Sunset.
Q. Did some of it go that way?
A. Some of it went that way.

Q. Did some of it go by the Southern Pacific and Ogden or Rio Grande?

A. Yes; the southern shipments used to go that way, or they went to Cheyenne and then over to Denver, out that way—Kansas City.

Q. Did they go both ways?

A. Yes.

Q. Both by the Shasta Route, the Rio Grande, the Union Pacific and the Short Line?

A. Yes.

Q. How did the Northern Pacific shipments move out of Portland?

A. They went to Tacoma, Seattle, sometimes connected with the Great Northern, sometimes direct to St. Paul.

Q. How did the Great Northern traffic move?

A. That goes through the Minnesota Transfer.

Q. How did it get out of Portland to the Great Northern?

A. Usually the O. R. & N.

Q. How does your business and how did your business in
4602 those days compare in size with that of other men in the same line along this coast here?

A. For a good many years I guess I have been equally as large a shipper as any of them.

Q. As a matter of fact, you have been the largest, haven't you, Mr. Elmore?

A. For Columbia River salmon, I guess that is so.

Q. Can you give an estimate of your annual output?

A. My own personal business and my connections with other concerns, I suppose, 250,000 cases.

Q. What is a case of salmon?

A. 48 pounds of 1-pound tall cans is considered a case of salmon.

Q. In what class does that move?

A. Well, it is a canned salmon rate.

Q. Oh, there is a commodity rate?

A. Yes, a commodity rate.

Q. And what has been the rate to the Atlantic seaboard?

A. Sometimes $1, sometimes 75 cents, and now it is 85.

Q. When was it made 85?

A. After the Interstate Commerce Commission fixed it up.

Q. When did they fix it up?

A. I don't know. They have been fixing all the rates, haven't they, for the last——

Q. How long ago, I mean, was the 85-cent rate?

A. I can't remember exactly.

Q. Several years ago?

A. Several years ago.

Mr. COTTON. 75 or 85?

Mr. SEVERANCE. 85. He said it had been $1, then 75 cents, and now 85 cents.

Q. How does your salmon reach the railroads from Astoria? How did it previous to the time the railroad ran to Astoria?
4603 A. By boat. The O. R. & N. Company had a line; the Vancouver Transportation Company had a line.

Q. And the railroads took it where—at Portland?

A. The Northern Pacific took it at Kalama, and the O. R. & N. at Portland.

Q. All the other lines at Portland?

A. Yes.

Q. How does it move now out of Astoria?

A. The bulk of it, on the Oregon side, moves by the A. & C. Railroad, and on the Washington side over the O. R. & N. and the Vancouver Transportation Company.

Cross-examination by Mr. COTTON:

Q. How does your business move now, Mr. Elmore?

A. Practically the same as it used to move, as it did in former days.

Mr. SEVERANCE. There was one question I forgot to ask, Mr. Cotton. Pardon me. As a rule, who has routed your business?

WITNESS. Some of our customers prefer to make their own routing. In the majority of cases we make our own routing.

Mr. SEVERANCE. And has it been your intention to divide your business?

WITNESS. Yes, sir. We have divided it pretty well. We have rather had a leaning toward the O. R. & N., because they are right
4604 closely allied with Astoria, until the A. & C. came on; since then they have had their share, that is all.

Mr. SEVERANCE. Astoria, by reason of their boat-line?

WITNESS. Their boat-line ran there direct, you know, and they were identified with the city.

Q. You say your business moves over all routes now, about as it did before?

A. About as it did before. I suppose you have reference now to the Sunset Route?

Q. Yes.

A. Well, we only shipped at odd times. It was not the favorite line to ship over.

Q. The lines that you preferred were the Great Northern, Northern Pacific and Union Pacific?

A. Yes, sir; the Canadian Pacific too.

Q. Why did you prefer these routes—on account of their being more direct?

A. More direct.

Q. You ship out over the Astoria & Columbia River and the O. R. & N. boat-lines?

A. Yes, sir.

Q. You ship stuff over the Astoria & Columbia River and the Union Pacific system, too, don't you?

A. Yes, sir.

Q. The Astoria & Columbia River is supposed to be owned and controlled in the interests of the Northern Pacific at the present time?

A. Yes, sir; the Great Northern.

Q. The Great Northern. You can ship freight, however, over the Astoria & Columbia River and the Union Pacific system, east?

A. Yes, sir.

Q. That is, your salmon?

A. Yes.

Q. You haven't noticed any change or effect in your business since 1901, as the result of anything that has been done, restraining your method of shipment in any way?

A. No, sir.

4605 FREDERICK N. KOLLOCK.

being duly sworn as a witness on behalf of the Complainant, testified as follows:

Direct-examination by Mr. SEVERANCE:

Q. Where do you live, Mr. Kollock?

A. Portland, Oregon.

Q. What is your business?

A. I am solicitor for the Pennsylvania Railroad.

Q. How long have you been here?

A. 16 years.

Q. In the same position?

A. Yes, sir.

Q. Representing the Pennsylvania Railroad?

A. Yes, sir.

Q. What classes of business have you solicited for that road?

A. Freight and passenger.

Q. For all points in the east?

A. All points in the east, yes, sir.

Q. Anywhere that your line reached?

A. Certainly.

Q. What territory have you had under your supervision?

A. When I first came here I had the whole Pacific northwest, that is, Oregon and Washington and Idaho and Montana and British Columbia; now I have Oregon and Idaho only.

Q. Has it been your practice to solicit business in the Willamette Valley?

A. Yes, sir.

Q. What classes of traffic?

A. Hops, lumber, prunes—freight; all kinds of passengers that had any money.

Q. You haven't solicited free passengers?

A. Oh, no.

Q. Not lately, I suppose?

A. Not lately—not on our road.

Q. Previous to the union of the Southern Pacific and the O. R. & N. and its connections, did you meet with the agents of
4606 the Southern Pacific and the O. R. & N. in the Willamette Valley in the solicitation of freight?

A. Yes, sir.

Q. Who represented, if you recall, the O. R. & N. in that territory? Did they have a traveling agent in the territory, or did they run out of Portland?

A. All the traveling agents came out of Portland, yes. I don't remember who they were now.

Q. And the Southern Pacific also had agents?

A. Yes, sir.

Q. In those days how were the Southern Pacific endeavoring to route their east-bound traffic?

A. Through the Sunset Route or the Sacramento route.

Q. And the O. R. & N. routed their business which way?

A. You refer to when the steamers were on the river?

Q. Yes.

A. They came into Portland of course, brought the product in here and gave it to the O. R. & N.

Q. Up to the time that these two lines were consolidated in interest, had that situation existed during all of your experience here?

A. I think it had.

Q. How far up the Willamette Valley? I think they call up the river down here.

A. Yes.

Q. How far down the valley or up the river did that competition exist?

A. It would be according to the stage of the water. In high water, steamers, I think, went up as far as Eugene.

Q. After the consolidation of the lines what was the fact as to this competition existing in the valley?

A. No competition after the consolidation.

Q. Any wool move out of that valley?

4607 A. Oh, yes, considerable.

Q. You didn't mention wool?

A. No; I never worked the wool. What I got that came out of the valley was generally controlled by parties in Portland.

Cross-examination by Mr. COTTON:

Q. How frequently was navigation open as far south as Eugene?

A. Well, that would be hard to tell, Mr. Cotton.

Q. Quite seldom, was it not?

A. Very seldom, yes sir. I don't think the boats went up beyond Albany except in exceptionally high water.

Q. In those days more or less traffic moved out by the Southern Pacific and the O. R. & N., did there not; that is, by the rail line of the Southern Pacific into Portland and then out?

A. Oh, yes.

Q. Competition was not confined then simply to the O. R. & N. boats?

A. Oh, no.

Q. How does that traffic move now?

A. Both ways.

Q. Moves by the Southern Pacific and O. R. & N., and then there is a boat-line on——

A. Yes, the boat-line does haul some business into Portland, certainly.

Q. And that is Mr. Graham's line?

A. Yes.

Q. And his boats are operated as far as Corvallis?

A. I think so.

Q. Any freight that you get up there now, that is tributary to the river, you can send down by the Graham boat and out by
4608 the O. R. & N. and Union Pacific, just as you formerly could?

A. Yes, sir; certainly.

Q. Or you could send it out by the Northern Pacific?

A. Oh, yes; yes, freight has moved that way.

Q. Then, in what respect have the traffic conditions changed?

A. Well, simply discontinuing the agencies of the Southern Pacific, I presume I might say: there are not two sets of agents.

Q. There are not two sets of agents?

A. That is about all that I can say.

Q. But otherwise the transportation in the movement of traffic is just about the same as it ever was?

A. I think so.

Q. And your facilities for getting business are substantially the same as they ever were?

A. Yes.

By Mr. LOVETT:

Q. Mr. Kollock, in securing traffic to or from the Atlantic seaboard over your line, which gateway do you prefer? Have you any preference?

A. We have none, sir. We could not show any partiality. We have two gateways—St. Louis and Chicago. We have got to be perfectly neutral.

Q. On account of your connections?

A. Certainly.

Q. The Pennsylvania System extends from New York westerly, with two gateways—one at St. Louis and one at Chicago?

A. Yes, sir.

By Mr. SEVERANCE:

Q. You stated in answer to Mr. Cotton that there was no change in the movement of traffic. You said the only change was that there is only one set of solicitors now.

4609 A. Well, I should think that would be about the only change—one set of solicitors now, and there were two then.

Q. The business solicited out of the valley now by this single set of solicitors is all solicited by way of the O. R. & N. to the east, isn't it, and not by the Sunset? Or is it solicited both ways?

A. No; it is solicited under the road; that is, send it whichever way the equipment is supplied and the general freight office decides. That is, a good many of the hops go through the Sunset gateway and some come up to Portland and go east over the other lines.

Q. Does any traffic now move by Sacramento?

A. I don't know about that. I couldn't say.

Q. You don't know of any, do you?

A. No.

Q. Well, the real change is that these two sets of solicitors who were working against each other, are all working together now? Isn't that the change?

A. Certainly.

4610 E. W. CRICHTON,

being duly sworn as a witness on behalf of the Complainant, testified as follows:

Direct examination by Mr. SEVERANCE:

Q. What is your business?

A. Secretary and treasurer of the Columbia River & Puget Sound Transportation Company.

Q. How long have you been with that company?

A. This company was organized in February, 1891.

Q. You have been with them ever since?

A. Yes, sir.

Q. Where do their boats run?

A. From 1891 to 1903 we had a line of boats on the Columbia River between Portland and Astoria; between 1901 and 1903 we had a line between Portland and The Dalles; and from 1892 up to the present time we have had a boat on Puget Sound between Seattle and Tacoma.

Q. That is the little boat that takes passengers across in a few minutes from one town to the other?

A. Yes; the "Flyer."

Q. Prior to 1901, did you participate in the salmon business, bringing it into Portland?

A. Yes, sir. From 1891 up until 1903, when we sold out, we carried salmon to Kalama for the Northern Pacific road. In 1894, December 8th, I think, we made a contract with the Southern Pacific and carried salmon for them up to the 13th of August, 1901.

Q. Where did you get this salmon that you carried for the Southern Pacific?

A. At Astoria and way points, canneries along the north bank of the river.

Q. And where did you deliver that to the Southern Pacific?

A. At Portland.

4611 Q. Did you deliver salmon to the O. R. & N. at that time?

A. No, sir; they carried their own salmon; they wouldn't allow us to touch their salmon.

Q. They had a boat line in competition with you on the river, hadn't they?

A. Yes.

Q. Where was this salmon destined that you delivered to the Southern Pacific?

A. For eastern points—Boston, New York, Philadelphia—and some to southern points—New Orleans, Memphis.

Q. And did it also move to Cincinnati and Pittsburg?

A. I think so; I think they took salmon for them for all points.

Q. For all points?

A. Yes; there was no restriction.

Q. What rate did you get on that salmon?

A. We got 6¼ cents a hundred pounds from the Southern Pacific—$1.25 a ton.

Q. For bringing it into Portland?

A. Yes, sir, into Portland. The railroad company absorbed that steamship charge.

Q. Now, you say that you worked in connection with the Northern Pacific at Kalama?

A. Yes, sir.

Q. Did you deliver any salmon to the Northern Pacific at Portland or only at Kalama?

A. Only at Kalama.

4612 Q. Did you deliver salmon to any company at Portland except the Southern Pacific?

A. We brought some pickled salmon here once or twice for the Northern Pacific, that went into cold storage, and shipped it out from here afterwards; that was all.

Q. But with that exception?

A. With that exception.

Q. And you say you made this contract in 1894?

A. Yes, sir.

Paper marked Complainant's Exhibit 161.

Q. I show you Complainant's Exhibit 161. What is that exhibit?

A. This is a letter received from Mr. C. H. Markham, the general freight and passenger agent of the Southern Pacific, notifying us that all arrangements would be cancelled on interchange of business between them and the Southern Pacific.

Mr. SEVERANCE. I offer Complainant's Exhibit 161 in evidence.

(It was agreed between counsel that this exhibit be copied into the record and the original returned to the witness.)

Complainant's Exhibit 161 is as follows:

4613 COMPLAINANT'S EXHIBIT 161. (Crichton.)

Subject: F—Discontinuance traffic relations. 2 TG. 169 B.

SOUTHERN PACIFIC
Sunset
Ogden & Shasta
Routes
COMPANY.

(2-7-01-5M.)

265 Washington Street,
Portland, Oregon.

Rates quoted by this company are for immediate use unless otherwise stated; when named on commodities in carloads will base on minimum weight of 60,000 lbs. but not to exceed full space or weight loading capacity of car, and not less than 30,000 lbs., exceptions noted, and are subject to change without notice except the printing and posting of tariffs as provided by law.

Load 10 percent above weight capacity marked on sides of cars when space permits.

TRAFFIC DEPARTMENT,
Oregon Lines.

C. H. MARKHAM,
*General Freight & Passenger Agent.*

In reply, please refer to N-7669 of August 13, 1901.

COLUMBIA RIVER & PUGET SOUND NAVIGATION CO.,
*Portland, Oregon.*

GENTLEMEN: Will you kindly accept this letter as notification of cancelation of all arrangements with this company for interchange of business originating at or destined to Columbia river points reached by your line.

Yours truly,

C. H. MARKHAM.

Q. Now, this letter is dated August 13, 1901?

A. Yes, sir.

4614 Q. And they canceled their arrangements with you on that date?

A. Yes, sir.

Q. After that time did you bring any salmon in here and deliver it to the Southern Pacific?

A. No.

Q. I notice this letter notifies you of the cancelation of all arrangements with the company for interchange of business originating at or destined to Columbia River points reached by your line. Did you take traffic from the Southern Pacific to Columbia River points before that time?

A. We carried tin-plate that came from the east to the canneries to make cans, until there was a can factory established in Astoria which made the cans, and after that we didn't carry very much; but before the cannery men bought their cans, they all bought the tin-

plate and manufactured the cans at the cannery, and we carried into the canneries every spring a good many carloads of this tin-plate out of which they made their cans.

Q. And from what company did you receive that tin-plate?

A. Received it from the Southern Pacific.

Q. Do you happen to know how that moved from the east?

A. No, sir, we didn't pay any attention to that.

Q. That is, except that you got it from the Southern Pacific, but you don't know by what route they moved it?

A. No, I don't know what route it came.

Q. Did you have any other traffic that interchanged with the Southern Pacific going to Columbia River points aside from tin-plate?

4615 A. Sometimes they had a little merchandise, a few boxes of shoes or something like that; we didn't figure on that amounting to very much.

Q. Who was Mr. C. H. Markham?

A. He was the general passenger and freight agent of the Southern Pacific at that time.

Q. At Portland?

A. At Portland, yes, sir.

Q. Did you have anything to do with the solicitation of business out of Astoria and these other points, or was that taken care of by the Southern Pacific?

A. The Southern Pacific had a solicitor on at different periods, and then we solicited ourselves between times, whenever we could influence a car to come our way; if we could get way freight out of it we solicited the parties for it.

Q. In connection with which road?

A. With the Southern Pacific or the Northern Pacific; we solicited for two roads.

Q. You were after your haul down to Kalama or to Portland?

A. Yes, that was it.

Q. Did the O. R. & N. have solicitors up there at the same time?

A. Yes, sir; they were after it.

Cross-examination by Mr. COTTON:

Q. What other transportation lines, that is, boat-lines, besides yours, were operating on the Columbia River between here and Astoria?

A. The O. R. & N. Company had a line and the Vancouver Transportation Company had a boat.

Q. Your company in 1901, all during 1901 up to August, and for some period of time prior thereto, worked in connection with both the Northern Pacific and the Southern Pacific?

A. Yes, sir.

4616 Q. The O. R. & N. boats worked in connection with the O. R. & N.?

A. Yes, sir.

Q. And the Vancouver Transportation boats worked in connection with——

A. Well, they didn't carry any salmon at that time; they didn't have any transcontinental connection.

Q. What?

A. The Vancouver Transportation Company didn't have any transcontinental connection at that time.

Q. Did not have any?

A. No.

Q. Did they have afterward?

A. After we sold out they did: they took our place on the river. I think they carried to the Northern Pacific.

Q. I mean before you sold out. Didn't they have traffic connection with the O. R. & N. and with the Southern Pacific before you sold out?

A. Not that I know of, they didn't.

Q. You may not have known about it?

A. They may have carried a car of salmon once in a while that they got through their own influence or something of the kind; we didn't know about it.

Q. But you don't want to say they didn't have rates that were available to them?

A. No, I don't want to say that, because I don't know.

Q. Now, at that time you acted as the representative of the Northern Pacific at Astoria and sold N. P. passenger tickets out of your office?

A. I don't recall whether our agent sold them or not. We didn't have any record of them in our office in Portland. Our agent in Astoria may have sold them and made his own report direct to the company.

Q. You regarded it particularly as the connection of the
4617 Northern Pacific as distinguished from the O. R. & N. boat connecting with the O. R. & N. line?

A. Yes.

Q. The bulk of the sa[illegible]n which moved out of there moved either in connection with the Northern Pacific or in connection with the O. R. & N. as a rule?

A. Yes, they carried the bulk of it.

Q. That is, the two lines?

A. Yes.

Q. Now, when was the Astoria & Columbia River Railroad completed?

A. That was along in the nineties some time; I don't know exactly when.

Q. It was in operation prior to 1901, and had been for some time?

A. Yes.

Q. What effect has the construction of the Astoria & Columbia River had upon the salmon business, in their facilities to get the salmon?

A. Well, the railroads have—I understand since we sold out and left there (I only know from what I hear, not having any interest in it) that they carry the bulk of the salmon now for the Northern Pacific.

Q. They have side-tracks into the canneries, have they not?

A. Yes, sir, side-tracks into the canneries.

Q. So that the cars can be loaded right at the canneries and go through?

A. They had side-tracks into the canneries.

Q. That is true, is it not, that they had side-tracks?

A. Yes, sir; side-tracks were all in, and they took the Japanese section-hands and loaded the salmon for the railroad company, so as to compete with the dock-hands on the boat taking salmon off of the floor of the cannery.

Q. Do you know what they do now in that regard?

A. No; I don't know what they do now.

4618 Q. So after the construction of the Astoria & Columbia River the competition was really keener than it had been between the boats?

A. Yes, sir.

Q. About how much of this salmon would you bring to the Southern Pacific (I mean in a percentage way) of the total output moving out of Astoria?

A. I don't know; I never figured it.

Q. Was it large or small?

A. It was small. We did more business with the Northern Pacific.

Q. So that the amount of business actually interchanged between you and the Southern Pacific was a comparatively small amount of your traffic?

A. Yes, sir.

Q. That is, that you handled between the two points. Do you know who took your place in connection with the Southern Pacific business?

A. The O. R. & N. carried the salmon; that is, their boats carried it.

Q. Did the O. R. & N. boats carry salmon then to the Southern Pacific line?

A. They took the salmon to the Southern Pacific. We had nothing more to do with anything that went to the O. R. & N. or the Southern Pacific after that. The O. R. & N. boats handled it all.

Q. Do you still continue to do business with the Northern?

A. Yes, sir; we did business up to the time we sold out to the Northern.

Q. And the Astoria & Columbia River did business with all three roads?

A. Yes, sir; they did.

Q. The salmon business has been very largely diverted from the boat-line, and the Astoria & Columbia River do the bulk of

4619 it and interchange business with the Northern Pacific and the

O. R. & N. and the Southern, and that condition prevails now, as you understand it?

A. Yes, sir.

Q. And so the only effect of this latter was simply to cut off the Southern Pacific business from your boat-line, but not to cut off the business or the movement at all?

A. It cut it off from us.

Q. Yes; but I mean it did not affect the ability of the canner or the shipper to send his business either way?

A. He could ship by the O. R. & N., the same as he did by us before.

Q. That is, you mean he can ship by the O. R. & N. boats to the Southern Pacific rail lines?

A. Yes.

Q. Or by the Astoria & Columbia River to the Southern Pacific rail lines?

A. Yes, sir.

By Mr. SEVERANCE:

Q. Are the Union Pacific and Southern Pacific agents still up there competing with each other for the business?

A. No, sir; they quit competing then, at the time of the merger.

4620 HUGH McGUIRE.

being duly sworn as a witness on behalf of the Complainant, testified as follows:

Direct examination by Mr. SEVERANCE:

Q. Where do you live, Mr. McGuire?

A. Portland.

Q. What is your business?

A. Merchant.

Q. What company?

A. Pacific Paper Company.

Q. Is that a wholesale or retail house?

A. Wholesale.

Q. Into what part of the northwest or the United States do you job?

A. Oregon, Washington, and Idaho.

Q. How long have you been in that business?

A. Since 1892.

Q. Do you recall the time that the Southern Pacific and the O. R. & N. had separate soliciting agencies here?

A. Yes.

Q. Was your business solicited by those agents?

A. Yes, sir.

Q. Who represented the Southern Pacific?

A. I think Mr. McCusker did at that time.
Q. Who represented the O. R. & N.?
A. I believe Mr. A. A. Morse.
Q. Did the Oregon Short Line have a representative also?
A. Yes.
Q. Who was that?
A. Mr. Coman, if I remember rightly.
Q. A good, energetic, handsome representative?
A. Yes, sir.
Q. And did the Union Pacific also have a representative?
A. Yes, sir.
Q. Who was that?
4621 A. I don't remember who the street man of the Union Pacific System was.
Q. What was the fact as to whether all these gentlemen were soliciting the business of your company?
A. Those roads were all represented by street men. I don't remember the Union Pacific.
Q. Where do you get your paper?
A. Our fine papers we get mostly in Massachusetts.
Q. And do you receive freight from other parts of the east?
A. Yes: Wisconsin, Ohio, and Michigan.
Q. Any of your freight move by the Sunset Route?
A. You mean now?
Q. No; formerly, when there was separate solicitation.
A. We have shipped from Massachusetts by the Sunset.
Q. Did you also ship from that same region by the Union Pacific and Short Line?
A. Yes, sir.
Q. At the present time is your business solicited by the representatives of these lines or any of them?
A. By the Union Pacific system; that is, the O. R. & N. and the Union Pacific system.
Q. Anybody soliciting for the Sunset Route now?
A. I haven't seen any.
Q. And how does your traffic chiefly move now?
A. At the present time a large part of our high commodity is moving by the American-Hawaiian—that is, the Atlantic seacoast shipments, from as far back as Ohio.
Q. As far back as Ohio?
A. Yes, sir.
Q. Do you ship any by the lake and rail connections?
A. Some; not very much.
4622 Q. In connection with that road?
A. Why, we divide it up between the North Bank and the Union Pacific system; we play no favorites.
Q. When the traffic comes by the lakes, where does the Union Pacific get it—at Omaha?

A. I couldn't tell you. Well, they would naturally get it at Omaha, but on the lakes I don't know just what point.

Q. You don't know whether it comes through Duluth or Chicago?

A. No; I don't think they route that way. I think mostly by Milwaukee or Chicago; I am not positive though on that point.

Cross-examination by Mr. COTTON:

Q. You say you have not shipped any recently by the Sunset Route. Have you desired to?

A. What is that?

Q. I say you have not shipped any recently by the Sunset Route.

A. No.

Q. Have you desired to?

A. No.

Q. Why not?

A. The time is too long. The rate is the same.

Q. What is that?

A. I say the time is too long.

Q. And the rates are the same?

A. And the rates are the same.

Q. Did you ever ship much, if any, by the Sunset Route?

A. No; never shipped any great amount.

Q. Can you give us an idea as to what portion of your traffic ever moved by the Sunset?

A. No, I could not, Mr. Cotton; I really couldn't say what time.

Q. It was very small, was it not?

4623 A. Yes, it was a small part of it.

Q. Did you move a given part regularly or just now and then use the line?

A. Depend upon what they were giving.

Q. What?

A. It depended upon what the rates were.

Q. Did you ever move any out on the Sunset Route at equal rates?

A. No, sir.

Q. Was there any inducement or any reason resulting from the route itself why stuff should ever have moved out by the Sunset at equal rates?

A. No, sir.

Q. That is, your Massachusetts business.

A. No, sir; we wouldn't ship that way.

Q. The rail lines, over the Union Pacific, the Northern Pacific, the Great Northern, and I believe you said you moved some Canadian Pacific——

A. Yes.

Q. So far as rail routes are concerned, they are all satisfactory?

A. Yes, sir.

Q. That is, I mean furnish ample rail facilities?

A. We have no trouble.

Q. Therefore, the Sacramento Route and the Sunset Route do not appeal to you at all?

A. No, sir; matter of time in laying down the merchandise. We use the American-Hawaiian because it is a cheaper route and we can wait for our goods—a matter of dollars and cents.

Q. If you were going to use water at all, you would either use the American-Hawaiian or the lakes?

A. Yes.

Q. Let me ask you some questions about these solicitors. In those days there used to be a very large number of solicitors?

A. Yes, sir.

4624 Q. And they have decreased on the part of the railroads to a greater or less extent?

A. We don't see as many of them now as we used to.

Q. The Northwestern at one time used to have two solicitors here in town?

A. Well, I couldn't say.

Q. One by the St. Paul gateway and the other by the Omaha gateway?

A. Well, I don't remember that. I think the territory is kind of divided up and the boys take certain territory.

Q. The soliciting of the freight business has been very largely done away with on the part of all the roads, that is, the personal solicitation?

A. There are not as many.

Q. Of chasing men into their office and asking for the business?

A. Yes.

Q. That you have noticed in reference to the Great Northern, the Northern Pacific and all the roads alike?

A. Well, I wouldn't say that. The Canadian Pacific have been about the same; in fact, they are a little more anxious now for business than they have been.

Q. They have recently got an entrance into Portland?

A. Yes. The Northern Pacific is about the same. I don't think there are as many street men for the gateways between Chicago and Omaha and Minneapolis; at least they don't call on us if they are here. I don't see as many solicitors as I used to, anyway.

Q. Mr. Sisler here represented the C. St. P. M. & O.—Sisler and Billy Mead?

A. Yes, I remember Billy Mead.

4625 Q. Billy Mead was succeeded by Sisler, and they solicited via St. Paul, did they not, for the Northwestern?

A. I couldn't say; I don't remember.

Q. Then there was another Northwestern office over across the street?

A. Yes. Mr. Mead did have an office, if I remember correctly, over on Washington Street, pretty near where your office is now, right in there; and then the Northwestern had an office farther down the street, on one side or the other.

Q. And that whole general system of soliciting for all these rival gateways has been largely done away with?

A. As I say, I don't see as many solicitors now as I used to.

By Mr. SEVERANCE:

Q. Outside of the consolidation of the soliciting agencies of the Southern Pacific and Union Pacific and the Short Line, have any of the transcontinental lines abolished their solicitors? You say the Canadian Pacific still solicits your business?

A. Yes: the Northern Pacific.

Q. The Northern Pacific and the Great Northern?

A. No; we don't ship very much by the Great Northern; they come in occasionally, but not very often.

Q. Did you formerly ship to some extent by Ogden and the Southern Pacific around by Sacramento?

A. I don't ever recall shipping that way.

Q. You don't?

A. No, sir.

4626 WALLACE NASH,

being duly sworn as a witness on behalf of the Complainant, testified as follows:

Direct examination by Mr. SEVERANCE:

Q. Mr. Nash, where do you live?

A. I live now in Lincoln County, Oregon.

Q. How far is that from Portland?

A. 130 miles.

Q. How long have you lived there?

A. I have owned a ranch there for nearly thirty years, but I have lived on the ranch for the last year and a quarter regularly.

Q. Previous to that where did you live?

A. I lived in Portland: and previous to that in Corvallis.

Q. What connection, if any, did you ever have with the Corvallis & Eastern Railway or its predecessor?

A. None with the Corvallis & Eastern, but with its predecessor, the Oregon Pacific, I was the second vice-president, resident here, and the legal adviser in the office, prepared all the contracts and supervised generally the affairs in the office.

Q. Are you a member of the bar, Mr. Nash?

A. I am, sir.

Q. Have been for how many years, if you don't mind telling?

A. Going on 50 years.

Q. You were a member of the English bar before you came to this country?

A. Yes, sir.

Q. How long have you been a member of the bar of Oregon—ever since you have been out here?

A. Ever since I have been out here, nearly 30 years.

Q. Where did the Oregon & Pacific road run?

4627 A. It ran from Yaquina Bay to Corvallis, thence across the Willamette Valley and the Willamette River to Albany, thence from Albany up along the Santiam Valley into the timber region of the Cascades, the total distance being about 131 miles.

Q. And was that line ever surveyed farther?

A. It was more than surveyed; it was platted entirely across Oregon, mapped out, and the right-of-way secured entirely across the state to a point called Ontario, on the Snake River, and some construction work was done at the east end, in the valley of the Malheur, and also in the passes of the Cascades which governed the route.

Q. I was going to ask you about the route out at the other side. That is the Malheur River?

A. The Malheur River, yes.

Q. Is there any rail line up that river now?

A. Not up that river. There is a rail line 16 miles to Ontario, from a place called Vale, which parallels the Malheur River, but not farther.

Q. What years was the Oregon & Pacific road built?

A. Construction began about 1884 or 1885, I am not certain, and continued until 1888.

Q. What was the extent of the work that was done at the eastern end, toward Ontario?

Q. There was $200,000 worth of rock work done in the canyon of the Malheur River. A large rock force was kept at work for ten months.

Q. You say the right-of-way was secured clear across Oregon?

4628 A. Clear across Oregon.

Q. What work, if any, was done east of its terminus on the west—that is, east of the point where the road was completed?

A. Where the construction stopped there was about between a quarter and half of a mile in the heart of the Cascades, which was the vital point of the pass. The rock work was done there and about a quarter of a mile or so of rails laid there to hold the pass.

Q. At the time you became connected with that proposition and it was under construction, were you down in the country?

A. I was all through the country; yes. I was not entirely over the eastern Oregon country, but all the western end of the road I have walked over and ridden over and done everything.

Q. What is the nature of the country east of the present terminus of the Corvallis & Eastern?

A. At the present time the road is in the heart of the timber region of the Cascades, and from that point to where it emerges from the timber on to the plain lands of eastern Oregon the timber resources in the region are enormous—there is no other word for it.

Q. What is there east of this timber region?

A. Between the point where the surveys emerged from the mountains on to the plain lands of eastern Oregon, to the eastern boundary of the state, there are about 675,000 acres of irrigable land, besides the dry-farming land on either side, and the stock ranges.

Q. Is there very much of that dry-farming land?

A. There is a very large amount: I can't give the exact
4629 acreage—no one can give the exact acreage, but so far as the dry-farming land has been tried it has proved successful.

Q. And what about the stock ranges? Is there a large amount of cattle kept there?

A. The surveys run for 200 miles through the stock ranges, and the yield of stock is not only very large, but can be increased almost indefinitely.

Q. Up to what time were you connected with the operation of the Corvallis & Eastern?

A. Until it went into the second receiver's hands, which, I think, was in the year 1892. It went into the receiver's hands in the year 1890, in the first place, but that was a friendly receivership, in the interest of the bondholders, but another faction got control and a second receiver was appointed in the year 1892, and then followed the sale of the road.

Q. After the time of the sale of the road did you have any further connection with it?

A. No: I had no connection with the road.

Q. Who acquired the road?

A. A firm called Bonner & Hammond, of Missoula, Montana, bought the road at auction, for $100,000.

Q. What did they do with it?

A. Mr. Bonner died some time afterwards, and Mr. Hammond operated the road for some years, and eventually sold it out.

Q. Did Mr. Hammond own the road, or did he operate it for some one else?

A. The Corvallis & Eastern Company was formed by Mr. Hammond in order to obtain corporate existence, but Mr. Hammond, as I believe, owned the majority of the stock at that time, at first, and it was several years before he sold out the majority of the stock to the Huntington estate.

Q. The Huntington estate finally acquired the majority of the stock?

A. They finally acquired the majority of the stock.

4630 Q. And did you have any negotiations with reference to that stock after that time?

A. Oh, yes.

Q. Up to what time?

A. The close of the year 1906 and the early part (the first month or two) of the year 1907.

Q. Did the Huntington estate still own it up to that time?

A. The majority stock interest, yes. I had the pleasure of meeting General Hubbard in New York, who, jointly with Mr. Ham-

mond, controlled the sale of the road entirely, the ownership, and everything else.

Q. What finally became of the road?

A. At the present time it forms part of the Southern Pacific system.

Q. When did the Southern Pacific acquire it?

A. That I don't know.

Q. Had they acquired it up to this time you speak of—1906?

A. Not at the time I speak of, no. It was in the hands of Mr. Hammond and those associated with him, the Huntington estate mainly.

Q. When did you first learn that it had been acquired by the Southern Pacific or Harriman system?

A. I forget the exact date, although I have it, but it was while I was in the east, traveling from New York west.

Q. What business were you in the east on?

A. I was endeavoring to acquire the road.

Q. At the time you were operating the road, what steamship connections, if any, did it have out of Yaquina Bay?

A. I think the first steamship was acquired when the first section of road from Yaquina Bay to Corvallis was opened, which was in the year 1887; and within a year from that time I think
4631 two other boats were put on, so that there was a three-boat service between Yaquina Bay and San Francisco—boats of considerable size.

Q. What was the amount of tonnage carried by that route up into the Willamette Valley and out of the Willamette Valley to San Francisco?

A. During the year 1888 and 1889, that is the season of 1888–9, we carried 24,000 tons of wheat and other cereals by those boats out over the Yaquina bar, and there was a corresponding amount (I can give you the figures if you desire) of the incoming traffic from San Francisco. The north-bound freights from San Francisco, which were brought in over the bar and distributed by our railroad over the Willamette Valley, ranged from 80 tons to 200 tons a trip, the trips being every five days.

Q. What is the nature of the merchandise or freight that came north from San Francisco?

A. Sugar, hardware, general merchandise, machinery, etc.—general traffic.

Q. Did you have docks on Yaquina Bay?

A. Large docks there, yes; docks that cost several hundred thousand dollars to build.

Q. Are those docks still there?

A. No, sir.

Q. What kind of a harbor was it?

A. When we first took hold of the affair it was a harbor that had a low-water depth on the bar of between 12 and 13 feet only, with a rise

of tide of 7.6 feet—average tide. By virtue of the expenditure by the government of six hundred and odd thousand dollars upon the bar, the depth of the water was increased to between 15 and 16
4632 feet on the bar at low tide, and the main obstructions in the channel have been removed. The channel used to be a devious one, and the deepest channel of the three which existed was the one to the south, next to the rocks, but the United States government engineers obliterated the rocks which formed the boundary of that south channel and opened a safe, straight, and direct channel from the ocean.

Q. What connection, if any, did you have with Portland?

A. After the railroad company went into the hands of the second receiver, and I quit my connection with the company, I came down to Portland and practiced law here for several years.

Q. I didn't mean you personally. I mean what connection did your railroad have with Portland?

A. None.

Q. When you were operating there.

A. Oh, when we were operating?

Q. Yes.

A. We maintained a line of three good-sized river boats, which carried, two of them, about 300 tons and the other one about 180 tons of freight, loaded. We maintained that line during all the time that the railroad was operating on the Willamette River. They were new boats, built especially for the purpose. The two larger ones cost about $26,000 each, and the smaller one about $22,000.

Q. Where did you connect with the railroad?

A. They connected with the railroad either at Corvallis or at Albany, mainly at Albany.

Q. How did you happen to know of the ownership or the control of this road by the Huntington estate up to the time you have stated?

4633 A. As I say, I was in New York negotiating with General Hubbard and I also saw Mr. Huntington, and my information was direct.

Q. That was as late as 1906?

A. I believe it to have been in December, 1906, and I think the negotiation went into the early part of 1907. I have no diary here, but I have a diary and I could refer to the exact time.

Q. You speak of the ranges in central Oregon that could be tapped by that road. What are they—cattle or sheep ranges?

A. Both.

Q. Is there a large or a small amount of cattle and sheep in that region?

A. A very large amount, indeed, of each; probably from 100,000 to 130,000 cattle are driven every year off those ranges southerly to Montague on the Southern Pacific, and a large proportion, probably from a fourth to a third, driven east to Ontario and to points on the Short Line.

Q. What about the wool clip?

A. The wool is very large indeed. Out of the 20,000,000 pounds (average) raised in Oregon in the last few years, about 17,000,000 pounds are raised in eastern Oregon, largely on those ranges.

Q. Where are the sheep sheared?

A. The sheep are sheared on the ranges, and the wool is largely delivered at Shaniko, where the wool sheds are the largest not only in this State but in any of these states.

Q. How do they get the wool to Shaniko?

A. It is brought there by wagon trains. The wool converges there from a very large area of country.

Q. What is the average distance from the railroad to those ranges?

4634 A. The cattle and sheep are driven, I suppose, from 150 to 200 miles, as a fair average.

Q. Before they can reach a railroad?

A. Before they can reach a railway.

Q. What is the size of the territory in there without any railroad facilities?

A. I don't remember the figures exactly, but it is in the neighborhood of 300 miles each way.

Q. Now, that country is east of the Cascade range?

A. East of the Cascades.

Q. Is there any railroad penetrating the Cascade range from the west leading into that country, except this road that you constructed?

A. Not except the Southern Pacific which runs south and west. I mean that runs directly south. There is no west railroad that I know of, except of course the O. R. & N. at the extreme north.

Q. The Southern Pacific runs south from Portland, doesn't it?

A. Certainly.

Q. By the Shasta route to San Francisco?

A. Certainly.

Q. What connections into that country, if any, have the Southern Pacific other than this line that you constructed?

A. I don't know of any.

Q. And that line is only built as far as the pass, you say?

A. No, it is not built as far as the pass; it stopped some 25 or 27 miles west of the pass.

Q. Then, was the work that was done in the pass disconnected from the line?

A. Disconnected; on the right-of-way, you understand, on the right-of-way that was mapped out, and done with a view to holding the Pass.

Q. So that the line as operated stops about 20 miles west of

4635 the Pass.

A. Yes; there or thereabouts.

Q. Then, is there any line of the Southern Pacific penetrating that country or even to the edge of that country from the west?

A. Not that I know of.

Q. Now going up to the north: what line runs along the north end of this territory?

A. The O. R. & N. has constructed several stub lines, as they are called, southward into the wheat regions of the northern tier of counties of the state.

Q. How long are those lines? Can you describe them?

A. Reasonably well. The first road was called the Columbia Southern, and runs from Biggs to Shaniko, a distance of 71 miles.

Q. Who built that road?

A. A gentleman by the name of Lytle, who was, I believe, at the time it was originated or begun, in the employ of the O. R. & N.

Q. Did he build it for them or for himself?

A. He built it for himself, I understand. This is only common repute. I don't know of my own knowledge.

Q. That is 71 miles long?

A. 71 miles.

Q. And where is the next one east of that?

A. Then there is a road that runs to Condon, which is farther east.

Q. How long is that?

A. I think about 40 miles. I am not exactly sure about that. I have never traveled over it and I don't know, but I think it is about 40 miles.

Q. Is that also a branch of the O. R. & N.?

A. That is a branch of the O. R. & N., yes.

Q. What is the next one east of that?

4636 A. Then the main line of the O. R. & N. turns south through those counties and by way of Pendleton, through Umatilla County by Pendleton, to La Grande, and thence southward on its way to Huntington.

Q. What about a line running up to Heppner?

A. Heppner. I forgot that.

Q. Where is that, please?

A. If you will give me that map a moment I can tell.

Q. That is a branch of the O. R. & N., isn't it?

A. Yes; a feeder of the O. R. & N. I don't know whether you can call it a branch or not.

Q. A feeder; yes.

A. (Looking at map.) This I don't know anything about. There is a short line marked on this map from the main line of the O. R. & N. to Pilot Rock, but I have never been up there—I don't know.

Q. Now, the O. R. & N. turns to the south, as you have stated, and runs down to Huntington?

A. Yes.

Q. Southeast?

A. Yes.

Q. Then it connects there with what road?

A. Connects there with the Short Line.

Q. What line is there running in toward this country that you have mentioned, from the main line of the Short Line, other than that line from Ontario that you spoke of?

A. There is the road that runs from Baker City; there is the Sumpter Valley road, which is, I believe, independently owned; but I am not sure about that; I think so.

Q. That is on the O. R. & N., isn't it?

A. Yes; it is a connection with the O. R. & N.

Q. Yes; but I mean it does not connect up with the Short
4637 Line. Baker City is on the O. R. & N.?

A. On the O. R. & N.

Q. And there is a line runs into Tipton from there?

A. Yes.

Q. Do you know how long that is?

A. No; I don't.

Q. Now, getting south or east of the line from Ontario, the short line running up there, is there any other line that penetrates this country you have mentioned?

A. None at all.

Q. Now, this region that you have spoken of——

A. Now, excuse me one moment. I wish to be accurate. The roads are now being constructed into the Klamath country, away to the west of the region we are speaking of, but still connecting those counties in Oregon, giving them railroad connection.

Q. That Klamath line is the one that leaves the Southern Pacific at Weed, California?

A. At Weed; yes.

Q. And runs up somewhat parallel with the Shasta Route?

A. Yes. Well, it is the other side of the mountain.

Q. Yes; but somewhat parallel in direction, I mean.

A. Yes; in general direction.

Q. Now, this territory you spoke of (you said you would not be exact as to the size) without a railroad, but you thought 300 miles each way——

A. Yes.

Q. Is that entirely in Oregon?

A. Entirely in Oregon, yes.

Q. You do not include any of the territory of Nevada, Idaho or California in that estimate?

A. No, sir; not at all.

Q. You are speaking only of Oregon?

A. Yes.

4638 Cross-examination by Mr. COTTON:

Q. Mr. Nash, how long did those three boats that you have mentioned operate on the Willamette River after Mr. Hammond bought the road?

A. That I am not able to state.

Q. You don't know what became of those boats?

A. I have every reason to believe that they were either sold by Mr. Hammond or parted with in some form; I don't know what.

Q. How long did the Corvallis & Eastern operate steamships?

A. They operated steamships, I think I have already stated, from the year 1888 to about 1892.

Q. On these steamships up-bound they used to carry about 80 to 100 tons of merchandise?

A. No, I said 80 to 180.

Q. 80 to 180?

A. Yes, sir.

Q. And going down how much would they carry?

A. Generally speaking, full.

Q. What was their carrying capacity?

A. From about 1,000 to about, I think, 1,600 or 1,700 tons. But I am not certain about that.

Q. What of these boats that formerly were operated on the Willamette River, and what steamships, did the Oregon & Pacific own at the time of the foreclosure sale?

A. Do you speak of the boats on the river first?

Q. Yes, the boats on the river.

A. It owned the same three boats.

Q. Those three good-sized river boats?

A. Those three good-sized river boats.

4639 Q. They were about as large boats as were operated on the Willamette River?

A. Yes, sir; they patterned the O. R. & N. boats very well.

Q. As boats, what would have been the value of each of them?

A. I gave you the cost just now. I can't tell what was the——

Q. About what was the cost?

A. The larger ones cost about $26,000 each and the smaller one about $22,000.

Q. So that would be $78,000 in boats?

A. About that.

Q. That is cost value?

A. Yes, sir.

Q. And what steamship did they own?

A. When?

Q. At the time of the foreclosure.

A. They owned one called the "Willamette Valley."

Q. And she was a steel boat?

A. I am not certain. Iron, but I don't think she was steel.

Q. An ocean-going iron steamer?

A. Certainly.

Q. And a carrying capacity of about how much?

A. Of a thousand tons.

Q. What was she supposed to be worth?

A. I can't tell you that. I know what she was sold for.

Q. What did she sell for?

A. She was included in the purchase by Hammond.

Q. I know, but what did Mr. Hammond sell her for, or do you remember?

A. I understand she sold for $40,000. I am not sure whether it is $38,000 or $40,000. I heard at the time, but I think it was about those figures.

Q. She was afterwards used from here to China, was she not?

A. I understand so. I don't know that of my own knowledge.

4640 Q. And do you know what her cost was?

A. I have forgotten. I did know. I think it was considerably over $100,000.

Q. What was the length of the rail line at the time of the sale?

A. I have already given it—131 miles.

Q. 131 miles of constructed railroad?

A. Yes, sir; constructed and operated.

Q. And equipped? You had equipment, engines?

A. Good equipment; yes.

Q. And stations?

A. And stations.

Q. A telegraph line?

A. A telegraph line.

Q. And included these rights in the passes over in the Malheur and in the mountains?

A. Yes; and the incomplete work done in advance of construction.

Q. Now, you say that the docks are not now at Yaquina?

A. I say that I was there a few weeks ago, and the warehouses have disappeared, and the main dock is in such a dilapidated condition that I would not consider it a dock at all.

Q. Mr. Hammond didn't use it at all?

A. I am not able to say. One of his ships was brought in a year ago, a considerable sized ship, called the "Liggett," and took a load of lumber there, but I don't know the exact date.

Q. But I mean Mr. Hammond didn't operate the steamships.

A. He didn't operate the steamships.

Q. Although he bought them?

A. Although he bought them.

Q. And he didn't operate the steamboats for any length of

4641 time, although he bought those?

A. I believe that to be true.

Q. If I remember correctly, the bonds which were issued upon this road ran into quite large figures; about $15,000,000.

A. Oh, no; that is a newspaper delusion. The bonds that were issued and sold amounted to a little over $8,000,000.

Q. A little over $8,000,000?

A. Yes. And if you wish to know the actual expenditure of cash at this end, it was four millions and a quarter, for the road and its equipment.

Q. Four millions and a quarter, and $8,000,000 of bonds issued?

A. Yes, sir.

Q. That covered the road and this steamboat property?

A. No; the four millions and a quarter did not cover the steamboats. The eight millions covered the whole thing, but the four millions and a quarter was the amount that passed through my hands in reference to the railroad.

Q. What was the total issue of bonds made under that mortgage by the Farmers Loan & Trust Company?

A. Fifteen millions.

Q. How many were actually issued?

A. I have told you.

Q. Eight?

A. Eight.

Q. Now, the principal bond-holder, or one of the principal bond-holders, was Mr. Blair, of Blairstown, New Jersey?

A. He was.

Q. He was a very wealthy man, was he not?

A. Very.

Q. Do you know what he was reputed to be worth?

A. I do not.

Q. He was one of the rich men of the country in those days?

4642 A. One of the very rich men of the country.

Q. John I. Blair, of Blairstown, New Jersey?

A. Yes.

Q. And he owned these bonds at the time of the foreclosure, did he not—large quantities of them?

A. I think he and quite a group of others owned the larger portion of these bonds. But I wish to state here that of my own knowledge I know nothing of the financial arrangements in New York at that time.

Q. But then that was the——

A. That was the understanding.

Q. And that we all believe to be the fact.

A. Yes, that we all believe to be the fact. I am not disputing it, but I don't know.

Q. And the other gentlemen who were associated with Mr. Blair were quite wealthy?

A. Quite a number of them, yes.

Q. They, therefore, had financial ability to go on and construct this road?

A. Undoubtedly. And Mr. Blair and Mr. Pine and one or two others were out here in '87, and they stated over their own signatures that they were not only able but had the full intention of completing this road here. It was published in "The Oregonian" over their signatures.

Q. What Pine was that?

A. Mr. Percy R. Pine.

Q. The road first went into the hands of a friendly receiver?

A. Yes.

Q. And during the operation of that friendly receiver and the receiver who followed, you accumulated receiver's certificates aggregating about how much?

A. I don't remember the figures.

Q. Something like $300,000 or $400,000?

4643 A. I think so, but I am not certain.

Q. And those receiver's certificates were very largely held by Vermilye & Company, bankers of New York?

A. I don't know that to be true.

Q. Well, they were represented by substantial people; that is, they had furnished the money for this three or four hundred thousand dollars to take these certificates, had they not?

A. Not to my knowledge. I don't know that that is so.

Q. Now, the road was sold twice?

A. It was sold twice.

Q. The first time it was sold, it was sold for $120,000, was it not?

A. No, sir; the first time it was sold to a small group who were represented here in Oregon by Governor Hughes; it was sold for $200,000.

Q. For $200,000?

A. Yes, sir.

Q. That is the present governor of New York?

A. Yes, sir.

Q. He represented the bond-holders?

A. He represented the bond-holders.

Q. And sold for $200,000?

A. To them; yes.

Q. And the court refused to confirm that sale?

A. Yes, sir.

Q. And set it aside?

A. It did.

Q. It was sold a few months afterwards for $100,000?

A. It was.

Q. The bondholders investigated the property and declined to bid?

A. I believe that to be true, yes; I should say so.

Q. So, for the four millions and eight millions of bonds which Mr. Blair and Mr. Percy Pine and their associates held,

4644 the most they could realize out of it was $100,000?

A. I believe that they realized nothing; none of us who were bondholders of the road here realized a cent.

Q. They declined to bid at the sale?

A. They never could be organized and got together again to make a purchase.

Q. But they were close together, were they not, before the second sale?

A. I think not. There was quite a faction and a factional dispute among two or three groups of bondholders between the first and second sale.

Q. They actually had the bonds, and those were sacrificed?

A. Those were all sacrificed; every bondholder sacrificed.

Q. Now, at this sale Bonner & Hammond bought the road, in 1892?

A. They did.

Q. And afterwards Mr. Hammond constructed the Astoria & Columbia River road, did he not?

A. I think it was in process of construction at the time.

Q. He was able to furnish money enough to construct the Astoria & Columbia River, but did not extend the Corvallis & Eastern?

A. I believe that is so.

Q. And he sold off the steamships and sold off the river boat?

A. Yes, sir; stripped the road.

Q. And then after he acquired the property he made a sale of the majority of the stock to H. E. Huntington or the Huntington estate?

A. I understand to Mr. Collis P. Huntington.

Q. To Mr. C. P. Huntington, himself?

A. I think so.

Q. How long did Mr. C. P. Huntington hold the property without extending it?

A. I don't know.

4645 Q. And it passed into the hands of the Huntington estate?

A. Yes; they held a majority of the stock.

Q. Represented by——

A. By General Hubbard.

Q. And they did not extend the road?

A. And they didn't extend it.

Q. And they held the road for about how many years—that is, C. P. Huntington and the Huntington estate?

A. I can't answer that question, because I don't know when the transaction took place between Mr. Hammond and the Huntington people.

Q. They held it up until December, 1906?

A. I think so.

Q. So, from 1892, at the time of the sale, when Mr. Blair and Mr. Pine sacrificed their $8,000,000 for $100,000, which they could not get——

A. I don't wish to interpose or interfere with your question, but it is not a correct way of putting it to say Mr. Blair and Mr. Pine did this, that, and the other. They were only some among quite a large, considerable number.

Q. Mr. Blair had all together in the neighborhood of at least $5,000,000 of those bonds, hadn't he?

A. I don't know that.

Q. Well, that is commonly reputed to be the fact.

A. I don't believe it to be true.

Q. He had a very considerable amount?

A. He had a very considerable amount.

Q. How much do you believe he had?

A. I don't know how much he had. You see several of these gentlemen you mention were depositaries of these bonds, outside of this four millions for which actual cash was found, and I don't know the inside of those transactions.

4646

Q. Mr. Blair, who was quite an elderly gentleman, had sufficient interest in the property to make a trip out here to look it over?

A. He came out here, as I told you, and I was with him during the whole of his examination.

Q. At that time he was how old a man?

A. 85. His 85th birthday was passed up on the Cascades.

Q. He had sufficient interest at 85 to travel across the continent to see what kind of property he had?

A. Yes; he expressed himself to me as being very deeply interested about the road.

Q. That was really before he had made an investigation of it?

A. No; it was after his investigation. It was really at the close of his investigation.

Q. That is, of the western end?

A. Of the western end.

Q. You don't know what investigation he made of the eastern end?

A. I know he didn't make any, because I was with him the whole time.

Q. Do you know when he did make an investigation of the eastern end?

A. I don't believe he ever did.

Q. Now, from 1892 to 1906 this property was in the hands of people who could have extended it?

A. Who could if they would, yes.

Q. And they didn't extend it?

A. And they did not extend it.

Q. About how high is the general country over here that you have described—this range country? What is the altitude?

A. It is very difficult to give a figure which would be true as to so large a tract of country. It ranges between 2,000 and 2,900 feet in elevation.

4647

Q. Along the line of your road?

A. The road runs through the depression, and it is about 2,000 feet elevation.

Q. What is the average altitude of Harney Valley?

A. I think about between 2,000 and 2,600 or 2,700 feet; I am not exactly sure about that.

Q. Your line ran in the vicinity of Burns, did it not?

A. No; it runs considerably south of Burns—a good many miles south of Burns.

Q. How far south of Burns?

A. Probably 40 miles south of Burns.

Q. Where does it go, with reference to Prineville?

A. It left Prineville away off to the east, some 20 or 30 miles to the east.

Q. Did it go north or south of Prineville?

A. When it came out of the mountains it turned mainly south, with some east in it; it left Prineville off to the northeast.

Q. What is the character of country south of Prineville, extending from, say, ten miles east of the Deschutes River and ten miles south of Prineville?

A. Broken and rough.

Q. How far does that broken and rough country extend?

A. I am not able to say. I have never traveled over in that direction. My knowledge is largely the other way, you know. I can't answer that question.

Q. Any water on it at all?

A. Not unless it can be brought there. I don't know.

Q. It is commonly known as the desert, isn't it?

A. No.

4648 Q. I mean isn't that commonly referred to as the desert, in that country?

A. No.

Q. It isn't?

A. The part that is laid down on the old Oregon maps as the desert is away off to the south and southwest of Prineville.

Q. I said ten miles east of the Deschutes River and about ten miles south—a line drawn about ten miles south of Prineville.

A. That may be in some of the old maps called the Oregon desert, but it is not the tract of country which is generally referred to and recognized as the Oregon desert.

Q. Do they produce anything there now in that section of the country?

A. Yes.

Q. What?

A. It is very difficult to answer that when you don't designate a point to which I can affix my answer. For instance, you mean around Bend?

Q. No; I said ten miles east of the Deschutes River and then on a line drawn ten miles south of Prineville.

Mr. SEVERANCE. That map doesn't show Prineville.

WITNESS. This is a very imperfect map.

Mr. SEVERANCE. Prineville, not being a large railroad center, does not seem to be on the map. What is that a map of?

Mr. COTTON. I wanted to revive his recollection.

WITNESS. If I may answer from this map, the tract which is generally known as the Oregon desert in the old maps extends all over this country. (Indicating on map.)

Mr. SEVERANCE. That doesn't mean anything in the record.

WITNESS. Not a thing.

Q. That extends over the country between Summer Lake——

4649 A. No; between Silver Lake——

Q. Silver Lake is here. (Pointing.)

A. This whole chain of lakes—Silver Lake, Summer Lake, Lake Ebert, and I don't know what the name of this one is—Warner Lake.

Q. Warner Lake. And then from there running northeast to Harney and Malheur.

A. The points mentioned were about the boundaries of what was known as the Oregon desert.

Q. And this supposed Oregon desert extended pretty nearly up to a line drawn east and west through Prineville?

A. No; not so far as that. This is a fairly well watered country here. [Indicating.]

Q. How far south of Prineville?

A. Probably 10 or 15 miles.

Q. Have you ever been there?

A. I have not been there.

Q. Do you know anything about it personally?

A. Personally I do not, no; but I have studied it from photographs.

Q. How much of this country that you have been describing here do you personally know anything about?

A. I know the tract that I mentioned from Ontario eastward; I have been through that.

Q. Ontario to where?

A. I have been up to Vale and along this country for some miles.

Q. How far west of Vale?

A. That I don't know. I don't know exactly. Some distance around.

Q. About how many miles?

A. A few miles; I don't know how many.

Q. Well, ten—fifteen?

A. Yes; probably ten or fifteen.

Q. Ten miles west of Vale?

A. West of Vale.

Q. And where else?

A. Personally I have not been into this country beyond that.

4650 Q. Where else in this interior section of Oregon?

A. In this interior section of Oregon?

Q. Yes.

A. I have been all through the line of this road to the extreme—until it issued completely from the mountains down here. (Indicating.)

Q. The Sisters?

A. Yes, I have been all through that country. And I have been out on to the edge of the valley there.

Q. The Deschutes River?

A. Yes.

Q. You have been from the end of the road down to the Deschutes River, down near Bend?

A. Yes, near Bend; I don't know what the name of the place is.

Q. Where else?

A. Where have I been in western Oregon?

Q. I mean in this interior part.

A. I have not been in this interior part.

Q. Then, ten miles west of Vale and from the end of your road over to the Deschutes River is the extent of your personal knowledge of the interior of Oregon?

A. Yes, sir.

Q. About your pass through the canyon at the end of the Corvallis & Eastern—what was the altitude of that?

A. 4,700 feet.

Q. What is the altitude of the present end of the railroad?

A. At Boulder Creek; I have forgotten. I can't answer that question, I don't remember.

Q. Do you know what the grade was on this?

A. Yes, I know all the grades.

Q. What was the grade from the end of the present road to the crossing?

4651 A. It was slightly over two per cent; it was less than 2¼, but I should say also that the engineers reported that by a slight deviation it could all be brought well within 2 per cent.

Q. What is the character of the country, where the road goes through the mountains, in the winter, in the time of snow?

A. I didn't catch the question.

Q. What is the character of that country where the road crosses the mountains, as to snow in the winter time?

A. There is a good deal of snow, but the engineers who examined the country around there for that purpose reported that it would be comparatively easily passed because the road at the extreme summit passed over a plateau and not over mountains, and that the road, being elevated some eight or ten feet above the surface of this plateau, would be either clear or easily kept clear of snow.

Q. This timber that you say is tributary to the line——

A. Yes, sir.

Q. Is that at all peculiar to this special section where the road goes through, or does it not extend up and down the Cascade Mountains for a considerable distance?

A. It extends up and down the Cascade Mountains for a considerable distance.

Q. Goes all the way down, practically to the southern end of Oregon?

A. It varies a great deal in value and width and in character of timber at points.

Q. At different points. But then there are other points that are just as good as this?

A. I don't know.

Q. You have never been in them?

A. I have been through this; I have walked for three days through the most magnificent timber anybody ever saw.

4652 Q. The road penetrates that timber now?

A. Yes, sir.

Q. And, penetrating that timber, its earnings have always been very limited, have they not?

A. The what?

Q. Its freight earnings.

A. Yes. That timber is standing—not lumber. It is timber.

Q. That timber could have been cut and moved, could it not, by the present railroad?

A. Certainly; undoubtedly that is so, but then it was not in the hands of owners who proposed to use it in that way.

Q. Is it in the hands of any owners? A large part of it is in the government reserve, isn't it?

A. Yes, now; it wasn't in those days.

Q. And the government reserve extends on both sides of the summit, does it not?

A. Yes.

Q. Now, in former days it was in the hands of private individuals who could cut it?

A. To some extent.

Q. And even then the r[illegible] did not pay expenses?

A. Yes. Now, I wish to interpose that, under the regulations of the government surveys, the timber will become available for any road in proportion as it becomes ripe and ready for that purpose.

Q. But in the hands of private individuals this timber was not sufficient to afford a revenue which made the road self-supporting?

A. No. The owners of such part of it as did not still remain in the hands of the government were not people of capital enough to erect mills or do anything of the kind.

Q. Now it can be cut through permission obtained at Washington?

A. Certainly.

4653 Q. And there is lots of other timber in Oregon that is in the hands of private individuals that can be cut without any such permission?

A. At a price.

Q. Yes, at a price.

4654 WILLIAM HANLEY,

being duly sworn as a witness on behalf of the Complainant, testified as follows:

Direct examination by Mr. SEVERANCE:

Q. Mr. Hanley, where do you live?

A. At Burns, Oregon.

Q. For the purpose of the record, state where Burns is with reference to Portland.

A. Burns is 350 miles southeast.

Q. How far is Burns from a railroad?

A. 150 miles.

Q. How long have you lived at Burns?

A. I went to Harney County in 1879.

Q. Is Harney County the county in which Burns is located?

A. Yes, sir. Burns was not located at the time I originally went to the county.

Q. What is your business?

A. Stock business, cattle business.

Q. How long have you been in the cattle business?

A. Always; ever since I had a business.

Q. All the time you have been in Harney County and before?

A. Yes, sir; all the time I have been in Harney County and before.

Q. How extensive is your cattle business? What are your annual sales of cattle?

A. You mean our regular product?

Q. How many do you ship out ordinarily, and have for a period of years?

A. In my early history I was a very small cattleman. I came into the country from southern Oregon with a little bunch of Rogue River steers, and from that my business grew, and I would
4655 say that I commenced actively to spread in the business in 1893 as a trader, and in 1895, 1896, and all through the nineties up to the present time my business and trading business has continually grown; and I would say that the Ontario shipments, which are probably the biggest, in association with M. K. Parsons, of Salt Lake—we have a combination trading account, and that trading business would run from probably 10 to 25 thousand cattle, maybe 30 thousand some years.

Q. Head of cattle?

A. Yes, sir.

Q. That many shipped out through Ontario?

A. Yes, sir.

Q. Do you ship from any other points aside from Ontario?

A. We take some cattle in the fall of the year, cow cattle, dry cows, to Winnemucca, Nevada; that is on the Southern Pacific.

Q. How far is Winnemucca from Burns?

A. Winnemucca is probably 250 miles from Burns, pretty near due south.

Q. And how far from Burns is Ontario, this other point from which you ship?

A. 150 miles.

Q. That is on what road?

A. That is on the Oregon Short Line.

Q. To what points do you ship cattle from Ontario?

A. We ship cattle to most every point, north and east, some going clear through to Canada, to the Missouri River, Nebraska, and Kansas; some into Colorado—that is, in former years we shipped some to Colorado.

Q. Over what line does your traffic move from Ontario?

A. It all starts over the Oregon Short Line.

Q. What line does it move over going to the Missouri River
4656 or intermediate points?

A. The Union Pacific.

Q. Was there a time when you could ship also over the Denver & Rio Grande?

A. Yes, sir.

Q. In connection with the Short Line?

A. Yes, sir.

Q. How long ago did you cease to have that privilege?

A. I wouldn't be definite about the dates, but I would think about three or four years.

Q. The Ogden gateway was closed so far as the Rio Grande was concerned on the Short Line there, was it?

A. I think about three or four years ago, yes, sir.

Q. Previous to that time did you have a market for any of your cattle along the line of the Rio Grande south of Salt Lake?

A. Yes, we sold a good many cattle in Colorado. The fact of it is some years we probably sold the biggest part of our cattle, especially cow cattle. The Colorado ranges bought a good many cow cattle—cows and calves.

Q. Why was Colorado a better market for cows than the region farther north, along the Union Pacific?

A. The northern country is a special steer country. The farther north you go the less success they make of breeding and the bigger success they make of making prime cattle, good enough to go to the best markets in the country. The northern grasses are really the only grass country that turn cattle off of the range good enough to go to a real killing market.

Q. What effect on your business did the closing of the Ogden gateway to the Rio Grande have?

A. Well, of course it had the effect of cutting us out of that much territory, and of course we couldn't ship anything into that country.

4657 Q. That was the country into which you shipped your cows chiefly, was it?

A. Well, that was some years. These countries were very peculiar, always have been very peculiar about their buying. It kind of runs in a fever with them. Some years they will rise up and buy more than they will other years. But Colorado was really a special country on she-cattle.

Q. Did you have regular points to which you shipped in Colorado?

A. Why, not specially so, but in around Rifle and Grand Junction, along in about that part.

Q. Through whom did you make your sales down there?

A. Mr. M. K. Parsons is the real salesman of our combination.

Q. Mr. Parsons is in business with you?

A. Yes, sir, in the trading business; and he also has a ranch and cattle business in Colorado, and of course Mr. Parsons rather has a special acquaintance in Colorado, and probably would account for more of the interest in that particular trade—his interests down in Colorado.

Q. What was the extent of your shipments of cows down there previous to the time that you were put out of that business?

A. That would be pretty hard to testify to, as to any number, without going a little bit into our records. Some years we would ship a great many cattle down in that way. Mr. Parsons has taken a good many steer cattle there himself. He bought from Oregon for a good many years and supplied his own ranches and he handled mainly steers, and I suppose some years he had as many as ten thousand cattle go down in Colorado, and from that up.

Q. And that is a business that is now closed to you?

4658 A. No, we couldn't ship anything into Colorado by train now.

Q. What effect did that have on your business in dealing in cows?

A. Well, of course that cut our cow market to a considerable extent.

Q. Have you been over this country in central Oregon that has no railroads at the present time?

A. Yes, sir; I have been over it pretty well, I think.

Q. How long have you been familiar with that country?

A. Since 1879. We drove our cattle from Rogue River Valley and came right out through by Klamath Falls, where Bly stands now, and Sprague River, Goose Lake, Warner Valley, the head of Harney Lake, Silver Creek, into Harney Valley.

Q. Have you been over the country along the Deschutes River?

A. Why, I have been through in a partial way, but I would not really say I am personally right familiar with the country right along the Deschutes River.

Q. Are you familiar with it back from the river?

A. Well, my line would run in along the Klamath lakes, Klamath marsh, Silver Lake, Christmas Lake, and Wagon-tire Mountain.

Q. Malheur Lake?

A. Malheur Lake and everything east to the Snake River.

Q. Are you also familiar with the country up around Canyon City?

A. Yes, sir.

Q. And Strawberry Mountains?

A. Yes, sir.

Q. And from there north to the O. R. & N.?

A. Yes, sir.

Q. Prineville?

A. Yes, sir; I have been over the county in Prineville. I have ridden the deserts out east of Crooked River.

4659 Q. That is, east of Prineville?

A. South of Prineville.

Q. South of Prineville, I mean?

A. Yes.

Q. And have you been off in the country along the line of The Dalles Military Road?

A. Yes, sir.

Q. Have you been to Shaniko?

A. I was to Shaniko before there was a railroad built there: I have been through that country, but I have not been there since the railroad was built.

Q. Then you have been pretty well over this whole region, I should think from the map. Are you familiar with the passes, the water courses through which railroads can be run into that region?

A. Yes, I would say that I am.

Q. Beginning on the south, will you describe these various feasible routes into that region?

A. On the south?

Q. Yes; beginning anywhere along the south end where there is any feasible route in there. Would the map help you? Here is a map which Judge Lovett says you may use. You will have to describe it by naming the places by geographical name, not with reference to the map, otherwise we will have to put the map in.

A. The first probable practical line leading up from the south would be the country from Siskiyou County in California, leading up through the Tule Lake country and up into the Klamath country, to Klamath Falls. A line that would get to Klamath Falls could go across the country either up or along the Klamath Lakes, Klamath Marsh, Silver Lake, and along the west slope of the Cascade Mountains, or it could go up Sprague River and through by Drews Valley and out into the Goose Lake Valley. They would have a lit-
4660 tle reef of mountains to cross in between the Sprague River divide and the Drews Valley country, which is a part of the Goose Lake Valley, which would take them out through the Goose Lake Valley and then out of the Goose Lake down a little creek that leads into the Goose Lake Valley, that throws towards the Chewaukan or the Big Desert. The Big Desert lies east and north of Goose Lake Valley.

Q. What is the character of this land that is called the Big Desert?

A. From the line of Albert Lake, Warner Lake, Summer Lake, Silver Lake, it is a dry rolling country with very few springs, very little water on it excepting early in the spring, where it would run down into the lakes. There is a big lot of rolling bunch grass country into it that would be farming country: it is capable of development under what would practically be known as the present farming system.

Q. Dry-farming?

A. Yes, sir.

Q. How large a territory does that Big Desert cover?

A. I would say from 100 to 200 miles across it, that is, north and south: east and west about the same.

Q. What other uses is that suitable for except dry-farming?

Mr. COTTON. Mr. Hanley didn't say that it was all suitable for dry-farming.

Mr. SEVERANCE. No; I am asking what other uses it is suitable for besides dry-farming. How much of it is suitable for dry-farming?

A. Well, I have seen so much land turned from what I have ordinarily classed nothing, to valuable land, that I am a little slow in going on record as a prophet, as the development of time indi-
4661 cates that a man's mind is very small on saying what land is good land and what is bad land without he is awful wise and has had but very little experience.

Q. Well, give us your best judgment.

A. But I would say offhand, making an estimate of what you would see at present—it would be easy enough to say from 25 to 30 percent.

Q. Outside of the part of that desert, as you call it—Big Desert—which is suitable for dry-farming, 25 or 30 per cent, what other purposes can any of it be put to?

A. It is used at the present time for grazing purposes. I would not want to go on record as saying that I knew any particular thing, but I think there are big coal beds in there—I think there is a big coal country. I think that off south in towards the Nevada line there is probably one of the biggest mining countries, in between Winnemucca, just across the Oregon line; when it is opened up I think it will be one of the biggest mining districts of the country. It is a big heavy granite formation. All the mountains are gray, and prospectors are drifting around. In my own mind it is a big heavy mining country, for big investment, big capital. It is not a small man's country.

Q. Is this Klamath Lake route now occupied?

A. I understand there is a road at Klamath Falls now, that it is completed to Klamath Falls.

Q. From Weed, California?

A. Well, out of Siskiyou County, yes.

Q. That is owned by the Southern Pacific?

A. That is what I understand, yes.

4662 Q. What is the next feasible route for a railroad into the country south?

A. The Pitt River pass.

Q. How far east is that from the Klamath line you have mentioned?

A. From Klamath Falls to Goose Lake it is about 125 miles.

Q. Where would the road run coming in by that route?

A. The road, if it came up Pitt River, would come into Goose Lake Valley at Goose Lake. Pitt River is the outlet to Goose Lake, if it had one.

Q. And where does the Pitt River run?

A. It runs into the Sacramento, as I remember, going down the Sacramento about 35 or 40 miles above Redding.

Q. And that would be a feasible route coming up from the Sacramento River, up the Pitt River?

A. Up on the table on the inside of Oregon.

Q. When you get into this table-land how high is your elevation?

A. From 4,000 to probably 4,600 feet.

Q. And what is the elevation on the Sacramento River at the junction?

A. A few hundred feet above sea level. The Sacramento Valley has but very little fall.

Q. What is the difference in the elevation at this point that you reach by coming into the Pitt River Valley and the point reached by coming in at Klamath Lake?

A. The Klamath country is lower than the Goose Lake country, but since these levels have been taken I would hardly be a competent witness on that. But I should judge close to a thousand feet higher—the Goose Lake is.

Q. Now, having come up through there, that Goose Lake
4663 country, where could the road be run?

A. Any part of what would be the table of central Oregon.

Q. How large is this table-land? Where does it start and where does it end?

A. It starts at The Dalles and runs across to the Rocky Mountains, through the country. The part that would be surrounded by railroads would be that part of Nevada that would be north of the line.

Q. North of the Southern Pacific?

A. North of the Southern Pacific, and then the Southern Pacific through the Willamette Valley and the O. R. & N. on the east line of the state.

Q. It covers a large part of Oregon and northern Nevada?

A. Yes, sir.

Q. What is the average elevation of that table-land?

A. 4,000 feet up to about 4,600 feet; there is hardly any mountain in the country, with the exception of Steins Mountain, that reaches 5,000 feet. The Blue Mountains are about 4,800 or 4,900 feet; that is, the mountains lying north of the Harney Valley, the Harney country.

Q. Now turning to this Fort Pitt road. Do you know whether anything has been done towards surveying a railroad up through there?

A. Only by information. I know that there were lines surveyed up there in 1906—that there were lines surveyed up Pitt River.

Q. By whom, do you know?

A. Why, by the Oregon Short Line surveyors; that is who I understand they were.

Q. Are there any other feasible routes to come in from the south to this region aside from Klamath Lake and this one?

4664 A. Not without going over a mountain. Goose Lake comes to the top of the table, the Deschutes comes to the top of the table, and the Malheour comes to the top of the table.

Q. Now, so much for the south end. What are the feasible routes into this country from the west?

A. The Cascade Mountains are but very little higher than the level of this table-land in the valley, and dropping down to the Willamette Valley is really the mountain. My understanding is that the Cascade Mountains do not go much over 5,000 feet any place.

Q. In Oregon?

A. In Oregon.

Q. Are you familiar with this Corvallis & Eastern road?

A. Why, nothing more than riding on it through the different periods of my time in the country and the Willamette Valley; I have ridden from Corvallis to Eugene on it, and then the Corvallis & Eastern surveys over in central Oregon.

Q. The Corvallis & Eastern surveys in central Oregon; where are they, in what towns?

A. The Corvallis & Eastern comes through into the Harney country proper, about 15 miles southwest of Riley. Riley is a point on Silver Creek, and on the line of the survey I would say that that is the first place in eastern Oregon that I would be right familiar with, from there to the Snake River.

Q. Are you familiar with the branch lines of the O. R. & N. that are built a short distance down into the state, from the north?

A. The branch lines of the O. R. & N.?

Q. Yes; the Shaniko.

4665 A. I have been on the Heppner line in years gone by, a good many times. I am familiar with that line. I have never ridden on the Shaniko line—I have not been on it since it was constructed.

Q. Do you know the Condon line?

A. No; I am not familiar with the Condon line.

Q. How long ago was that Heppner line built?

A. The Heppner line was built right at the first part of the construction of the road. I can remember of being on the Heppner line, say, through from 1884 or 1885 till——

Q. How long ago was the Shaniko line built?

A. The Shaniko line was built in the nineties—probably 1895 or 1896.

Q. When was the Condon line built?

A. Well, that is recent. I wouldn't know. Not a great many years.

Q. Is that an O. R. & N. line or an independent line, do you know?

A. No; I do not.

Q. What do you know about a little line that runs out to Pilot Rock?

A. Why, I understand there is a line there. I was there a good many times before the line was built. That runs out probably 16 or 18 miles from Pendleton, up on to the Blue Mountains, up to the edge of the rise of the Blue Mountains.

(A recess was here taken until 2 o'clock p. m.)

Q. Is it feasible to extend that line inland from there?

A. Yes; that line is feasible to extension from the standpoint of taking a line over a mountain. It is not a water-grade line.

4666 There is probably not much difference between the summit of the mountain south and where the present O. R. & N. crosses it now. Probably the mountain there may be a little higher, but I would say there isn't much difference.

Q. Now, farther east than that, where is the next branch or small road running into the country?

A. At Vale.

Q. Where does that road start from?

A. Ontario.

Q. That is the shipping point which you mentioned?

A. Yes.

Q. How long is that line to Vale?

A. 16 miles.

Q. How near is that to the Malheur River?

A. It is right up the Malheur River, right up the river valley.

Q. What kind of a route is that for a railroad into the interior of the country?

A. The Malheur River drains the Harney Lakes and all the country to the line of the rim of the Wagon-tree Mountain, north and south to the Blue Mountains, and south to the spur of the Cascades, running out through Lake County.

Q. Is there any other line running in from the east?

A. No other line running in from the east.

Q. Now, you have gone clear around in your testimony, from the south clear around to the east, haven't you?

A. I think I got clear around.

Q. Clear around?

A. Yes, sir.

Q. And you have named all of the branches that there are of any of these roads, and in your opinion all of the feasible routes?

A. Yes, sir. The first transportation of the country to come

4667 out of it was water, and the water passes are really the great feasible passes for transportation for highways.

Q. How large is the territory in there, substantially enclosed within the lines of the O. R. & N., the Oregon Short Line and the Southern Pacific, including the Southern Pacific south in Nevada and the Southern Pacific west in Oregon? In miles, how long and how wide?

A. Well, by old trail count, 400 one way and 450 or 475 the other.

Q. By "old trail count" you mean by the ordinary ways of getting through by roads?

A. By roads, yes. That is, east and west 400 miles, north and south 450 to 475.

Q. Now, suppose you figure from the line included within the limits of these branches, that is, commence on the north at Shaniko and on the south at the branches that come in—there is a branch up from some town there on the Southern Pacific, a narrow-gauge road?

A. Yes; that runs to Alturas.

Q. How far is it across there, from Shaniko to Alturas?

A. From where?

Q. From Shaniko. That seems to be the nearest branch coming from the north.

A. Yes. Oh, that is 225 or 250 miles.

Q. How much land is there in this territory which is remote from railroads, not now under cultivation, that is susceptible of dry-farming or being irrigated?

A. I would say conservatively 25 to 30 per cent.

Q. In square miles?

A. Of the total area. Of course I am only passing on that
4668 from the little information I have gathered up so far in farming.

Q. This "little information" is gained from tramping over that country for thirty years?

A. Yes, and of my knowledge of this kind of farming.

Q. How would you divide that 25 or 30 per cent between the irrigated lands and dry-farming?

A. The irrigated part is a very small part. I would say that the irrigated part of it would be 5 or 7 per cent.

Q. 5 or 7 per cent of the 25 or 30 per cent?

A. Yes.

Q. Or of the whole—which do you mean?

A. Of the 25 or 30 per cent. The valley is very small as compared to the whole area of the country.

Q. What is the nature of the land that is susceptible of dry-farming in that region—what kind of soil, how does it lie?

A. That is the rolling hill soil that grows the original bunch grass. The soil generally leans towards adobe; it is a mixture.

Q. Does that kind of soil hold water?

A. Oh, yes. The muck land is really the water land; that is, the land that holds the moisture is the adobe land.

Q. Have you yourself engaged at all in dry-farming up in this region?

A. Yes, sir.

Q. Whereabouts?

A. In the Harney country.

Q. From your experience do you say that can be successfully carried on there?

A. Yes, sir. The dry-farming system is a question of high-class cultivation or scientifically putting the lid on the top of the
4669 soil and drawing the moisture out with the product.

Q. Is that the class of farming that is now carried on in Washington, west of Spokane, along the Northern Pacific?

A. I wouldn't say that I was really familiar with those people up there in that farming country, but I should judge it is.

Q. But it is what is commonly spoken of as dry-farming?

A. Yes, the dry-farming. Any cultivated farming in a hill area is dry-farming—practically dry-farming.

Q. In driving your cattle to Ontario for shipment, do they sustain any loss in weight?

A. That depends considerably upon the ability of the management. I would put this more in the classing of cattle. I would say that cattle whose flesh was up to a sharp edge, a sharp edge of being fed, would be much more apt to fall off; they have something to lose; they would lose more than the common stock cattle. The common stock cattle would go on the road on the same base and gain. They would gain while the cattle that were up on to a sharp edge of development would have a tendency to work the other way.

Q. What do you mean by cattle up to a sharp edge—cattle that are fit for the packing-house?

A. Yes, cattle that are fit for slaughter.

Q. They lose in weight, do they?

A. Well, of course that depends a good deal on the management. I really feel that I could pretty near take them through the country without losing much.

Q. Is it a matter of time?

4670 A. A matter of time and skill in handling them; but under ordinary management the tendency is to lose.

Q. And is there any attempt to export wheat from your region?

A. No, sir. We have got no wheat raisers.

Q. You have no wheat raisers?

A. No, sir.

Q. Is that region around there susceptible to cultivation in that way?

A. Yes, sir; I have raised good wheat.

Q. What is the reason, if you know, that you have not wheat raisers there?

A. They have quit making the kind of people that will go back into that country and take the conditions of it and start out to make a living by working the soil, without transportation.

Q. You said you were 150 miles from a railroad, didn't you?

A. Yes, sir. Now, in dealing with miles, our old base used to be 50-mile change, but now we have dropped down to 25-mile change. Do you understand what I mean?

A. Well, we quote the country as 50, 75 or 100. But that little niche has been taken off, from Vale to Ontario. I hardly ever reckon that off of the total mileage in speaking of the mileage. That would cut 15 miles off of the base of 150.

Q. Oh, I see.

A. But I think the 150 was always strong. I think that is one strong measurement. Most all of these distances stand as the old-timer put it in the history of the country. As a rule they over-run. Sometimes they get them a little short. But they have always been estimated on a 25–50 mile base.

4671 Cross-examination by Mr. COTTON:

Q. Mr. Hanley, where does the bulk of the good territory lie that is suitable for dry-farming and irrigation in this territory that you have been referring to south and east of the railroads in Oregon?

A. I think, Mr. Cotton, there is a wheat field commences right at Huntington.

Q. Where does the bulk of it lie—that is, running over into the Burns country and then extending along the southern——

A. I think the best country lies south of the drainage of the Blue Mountains. You understand what I mean?

Q. Yes.

A. That is, the Malheur, the Crooked River, Silver Creek, and those drainages of the Blue Mountains; I think the best farming, the cultivated country, runs south.

Q. That would be tapped very largely by a railroad upon the survey of the Oregon Eastern, say from Ontario into the O'Dell Lake and then down?

A. Yes.

Q. That would practically cover it?

A. Yes; it would cover it as a——

Q. How could that line be conveniently hooked up with this territory up here?

A. Which territory?

Q. That is, with Portland. That is, conveniently, so you would not be building a road just for the sake of hooking it up.

A. Well, really, Mr. Cotton, I think the great place for the road is on the water course, down the Deschutes; I think that is the great place for the road. Of course, it is generally understood that the road can go across the mountain any place, which I believe
4672 it could, as a base of the grade going west. Of course, the grade would be heavy coming east, coming up the Cascade Mountains.

Q. That Deschutes road would require quite a large amount of rock construction, through a comparatively unbroken territory for a very considerable distance, a hundred miles at least?

A. Yes, it would.

Q. Then, as you would get down there, the only thing you would do would be to hook up this line that would go through the country, with Portland?

A. I think as a common developer the line running across the mountain would be excellent.

Q. A line from Klamath to Ontario would do, wouldn't it?

A. Yes, that would be a good line; Klamath to Ontario would be a good line.

Q. That is what I thought. The main difficulty is in hooking that country up with Portland, isn't it?

A. Why, I wouldn't say so. I wouldn't say there would be any main trouble in hooking it up any side of this course.

Q. You would have to build a comparatively unproductive road across the mountains and up the Deschutes in order to accomplish that result, wouldn't you?

A. I think the road across the mountain would be a good road. I think there is a good deal of timber there that would be very attractive for the road.

Q. All in the government reserve, is it not?

A. Oh, they would give that up.

Q. Well, I say it is all in the government reserve at present?

A. Oh, I think so. I think the Willamette and——

Q. Except the Willamette, which extends for how many
4673 miles on each side of the wagon road?

A. Three miles; six-mile limit.

Q. Now, in place of the mountain passes being limited, what is the fact about there being several places in which you could cross the Cascade Mountains between the Oregon state line and Portland?

A. If you are going over the mountain, Mr. Cotton, I think there are a good many places you could cross. If you make up your mind to cross a mountain you generally hunt for a pass if it comes handy. I think if you are going to cross the mountain, you can cross the Cascades any place and reach the same table.

Q. The Corvallis & Eastern extensions are not the only two places in which the railroad could cross the Cascade Mountains, by a long way?

A. No, sir.

Q. The headwaters of the McKenzie, or following the old Military Wagon Road route, or up several different ways there; all the passes are just about equal, are they not?

A. I would pass on that as genera' information and would say yes.

Q. That is, as common men look at things, there isn't very much difference between any of them?

A. Not very much difference.

Q. And there are at least how many that you know of yourself?

A. I would not want to say that I am familiar with the passes, but
there are several. From my information and knowledge of it,
4674 the farther you go south, down to Klamath, the worse the
mountain is to cross. Say in about Fort Klamath, if you would start west across the mountain, you would find the mountain rougher there than you would fifty miles farther north.

Q. There is no real reason that you know of why anybody could not build a railroad from the Willamette Valley over into your territory, except money?

A. No reason except the money, yes.

Q. And the passes are not all corralled at all?

A. No, not that way.

Q. Now, coming from the Columbia River, on this Deschutes line, you have got to go down about 100 miles through a narrow canyon, which is quite rocky and quite deep, is it not?

A. From general information I would say it was.

Q. Then, with that one exception, all these branch lines, the Heppner branch, the Arlington-Condon branch, the Pilot Rock branch, there are probably dozens of other places where you could just as conveniently build a railroad south of the Columbia River, are there not?

A. Well, I would say the Pilot Rock branch has pretty good merit to it as a road to cross the mountain by striking the John Day's and going south, say, up the South Fork of the John Day. Silver Creek would take it out on the same table, and the main mountain it would have to cross would be the Blue Mountains back of Pilot Rock, while it would cross the other mountain as the divide between the Silver Creek and the John Day's, but that would be very nominal—the crossing of that.

Q. This mileage of the Pilot Rock line doesn't occupy any
4675 territory that anybody else could not occupy, does it—this thirteen miles?

A. Well, I wouldn't really know much about the Pilot Rock line. I was never in there.

Q. That just goes out over the wheat country?

A. Yes.

Q. You could build half a dozen railroads in there, in that thirteen miles, couldn't you?

A. Oh, the thirteen miles of road, of course, wouldn't amount to anything.

Q. From the Columbia River how many railroads could you build into central Oregon, if you really had the money and wanted to try?

A. Well, I would build the first one up the Malheur.

Q. But I am starting right from the Columbia River. I don't want to go to Burns. I want to go into central Oregon. How many railroads could you build from the Columbia River into central Oregon, if you had the money, over ground that is not now occupied by any one of the Harriman branches?

A. Do you mean without a pass or with a pass?

Q. Well, that would be a feasible railroad.

A. From my knowledge of the Shaniko road I wouldn't consider it a feasible road further than a feeder to the main line, and of course as feeders to a main line any number of roads could be built. There would be an endless quantity of them.

Q. The Shaniko line could not be well extended as a main line into your country on account of the drop into the Antelope Valley?

A. Yes.

Q. What about the Arlington-Condon line? That is pro-
4676 jected as far as it can go?

A. The Arlington?

Q. Yes, down to Condon. There is a big hill right south of Condon, isn't there?

A. I am not right familiar with that country in there, in detail.

Q. The Shaniko line and the Arlington-Condon line and the Pilot Rock line do not occupy any territory to keep anybody else from going in there. They develop wheat countries tributary to those lines, which run out at the end of those lines largely, don't they?

A. Yes, and I would say in a general way that at the end of the line, or close to it, is the end of the wheat, because wheat doesn't stand much wagon haul, especially on the old-fashioned base that wheat has been produced on.

Q. I mean those lines were not projected for the purpose of keeping somebody else from building into the territory, were they? That is, they would not as a matter of fact, would they?

A. Well, I would hate to interpret the design. Of course I would feel as though the Pendleton line might have merit to it as going across the mountain.

Q. That is only 13 miles long and over a comparatively flat country, isn't it?

A. Well, it runs up practically to where the mountain starts to jump up.

Q. You could duplicate that railroad three times over in the territory it occupies, couldn't you, if somebody wanted to build in there?

A. A branch is like a foot race. If you take a little bit of a start and the other fellow takes after you, you have got a little the best of him.

Q. Do you think 13 miles would keep somebody from building?

4677 A. Yes, I think it would; especially on the basis that there aren't very many men who can build railroads, and there is a certain amount of respect as to the way the finger is pointing. I think there is something in that.

Q. All these railroads connect with the Columbia River and boat transportation?

A. Well, I wouldn't want to say that I think the Columbia River is worth much from the standpoint of transportation. I think in 15 or 20 years, when they irrigate all the country above and the people get to thinking about what that water is the most valuable for, they will find that the pass is most valuable for a grade on each side, and the main river is simply a drainage to the country and the flowing part of the water is used up in irrigation.

Q. If you wanted to build into that country you would not build a north-and-south line at all, would you? You would build an east-and-west line, wouldn't you?

A. If I were thinking out a line and were going into the railroad business, I would take a line from Butte to Portland and I would run a branch south from in about the Harney Lakes to a point in about Winnemucca, east of the Sierra Nevadas, and I would run

another line south into the Goose Lake Valley and down into the Sacramento Valley.

Q. But just taking the Harriman lines as they exist at the present time, your development would be on east-and-west lines, wouldn't it?

A. Yes, that would be my first choice.

Q. And not north-and-south?

A. Well, if I could soak what I have done for another I would go on the north-and-south.

Q. Yes, but your first choice would be east-and-west?

4678 A. Yes, that would be my first choice.

Q. Out of the Malheur country and over into the Burns country and down into the Klamath country, with a branch up to Bend?

A. I would not want to start this side of Butte, Mr. Cotton.

Q. I am just taking the Harriman lines themselves.

A. Oh, yes. I was taking it that you were putting me as a railroad builder.

Q. Oh, no. You would start from the Malheur country and you would go out through the Burns country, down through Klamath, with a branch up to Bend. Wouldn't that cover about most of the good country?

A. The old lay of the plan, which of course was generally understood, the first plan they say the Harriman people had, was from Natron to Ontario; that would be across the Cascades; and then the line from Odell Lake, after it strikes the valley, to Silver Lake, over across the divide to—wait a moment. It is the marsh at the head of Williamson River. I mentioned it once this morning. It has slipped away from me. The Klamath marsh—that is it, and down Williamson River and down the Klamath; there couldn't be any better line laid than that. Of course you could cut and run another line; right out across anywhere from Silver Lake into the Goose Lake Valley and down Pitt River would be a more gradeless line than the one across Shikan and over across the marsh.

Q. All of that development leaves out the northern part of the State, doesn't it, except right around Burns?

A. In the northern part of the state, the lines must be cut. Say for instance, you run up Silvies River and go down the

4679 John Day. You can't run across east and west on the other side of the mountain; practically you can't run west as a base of the John Day's and the rivers through there.

Q. The northern part of the state is all broken up; you drop down at the Deschutes; then you climb up, and you keep dropping down and dropping down into the John Day's, and up again. It is just a succession of gouged-out country, isn't it, and a great big plateau plain?

A. Yes; it is pretty badly broken.

Q. And that extends how far south of the Columbia River?

A. Well, the John Day River——

Q. I mean this broken character; just in a general way.

A. Well, right from the Columbia River the hills all break right up. Of course there is a great deal of wheat country up on those plateaus of those hills.

Q. I mean this broken-up character of country.

A. It is all that way, practically.

Q. For how far south?

A. To the Blue Mountains.

Q. That is how many miles?

A. From a point like Heppner, why, of course, the Blue Mountains run right in back of Heppner.

Q. I mean the Columbia River extension of the line.

A. The John Day River in a way partially parallels the Columbia, part way: it is 150 miles.

Q. Then, you would say from about 150 miles south of the Columbia River and an extension of a line towards the east from the Columbia for 100 to 150 miles, the country south is very badly broken up, as a rule?

A. Yes, as a rule, but it would turn off a product all right.

4680 Q. And that is the reason why these branches are limited to, say, about 70 or 80 miles in length and run due south in place of east and west, is it not?

A. Well, of course the country develops from an agricultural standpoint up to the end of all of those ranches and one of the bases of building their branches was the knowledge that that was the best agricultural country that led out from them, and to my notion, as a general rule, those branches were built for feeders. That was the main principle they were built on.

Q. And they had to run south because they couldn't run east and west? You couldn't have crossed the breaks, could you, of these various rivers?

A. Why, they could have followed up on the backbone of the mountains, say the mountain between the John Day and the Burnt and the Umatilla rivers.

Q. Yes, but that would be unnecessary and heavy construction and would not have developed as much country as these north and south branches do, would it?

A. Well, the branches are north and south. You mean the branches east and west?

Q. Yes. You could have built an east and west——

A. No, I don't think it is practicable to build east and west across these breaks at all.

Q. The country along the Shaniko branch is wheat for about the last fifteen miles, and the country along Condon branch is wheat, is it not?

A. Why, I am not right familiar with those countries so as to testify in detail, because I have really not had very much knowledge of that in a good many years.

Q. Lying between those two railroads is the John Day River, isn't it [showing witness map]?

4681 A. Is this the John Day?

Q. I think so, yes.

A. Yes, this is the John Day River.

Q. Do you know how many ferries or crossings or ways of crossing the John Day River there are the first 75 miles south of the Columbia?

A. No, sir, I wouldn't say, only so far as general knowledge. My knowledge of it is that that is pretty rough, broken country.

Q. There is only one wagon road across the John Day River in the first 75 miles south? Crossing the river you have to go away down in a great big hollow and away up again, don't you?

A. I wouldn't want to be a definite witness on that part of the John Day.

Q. You have been along the river, haven't you?

A. I have been through that country, a long time ago.

Q. It is away down below the plateau?

A. Yes, sir; it is a broken, rough country in there.

Q. You say there was some change made in the rates on the Oregon Short Line to Denver & Rio Grande territory. When was that change made?

A. In the rates?

Mr. SEVERANCE. Withdrawing the divisions; the gateway was closed.

A. Closing the Ogden gateway?

Q. Yes.

A. Of course that would be only a matter of jumping offhand. I would say three or four years.

Q. You can still ship on a combination of the locals, can you not? I mean that method of shipment is available?

A. Why, we have given up the Colorado points.

Q. But there is a combined local rate there that you can

4682 ship on?

A. I suppose there is. Of course, Mr. Parsons takes up that part of it. A combination of rates would be so great that we couldn't afford to——

Q. You don't know what the reason was for withdrawing those rates?

A. No; I do not.

By Mr. SEVERANCE:

Q. How many branch lines of road have been built into the country in Oregon, either running east from the Southern Pacific, Shasta Route, or south or southwest from the O. R. & N., or west from the Short Line, since the spring of 1901, and by whom were they built?

A. Well, the Siskiyou County branch, which I have not been over since the road was started; I understand it is built to Klamath Falls and by the Southern Pacific or Harriman system. Outside of that I only know of the Ontario line.

Q. When was the Ontario line built?

A. That has been built three or four years.

By Mr. COTTON:

Q. The Arlington-Condon branch was built in 1904?
A. Yes. Well, I know that that has been built recently.
Q. The Pilot Rock branch has been built in the last two years?
A. Yes; I think that is a recent road.
Q. And the Vale branch has been built in the last four years?
Mr. SEVERANCE. That is the one you spoke of—the Ontario?
A. Yes. Of course those branches from a railroad standpoint do not cut much figure with us either coming in or going out of the country, as far as the little short change is concerned; it doesn't really cut much figure with our methods of traveling through the country.

4683 By Mr. SEVERANCE:

Q. How long is that Ontario branch?
A. 16 miles.
Q. And how long is the Pilot Rock?
A. The Pilot Rock, as I remember the distance, is 16 or 18 miles.

By Mr. COTTON:

Q. The Condon line is about 45 miles, I believe—40 or 41.
A. Yes; I am not acquainted with that line, Mr. Cotton.
Q. The O. R. & N. have a whole lot of branches up in eastern Washington, haven't they?
A. I understand they have.
Q. And by common repute you know that the line for a long time was controlled to a very great extent by Portland capital, in an early day, in 1880?
A. Yes; that is my understanding.
Q. And all those branches up there were largely built by the Portland directors, weren't they?
A. That was my understanding; they were built by Portland capital.
Q. And they neglected this Portland country while they were building branches in Washington?
A. They were the old pioneer type and they struck up the first river.
Q. And we haven't found the second river yet?
A. No; you never have found the second river.
Mr. SEVERANCE. Do you think they ever will?
(No response.)

4684

## T. M. BALDWIN,

being duly sworn as a witness on behalf of the Complainant, testified as follows:

Direct examination by Mr. SEVERANCE:

Q. Mr. Baldwin, where do you live?
A. I live at Prineville, Oregon.

Q. How long have you lived there?
A. A little over three years.
Q. What is your business?
A. I am in the banking business.
Q. How long have you been banking there?
A. About 22 years.
Q. Are you engaged in other lines of business?
A. Yes, to some extent. I own some ranches about Prineville.
Q. About how far is Prineville from a railroad station?
A. It is 65 miles from Shaniko.
Q. What other station is there that is next nearest, aside from Shaniko?
A. Well, The Dalles used to be the shipping point of that section of the country.
Q. How far is The Dalles?
A. 120 miles.
Q. What is the character of the country in that part of Oregon?
A. It is high table-lands and valleys, watered by the streams.
Q. What kind of produce is raised there?
A. They raise all the cereals there—oats, wheat, barley, rye—vegetables, or any other product grown in that latitude.
Q. Is there any stock business in that region?
A. Yes, sir; it is principally devoted to stock-raising, and has been.
Q. How large a territory around there is devoted to stock-
4685 raising?
A. It is largely devoted to stock-raising. There are something over 6,000,000 acres in the county.
Q. Have you any idea of the annual output of stock from there?
A. I couldn't give you the figures exactly on that point.
Q. What kind of stock do they raise—cattle or horses or sheep?
A. Cattle, horses, sheep.
Q. All classes?
A. Yes, sir.
Q. To what station are they driven?
A. To Shaniko principally; some are driven south.
Q. You say you ranch some yourself?
A. Yes, sir; I have some ranches there.
Q. What disadvantage, if any, do stock men labor under when they have to drive fat cattle that distance to market?
A. There is considerable shrinkage in driving cattle to the railroad.
Q. Driving that distance, how much is the shrinkage per head?
A. I think it would amount to from 75 to 100 pounds to the animal—fat cattle.
Q. Is there any timber in that country?
A. Yes, sir.
Q. What kind of timber?
A. Mostly yellow pine.
Q. Is it in large or small quantities?
A. There is considerable timber; I should say in large quantities.

Q. How is that?

A. In large quantities, I should say. I couldn't give you the area of the timber section, but it amounts to considerable.

Q. Is Prineville on a river.

A. It is on Crooked River.

Q. How far from the Deschutes River?

A. 20 miles.

4686 Q. The Crooked River flows into the Deschutes?

A. Yes, sir.

Q. Into what stream does the Deschutes River empty?

A. The Columbia.

Q. Are there any irrigation projects in that country, under way or completed?

A. Yes, sir: there are several.

Q. By the Government?

A. No, sir; not by the Government.

Q. Any under the Cary Act?

A. Yes, sir. The Deschutes Irrigation Power Company is the largest company operating there now.

Q. How far have they progressed with their development?

A. They have about 300 miles of mains and laterals.

Q. How many acres under water?

A. Their original segregation was 87,000 acres. They have mostly covered that at this time I understand; I judge from going over the ground.

Q. What kind of products are raised on those irrigated lands?

A. They raise alfalfa and grain and vegetables.

Q. Are those lands taken up and used at present?

A. A good deal of it has been taken up.

Q. How do they get their grain out?

A. They have to haul it out by team if they can get it out at all.

Q. How long a haul does that make?

A. I don't think that these lands have produced any grain for export.

Q. How far are they from the railroad now?

A. These lands are about 70 to 80 miles.

Q. Is any wheat exported from that region at present?

A. Yes, sir: the northern part of the county is a belt of

4687 wheat lands, but they are not under irrigation.

Q. That is dry-farming?

A. That is dry-farming.

Q. How large a belt of land is that?

A. Probably 250,000 acres, or upwards of that.

Q. And how does that grain get to market?

A. It is hauled to Shaniko and to Prineville.

Q. To Prineville?

A. Yes, sir; there is a market at Prineville.

Q. That which is shipped out of the country all goes to Shaniko?

A. All goes to Shaniko.

Q. Do you know what it costs to haul grain from that region to Shaniko?

A. It costs from 20 to 50 cents a bushel.

Q. How large a place is Prineville?

A. About 1,400.

Cross-examination by Mr. COTTON:

Q. How long has this Bend irrigation scheme, the Deschutes Power & Development Company, had their water on this land?

A. I think it is three or four years since they first commenced operations.

Q. They have had water on practically this area or a large quantity, say 50,000 acres or more, for the last two or three years, have they not?

A. Yes, sir.

Q. How many acres of this 50,000 or 80,000 acres are under cultivation at the present time?

A. I couldn't say as to that, but there is a considerable amount of it.

Q. About how much?

A. There must be 50,000 acres, or something like that, probably.

4688 Q. 50,000 acres under cultivation?

A. Yes, sir.

Q. And that is devoted to raising alfalfa?

A. Yes; and grain, oats, barley, and vegetables.

Q. Do you think that they have all-told a thousand acres of alfalfa up there under the Bend irrigation scheme?

A. No, sir, I don't think they have at this time.

Q. Do you think they ever have had?

A. Oh, no.

Q. What?

A. They have now all they ever had. Not under irrigation, I mean.

Q. In the Crooked River Valley how many acres are under alfalfa, down in the valley, where it is warm?

A. That would only be a guess, because I never sized it up. That is the principal crop raised in the valley.

Q. Practically everything in Crooked River Valley that can be put into alfalfa is in alfalfa, isn't it?

A. Oh, no, sir.

Q. I mean all they have got water for.

A. No, sir.

Q. How much more could they put in?

A. Oh, quite a bit more; several thousand acres could be put under water.

Q. I mean, everything that is under water down there is in alfalfa, largely?

A. Yes, sir.

Q. What?

A. Everything—oh, no. It is not all in alfalfa. There is a good deal of the Road land along down the valley that is not cultivated or sown to alfalfa at all.

Q. What is that in?

A. It is not in anything—pasture.

Q. What is that?

A. Just used for pasture, that is all.

Q. Is that under water?

A. It could be—it is.

Q. I mean is it under water?

A. Yes; it is.

Q. I mean is there water to supply it?

A. Yes.

4689 Q. How many acres in alfalfa in Crooked River Valley?

A. How many acres?

Q. Yes.

A. It would only be a guess: probably 25 or 30 thousand acres.

Q. And that is all in alfalfa?

A. Yes, sir.

Q. And what did you say is the amount of available land down there that is not under water in Crooked River Valley? What did you say that area would be?

A. Well, it would be as much more.

Q. This land down in the Crooked River bottoms, that is in alfalfa, sells for from $50 to $100, doesn't it?

A. Yes, sir.

Q. And up at Bend, the Deschutes Power & Development Company, you can buy land for from $16 or $17 up to $40, at the present time?

A. I think they hold it from $40 to $60 an acre.

Q. That is now?

A. Yes, sir. But that land isn't cleared. That is what they sell it to the settler at, without clearing.

Q. That is covered with a scrub growth of junipers?

A. Of junipers and sage-brush.

Q. Sage-brush and junipers and a large quantity of rocks?

A. Yes, sir: in some places.

Q. There are a great many open places where the water would escape?

A. I am not familiar with that part of it. I presume——

Q. And on different levels?

A. Yes, sir.

Q. What is the elevation of this Bend country?

A. About 3,500 feet.

4690 Q. They have a frost there practically every month of the year?

A. Well, they are subject to frequent frosts.

Q. Practically every month in the year?

A. Some months they don't have frost.

Q. Well, of course I know some months, but there is not any month in the year from January to December in which they are not liable to have a frost?

A. Yes.

Q. They may not have a frost every August, but they are liable to have a frost any August?

A. Yes, sir.

Q. Or any July?

A. Yes, sir. That doesn't affect the growing of alfalfa or any of the hardier grains, however.

Q. You say that won't affect alfalfa?

A. No.

Q. Now, alfalfa land any place through that country is worth good money, isn't it?

A. Yes, sir.

Q. And there is no reason in the world that any land that is capable of raising alfalfa should not be put into alfalfa in that section, is there?

A. There are some lands that are not available. The Road Company land is not in the market.

Q. That belongs to the Willamette Valley Road Company?

A. Yes, sir.

Q. What does that alfalfa hay sell for in the Crooked River Valley?

A. Well, they have to market it by feeding it to the stock and then selling the stock.

Q. Yes, but I mean when a man brings a band of sheep in there, what does he have to pay for alfalfa?

A. He pays anywhere from $5 to $8 a ton.

Q. And how many tons to the acre per season?

A. About five to seven tons, I think.

Q. Five to seven tons, and it will cost you about a dollar
4691 a ton to put it in stack?

A. Yes, sir. If it were not for the fact that they feed much of this to stock and drive it out, of course the home market would be over-stocked; it would not bring that price.

Q. Now, outside of the Crooked River bottom, how far do you have to go before you find any other alfalfa land or land that is devoted to alfalfa, including the Bend irrigation scheme? You find about a thousand acres up at Bend, don't you?

A. The Crooked River Valley is quite extensive; it extends for a great many miles, and at the head-waters of the Crooked River there is quite an area of country that is devoted to stock-raising because of the natural grasses and alfalfa.

Q. If alfalfa ground in the Crooked River Valley will produce six or seven tons per acre, worth from $5 to $8 per ton, why don't they have more than a thousand acres in alfalfa up at Bend, out of this 50,000 acres you have referred to?

A. Well, they have hardly had time yet, I suppose.

Q. They have been running there now, to your certain knowledge, for four years, have they not?

A. It is three or four years; yes, sir.

Q. How long does it take to set out alfalfa, seed alfalfa, and get it running?

A. They get a crop about the second year.

Q. Now, what is the reason? Isn't it because it is cold and the land is rocky?

A. I am sure I don't know what the reason is, but they are increasing the acreage all the time.

Q. Yes; I know they are getting a little more in. You have referred to this other section of your country that produces wheat—the Agency Plains, and the Little Agency, and the

4692 Haystack country?

A. Yes, sir.

Q. That is north of Shaniko?

A. Yes, sir.

Q. Lying between this Agency Plains country and Shaniko, what is the character of the country as to productiveness?

A. It is broken some by hills. The valleys are quite productive.

Q. Those valleys are quite limited coming down there out of Antelope Creek?

A. Yes, sir; they are narrow valleys.

Q. Shaniko is up at the top of a plateau, isn't it?

A. Yes, sir.

Q. Then there is quite a big drop to get from there down into the Antelope Valley on the level of the Crooked River?

A. Yes, sir.

Q. What is the drop from Shaniko down to Antelope, how many feet in how many miles?

A. I think the elevation at Shaniko is something like 38 or 39 hundred feet; the Trout Creek or Antelope Valley is about 2,200.

Q. And the distance six miles?

A. It is farther than that. What I mean is, the lower Antelope Valley; it is only six miles from Shaniko to the town of Antelope.

Q. What is the difference in elevation between Antelope and Shaniko?

A. I don't know. I don't know what the elevation of Antelope town is.

Q. It is a very steep hill, isn't it?

A. Yes, sir.

Q. A long, steep hill?

A. Yes, sir.

Q. Almost continuous for the whole six miles?

A. Yes.

Q. Until you get right into Antelope. Is that about right?

A. Yes. Well, it is six miles from Shaniko to Antelope.

Q. Is it two miles on the level?

4693 A. About the first four miles.

Q. The first four miles?

A. Yes, sir. The drop is in the last two miles.

Q. Now, the country up there on that Shaniko hill is all unproductive, isn't it?

A. Yes, sir.

Q. In fact the last fifteen miles of the Shaniko line is unproductive?

A. It is good for grazing only.

Q. Well, by being good for grazing only, the grass is very sparse and you can't raise wheat—too rocky for wheat?

A. Too rocky for that.

Q. And with the exception of this little Antelope Valley, there is only 20 miles of that character of country immediately south of Shaniko?

A. Yes, sir; where the valley opens out. There are farms all along down Antelope Creek.

Q. Yes; but they are very limited in area?

A. Yes; they are narrow valleys.

Q. Lying immediately south of Prineville is what is known as The Desert?

A. Yes, sir; south and west.

Q. About how large is that?

A. I don't know how far it extends; I have never been to the limit of it; but it extends practically to the south line of the state.

Q. They don't raise wheat out there now, do they, except in spots?

A. No, sir; they wouldn't know what to do with it if they did.

Q. Well, could they raise it?

A. They could in some places, yes.

Q. But a comparatively limited area.

A. I couldn't say as to that. I don't think they have tried to any extent.

4694 Q. It is a gray-sand, juniper desert as a rule?

A. I believe it is.

Q. Now, going west from Prineville, after you leave the Crooked River Valley, you go down about 12 miles west from Prineville and then climb up on the top of the table-land?

A. Yes, sir.

Q. About how high do you climb?

A. That isn't very much above the level of the valley there, at that point.

Q. And then you strike a gray-sand, juniper desert that extends over to the timber and the Cascade Mountains?

A. Yes, sir.

Q. Absolutely unproductive?

A. Oh, no.

Q. I mean without water.

A. Without water, yes.

Q. There is no water on it except this Bend irrigation scheme?

A. Yes, there is water on it, on the west side of the Deschutes.

Q. At the Deschutes irrigation place?

A. Yes. Water from Squaw Creek is taken out.

Q. Those are both limited in quantity, are they not?

A. One company has redeemed about 10,000 acres there, called the Squaw Creek Irrigation Company.

Q. The other about 20,000?

A. The Columbia Southern Irrigation Company operates on that side of the river.

Q. About 20,000?

A. About 27,000 acres.

Q. After you strike this gray-sand, juniper desert you strike the timber to which you referred?

A. Yes, sir.

Q. And that goes along on the eastern slope of the Cascade Mountains?

A. Yes, sir.

4695 Q. It follows the Cascade Mountains down into the Klamath country?

A. Yes, sir.

Q. Now, west of Prineville—west and north—you run into the fringes of the Blue Mountains, do you not?

A. Yes, sir

Q. And that is a very much broken country?

A. Yes.

Q. And outside of the irrigation up on the Owyhee and some little wheat north of that, there is not very much in that from a productive standpoint, is there?

A. No, except the valleys; that is all.

Q. And those valleys are all limited?

A. Very narrow.

Q. And the country is very badly broken?

A. Yes, it is badly broken.

Q. Very difficult to construct a railroad through it?

A. Yes, that part of the country.

Q. Do you think the Condon line could be extended?

A. I don't think it is practicable.

Q. Do you think the Heppner line could be extended?

A. Not through that section; no.

Q. So, therefore, the only feasible extension of any of the O. R. & N. lines is that Shaniko line through the country we have described?

A. No, I think that a more practicable route would be up the Deschutes.

Q. Now, take the Deschutes. That is a rocky canyon, isn't it, for about 135 miles?

A. Yes, sir.

Q. You would have to chop your way out of rock through most of the entire distance?

A. I think you would. There would be a good deal of that character of work.

Q. And the rock rises from the level of the river in places
4696 2,000 feet almost sheer up into the air?

A. There is a very deep, narrow canyon.

Q. And in some places it is nearly 2,000 feet?

A. Yes, sir.

Q. Take it at Sherar Bridge, for example?

A. Yes, sir.

Q. That is where the old Dalles road crossed?

A. Yes.

Q. And that extends up say 135 miles south of the Columbia River?

A. Yes, sir.

Q. Is the country at all productive tributary to it?

A. Not until you get to the mouth of Trout Creek, I should say.

Q. How far is the mouth of Trout Creek from the Columbia River?

A. I presume it must be between 80 and 90 miles.

Q. Just east of the Deschutes River, the Columbia Southern runs parallel with the river 70 miles, does it not?

A. Yes, sir.

Q. Takes in all that wheat country and covers that?

A. Practically it does.

Q. Then west of the Deschutes River there is the Great Southern Company, owned by Mr. Heinrich?

A. Yes.

Q. That runs how far down into the country?

A. I think that runs 15 miles.

Q. Taps the country which might be tributary to the Deschutes on the west?

A. I presume it might do so.

By Mr. SEVERANCE:

Q. How far from Prineville, in the region around Prineville, is this last line that Mr. Cotton asked you about—the Heinrich line?

Mr. COTTON. That is west of the Deschutes.

Q. I understand. How far west?

4697 A. That is only fifteen miles out of The Dalles.

Q. That is practically inaccessible to you?

A. Oh, entirely so.

Q. How much is land similar to that which you said was selling for $40 to $60, worth out here in Oregon where it is close to a railroad?

A. Oh, I couldn't say. Under a proper state of cultivation it would be worth probably $100 an acre.

Q. You stated that was only a small amount; I think you said there was 50,000 acres of land in the bottom and 1,000 acres in alfalfa. What is the balance of it used for?

A. They are engaged in clearing it and bringing it under cultivation; growing different kinds of grain and vegetables.

Q. What becomes of that grain—is it fed?
A. It is fed, yes.
Q. Is that near enough to any railroad so that it would be feasible to raise grain and cart it out?
A. No, sir.

By Mr. COTTON:

Q. They drive sheep from your country to the Columbia River, do they not?
A. They drive sheep out of there, yes.
Q. They drive them to the Columbia River, straight through, don't they?
A. I think the most of the sheep are shipped from Shaniko.
Q. But I say they do drive large quantities of sheep from your country to the Columbia River, and then over across the river into the Washington mountain country, do they not?
A. I think so.
Q. Don't they now?
A. No, sir.

4698 Q. You have quite an active demand for all the hay and grain that you can raise in that country at present, for feed purposes?
A. Yes sir.

By Mr. SEVERANCE:

Q. Do you clip wool there?
A. Yes, sir.
Q. Where?
A. The sheep are shorn on the ranges or out there in the corrals.
Q. How far does that have to be hauled from those ranges?
A. Some of that is hauled for 150 miles or farther, probably 200 miles.
Q. How much does that cost?
A. It costs from half a cent to probably a cent and a quarter a pound, depending on the distance.
Q. Is that an extensive industry there?
A. Quite so, yes, sir.
Q. Have you any idea how much the annual clip of wool is in that region, that has to be hauled a long distance?
A. 3 or 4 million pounds.
Q. Where is it hauled to, ordinarily?
A. Shaniko.

By Mr. COTTON:

Q. That wool is raised in the territory extending from the Cascade Mountains to the Blue Mountains?
A. Yes, and south.
Q. What?

A. South, to Prineville principally.

Q. In fact a great many of these sheep men feed in one place and then drive afterwards to another place?

A. Yes, sir.

Q. All over that whole country?

A. Yes, sir.

Q. So the sheep, you might say, are on foot practically more or less all the time?

4699 A. Well, they have to be. Of course they have to go to the mountains for summer range—the Cascades and Blue Mountains.

Q. For instance, you take the Baldwin Sheep & Land Company. They take their sheep from the farm and send them, some to the mountains, some to the Cascades, and some to the Blue Mountains?

A. Yes, sir.

Q. And everybody else does the same thing?

A. Yes.

Q. And then they bring them down to the same place for shearing purposes?

A. Yes.

Q. That territory which the Baldwin Sheep & Land Company cover with their sheep is about how wide east and west?

A. The Baldwin Sheep & Land Company?

Q. Yes; that is, from the Cascade Mountains to the Blue Mountains.

A. Oh, that would probably be from 75 to 100 miles, taking it from one limit to the other.

4700 Mr. SEVERANCE. Mr. Cotton, so as to have it in the record, how long is that Klamath line?

Mr. COTTON. It is over a hundred miles.

## C. E. S. WOOD,

being duly sworn as a witness on behalf of the Complainant, testified as follows:

Direct-examination by Mr. SEVERANCE:

Q. Mr. Wood, where do you live?

A. Portland, Oregon.

Q. What is your profession?

A. Lawyer.

Q. How long have you lived in Portland?

A. Practicing law since 1884; in the army since 1875; left in 1880 and came back in 1884.

Q. You were in the regular army, were you?

A. Yes, sir. I came here in 1875 as a lieutenant, with headquarters at Vancouver; afterwards I went on the general command staff, with headquarters at Portland, and as an officer campaigned and

otherwise traveled all over this country. That is what I mean by living here.

Q. You were present this afternoon while Mr. Hanley was on the stand?

A. Just recently, after lunch.

Q. I have been asking him and Mr. Cotton has also been interrogating him with reference to this country that is without railroad facilities in central Oregon. How familiar are you with that country, Mr. Wood?

A. In a general way I am pretty familiar with it. When it comes to detailed figures and statistics I might fall down. But I
4701 came through with my company in 1875—through this same Harney Valley; rested for a long time at Camp Harney; came on down the John Day River and to The Dalles—in 1875. In 1878 I campaigned all through that same country, in the whole State of eastern Oregon, down to Nevada.

Q. Whom were you looking for in that campaign?

A. Looking for "Buffalo Horn," the Pioche chief.

Q. It was an Indian campaign?

A. Yes. Campaigned up north of the Columbia that same year, through the State of Washington—then the Territory of Washington; campaigned in Washington in 1879.

Q. What part of Washington?

A. All of eastern Washington. When you go into an Indian campaign it is like chasing a scattered lot of sheep. After you have once broken them up they scatter everywhere and you follow them everywhere. To give you an illustration, in the campaign of 1878, after we broke them up at the Battle of Pilot Rock, where this line goes to that they speak of, they broke and scattered, with the result that we went north of Spokane—there wasn't any Spokane then, but I mean where Spokane now is. We went all through eastern Washington and north of Lake Chelan; went as far south as Sheepshead Station on the old Winnemucca stage road in Nevada; went as far east as the Seven Devils country in Idaho and all over eastern Oregon—everywhere—Jordan Valley, Fox Valley, Harney Valley, John Day Valley.

Q. Since you left the army and have been practicing law here in this city, have you had occasion to become familiar and remain familiar with that region?

A. Yes, I have been in eastern Washington a good deal on
4702 business and ordinary travel, and I represent this Wagon Road grant that has been spoken of in Oregon—the Willamette Valley and Cascade Mountain Wagon Road grant.

Q. Where does that grant run?

A. That runs legally from Albany and the Willamette Valley across the Cascade Mountains by way of the South Fork of the Santiam through Prineville, up the Crooked River, across Buck Mountain, down Silver Creek into Harney Valley; skirts the north edge of Harney Valley, out through Crane Creek Gap, follows the survey

of this Harriman road to Ontario on the Snake River; that is, to put it more chronologically, the survey follows our road.

Q. Will you describe in your own way, in general, the character of this country in eastern and central Oregon which you mention, briefly describe it, what it is suitable for, the production it is suitable for.

A. I would describe it as a great basin which, compared with western Oregon, you would call treeless. The trees in the mountains are pine, juniper trees scattered out on the lower levels, and then broken hills without trees, and rolling bunch grass hills, and linking through these, with a general east and west tendency, are great valleys. The Malheur Valley leads up through Crane Creek Gap into the Harney Valley. The Harney Valley is 40 miles wide and about 75 miles long, and the spur of it is Silver Creek Valley. It leads on west into Crooked River Valley, and then the Deschutes Valley; and then, somewhat paralleling it, farther to the south, comes Christmas Valley, and on farther south Goose Lake Valley, all of them enormous valleys.

Q. Suitable for what kind of agriculture, if any?

A. In my opinion, suitable abundantly for cereals, wheat,
4703 oats, and barley—enormous acreage for that, and a lesser acreage suitable for alfalfa and sugar beets and hardy vegetables; in many localities, hops; in many localities, fruits, and general farming. And I can explain my reasons for that better by saying (returning to the early days) that when I first came here there were no railroads in Oregon except the stub down to Roseburg out of Portland, the Ben Holliday road, and a little portage road that connected with the steamboats, over the Cascades and over The Dalles—two links of portage road. There were no railroads at all in Washington except the early commencement of the Northern Pacific to earn its grant, which ran from Kalama down here across to the Sound. Eastern Washington and eastern Oregon were alike railroadless—wild Indian country, sage-brush, bunch-grass. And the general belief at that time was that they would always remain so. But the people discovered that bunch-grass meant wheat. And, as I tell you, I have seen the old Palouse and Walla Walla country nothing but Indian country, nothing but bunch-grass and sage-bush, and to-day it is all solid wheat. There came to be an axiom, which I have never known to fail, that where bunch grass will grow wheat will follow. Bunch grass is a cereal—that is, where people plow it will grow. Of course bunch grass grows in lots of rocky places where it would not be feasible to plow—I mean where it is arable. On that test I have ridden through the same miles and miles of bunch grass in eastern Oregon that I did in eastern Washington, and I don't see why the
4704 same conversion should not be made in eastern Oregon as has been made in eastern Washington. Not many years ago, Mr. Hanley here said that if I would let him have a piece of road land he would show me what it could produce, and I did so—sold it to him. He has raised, as I remember it, 60 bushels and 80 bushels of

barley off of that same land, without irrigation. But I differ from Mr. Hanley in the understanding of dry-farming. Now, he called that dry-farming. I don't understand it to be dry-farming. My understanding of dry-farming is, as he said, put the lid on, keep the moisture in—put the lid on both ways, pack the sub-soil and keep the surface constantly stirred so that there is no evaporation, or limit the evaporation, and retain the moisture that falls from the skies. Now, he himself has demonstrated to me that this rolling hill land does not depend on the melting snow or on any moisture that falls from the skies locally; but that it has got a sub-drainage or seepage coming down from the hills that is passing under it all the crop-making season. So I would make that difference—that this land that we farm without irrigation has got really a constant seepage supply of water. And that is the reason, I think, that when you get very far out, away from the foot-hills into these great valleys—as I say, Harney Valley is 40 miles in width—when you get away out in the center, there you have to resort to irrigation if you want to raise anything. Hanley will raise you 80 bushels of barley in the seepage area, but out in the center he will have to have irrigation.

Then, I have seen down on the Pea Ranch, under the effects of irrigation, fine fields of alfalfa. The elevation there is about 4,200. I have also seen all manner of garden vegetables—carrots, beets, cabbages, onions, turnips, and all that sort of thing: fine apples, hardy apples, winter apples, and I believe it would be perfection for the Siberian crab-apple (I don't know what its market value is), but I never saw more beautiful crops. Up near Burns there is a man named Geer. He said, "Let me have a piece of your Road land and I will see what can be done without irrigation." My great point is that I have always been for cutting loose from irrigation, because while irrigation improves any land, yet it is a bad thing to be wholly dependent upon it, because the irrigable area is necessarily limited, whereas these other areas of which I speak are not. I have seen Irwin Geer on this same rolling foothill, right up on a hill—you wouldn't think they could raise anything there in that country without irrigation, but I have seen him raise the finest kind of potatoes, few in a hill, but their texture like ivory—not more than six or eight potatoes to a hill, and the hills had to be a pretty long way apart, probably four feet apart. And the finest kind of wheat. Of course I have been over that wheat proposition before. And he is growing an orchard which ought to be coming slightly into bearing this year. It is all being done without irrigation, which is very interesting to me.

4705

Now, if I take these same tests of elevation, of natural growth like bunch grass and sage brush, of location, with a hillside sloping the water in, surrounded by hills where the snows lie and send in a supply of water, I would say that Christmas Lake Valley ought to do the same, and these other valleys. Over in the Prineville country, in the Crooked River and Deschutes River Valley, they raise

4706 hardy vegetables; and the Prineville people have their own gardens, and they raise oats, wheat and barley there, so far as local use demands it. And I have seen all these crops growing. But commercially speaking, of course, there is no use to raise anything—you can't get out of the country. So they are not raised commercially. Judging by these tests, judging by what has been done in eastern Washington, judging by what has been locally done by the farmer and the small kitchen gardener and by the man with a 40-acre field of wheat or oats, I would be afraid to put a calculation on the acreage that could be brought into human use. There is where I would fall down on statistics. It would have to be a guess. But judging from our Wagon Road, I would say that there were several millions of acres in eastern Oregon that will be bountifully tributary to man whenever it is necessary.

Q. And what do they lack now? What does that land lack now?

A. Well, in my opinion, as I have told you, nothing but transportation to get the stuff out. If you wish me to go on——

Q. Go ahead, yes.

A. I will state my views. They are pretty well known, but not on the witness-stand.

Q. Not under oath.

A. No. They are these: Here is Harney Valley, that has 4,100 feet average elevation, or about 4,000 feet average elevation. That is the bed of an extinct sea or inland sea or lake. When that broke away and drained off, it is perfectly apparent that an arm of it was this projection to the westward known as the Crooked River Valley, and it drained off into the Columbia River by the Deschutes Valley, by the Deschutes River; it drained off to the eastward
4707 by the Malheur canyon, and those are the only passes into eastern Oregon, if you are hunting for a natural water grade. I agree with Mr. Hanley and Mr. Cotton: plenty of places where skill and money can put you through. Those are the only passes into territory of about 30,000,000 of acres, on the natural water grade. You can go up the Columbia and you come down to the Deschutes, and that leads you right up on to this table-land, on to this plateau, and then you go on to the John Day, and that lands you away up in the mountains by Canyon City, right up in the heart of the mountains, instead of on a plateau. At Umatilla, the Harriman road occupies that valley and they know where that leads them up—right up to the top of the Blue Mountains, and then they come down into LaGrande. And you keep on going around—Burnt River—every one of them, and they all land you in the mountains until you get to one river—the Malheur or Ontario, and that leads you right up into this same identical plateau. I said Deschutes. I am really talking about its eastern branch, the Crooked River, but they are the same thing. Crooked River and the Deschutes at their junction make the same river. So you come to this same great plateau, and out of a great marsh there, the waters practically go to the west. The Malheur comes down into the Snake, and while Sil-

ver Creek (which is the head of Crooked River) really comes out of Buck Mountain, yet Buck Mountain's feet are right in this same marsh. So it is almost literally true that these two streams lead off the plateau, and they are the only two in Oregon that do. You keep on going and you come to the Owyhee, and that leads
4708 you off into the mountains to the south. Now, I don't think there can be any question that those are keynote passes; at least the predecessors of Mr. Harriman laid their 5-year regular plats and surveys on the Malheur canyon to hold it, have been doing so to my knowledge for twenty years, I guess, and Mr. Harriman has been doing the same thing; therefore, I would think it must be considered a preferred pass. So, that my idea about it is that there is the way the water ran out of that country originally; that is the way it is running to-day, and if you are looking for a water-level pass, it is just two rivers: up one and down the other; except this, that when you get over on to this plateau that I speak of, in which Harney Valley is situated, you cross to the Cascade Mountains, and then you can hit the Klamath marshes on practically the same level, and then you get a water-shed that leads off down to San Francisco by way of the Sacramento; and if the Lord was laying off railroads by water courses, He has marked them pretty plainly: right up Malheur on to the plateau, down the Deschutes to Portland, and up the Klamath or Pitt (or whatever you call it), and down the Sacramento to San Francisco. Those are the preferred lines. I will also state that I have an opinion that the Deschutes River ought to be very carefully looked at before it is absolutely destroyed in railroading. The Deschutes River has the most even flow of any river in the United States and the greatest water power of any river in the United States—many times more than Niagara Falls. It represents 9,000,000 tons of coal a year in power, forever, as long as the sun burns, and I don't think that ought
4709 to be lightly destroyed by either irrigation or railroads, or anything else.

Q. Do you know anything about the irrigation projects that are under way in central Oregon now?

A. I know something about them.

Q. What?

A. The chief one is the Deschutes Irrigation & Power Company. They have about 200,000 acres all told within their contracts; about half allowed by the state land board to be listed as completed; about half still uncompleted and to be developed; and the state land board has just handed them over a third contract for 73,000 acres at $60 an acre lien, and all the water power of the Deschutes River by way of a side-show.

Q. Is there any other irrigation going on up in that country, that you know of?

A. Yes, there is the Columbia Southern, and there are several smaller irrigation enterprises out there in Crook County. I don't

know of any over in the Harney County country. Mr. Hanley tried to get one up there, but the Pacific Livestock Company opposed it in the Secretary of the Interior's office, on the ground that they had the superior right to the water, and for some reason or other the State's proposition was turned down in Washington.

Q. You were speaking a little while ago about the difference between eastern Washington and this part of Oregon which was undeveloped. You said it was a matter of transportation. Are there a number of railroad lines in eastern Washington?

A. Yes; that is common knowledge. There are at least four.

Q. I know it is common knowledge, but I want it on the record.

A. There are at least four great competing lines. There is
4710 the Northern Pacific, the Great Northern, the O. R. & N.—that is, I don't give its corporate name, but the Harriman system; the Canadian Pacific, and then other roads are coming in by arrangement. The Chicago, Milwaukee & St. Paul is coming in.

Q. Are these roads or their branches run around through that country, reaching these wheat fields that you have spoken of?

A. Yes; I might say that eastern Washington is, for a western place, gridironed with railroads that are fully developed, and there are more or less competing——

Q. Had the wheat fields been developed before the railroads, or did the railroads come first?

A. The railroads helped to bring in the people and gave them money to raise the wheat. There was no development until the railroads came. That is true of the west. I have helped protect the surveyors of the Northern Pacific (I know all about it) from Bismarck on. The railroad was the pioneer, the forerunner—had to be. The railroad and what it brought ended the Indian question—not the army. Yakima Valley, that is now one of the garden spots and show spots, was nothing but an Indian reservation until the railroads got there. The railroads did it all.

Q. How do you estimate the size of this territory out here in Oregon without railroad facilities?

A. From where the Harriman system forks at Granger going to San Francisco and north to Portland?

Q. Yes, start there.

A. Oh, 50 odd millions of acres; about 30 millions in Oregon alone.

4711 Q. What other States does it extend into?

A. Nevada principally.

Q. Some in Idaho and Wyoming?

A. Yes; Idaho and Wyoming.

Q. Utah?

A. No, I guess none in Utah; it is right at the north of Utah.

Cross-examination by Mr. COTTON:

Q. How extensive is this land grant of yours, to which you refer, Mr. Wood?

A. Oh, not very much. It begins, I said, legally at Albany, but in fact the actual granted land begins at Sweet Home, on the west side of the Cascade Mountains, and runs east by way of Prineville and Burns and Vale to Ontario, in round numbers about 137 or 140 miles to Burns by our road; 150 miles to Prineville; about 60 miles to the summit of the Cascades, where the elevation is 4,100; about 50 miles to Albany—four hundred and something, isn't it—I have forgotten, and 863,000 acres.

Q. It was originally, before you commenced selling alternate sections, three miles on each side of the road?

A. No. Mr. Hanley was mistaken about that. It is a 12-mile limit; the right of selection, within those limits, of three sections per mile to be taken from odd numbered sections. It is not a grant in place.

Q. Three sections per mile?

A. Yes.

Q. So that it makes a stretch, then, three miles wide?

A. Yes.

Q. That is, if it were solid.

4712 A. Yes; if it were solidified.

Q. That was bought from whom?

A. That was bought from—well, if you have no objection, I will answer it in the chain of title. There was a grant from the United States to the State of Oregon, from the State of Oregon to some thrifty Willamette Valley politicians incorporated under the name of the Willamette Valley & Cascade Mountain Wagon Road Company, from that to the projector of the Oregon Pacific, T. Edgerton Hogg, who built the road down to Yaquina Bay and projected the Corvallis & Eastern. He sold it to my people, French bankers.

Q. Who were they, please?

A. What are their names?

Q. Yes; I mean the firm.

A. Lazard Frere.

Q. Of New York and Paris?

A. New York, Paris, and San Francisco.

Q. And your clients have owned it now for many years?

A. They have owned it thirty odd years. I don't remember the date of the deed. I have been with it over twenty years.

Q. And you have been familiar with the character of the country during all that time?

A. Yes, sir. I used to think it good-for-nothing Indian country. I shared the belief that the Palouse country would remain Indian country to the end of time.

Q. And you changed your views about the Palouse country about twenty years ago?

A. Yes.

Q. Then, for the last twenty years, entertaining the same views, and your clients still owning the land grant, they have held it and waited for a railroad?

A. Yes, sir.

4713 Q. And they paid how much for it?

A. I don't know.

Q. A couple of hundred thousand dollars, wasn't it?

A. Oh, that must be the blindest kind of a guess on your part. I haven't the faintest idea. I don't think anybody knows what they paid for it. I can only tell you this: that at the time we offered it to Mr. Harriman at $3.50 an acre, or 2½ millions net cash, they told me that that would (taking 6 per cent interest) just get them out whole. That was one of the reasons for fixing the price.

Q. That was how long ago?

A. Six years ago, I guess.

Q. That is, interest and taxes?

A. No; I guess that was all expenses—interest, taxes, lawyers' fees, and all expenses of the grant.

Q. And you have been connected with it for the whole twenty years?

A. Yes.

Q. Now, that land is about the same general character as land generally over in eastern Oregon?

A. Yes. While we had the right of selection, it was within limits, and we had to take the alternate sections, so that it is about the average character.

Q. But within those limits you picked the best you could?

A. We did the best we could, but we were not able to do any better really than anybody else—except, I mean, where we did pick, but when it came to a place like the Malheur canyon, we skipped it entirely.

Q. You could build a railroad across the mountains on your pass, could you not?

A. Yes, sir.

Q. That is not occupied by any railroad survey?

A. Not that I know of.

4714 Q. Never has been?

A. No; not that I know of, unless Hogg laid a survey down there. I believe he did once. Still, you mean it is not legally occupied?

Q. Yes.

A. No.

Q. When did Mr. Harriman acquire this Malheur pass that you referred to?

A. When he acquired the Corvallis & Eastern and the Hammond road, for this reason: I surmised that all those properties were T. Edgerton Hogg's, and when he went bankrupt and the road was put up at receiver's sale, Hammond bought it in and Mr. Harriman bought out Hammond. So I presume that is the chain of title.

Q. Yes; the Corvallis & Eastern.

By Mr. SEVERANCE:

Q. What firm are you a member of here?

A. Williams, Wood & Linthicum.

Q. How long has that firm been in existence here?

A. It has been in existence as that firm, under that title, I guess about fifteen years.

4715 WILLIAM GRIMES,

being duly sworn as a witness on behalf of the Complainant, testified as follows:

Direct examination by Mr. SEVERANCE:

Q. Mr. Grimes, where do you live?

A. Marshfield.

Q. How long have you lived there?

A. I have been off and on there for about three years.

Q. What is your business at Marshfield?

A. I am connected with the First Trust & Savings Bank and property interests and other enterprises.

Q. Are you in any way connected with the Chamber of Commerce of Marshfield?

A. Yes, sir.

Q. What capacity?

A. One of the executive committee, and chairman of the railroad committee.

Q. Chairman of the railroad committee?

A. Yes.

Q. Have you ever met Mr. E. H. Harriman, one of the defendants in this suit?

A. I have.

Q. Where did you see him?

A. I saw him between Roseburg and Eugene, last October.

Q. Who was with you?

A. Mr. Oren and Dr. Mingus.

Q. Where is Marshfield situated with reference to the seacoast?

A. It is in southwestern Oregon, in the second tier of counties from the south boundary: Curry being on the boundary line of the coast of California, and this is the second county.

Q. Are you on any harbor?

A. Yes, sir.

Q. What is it?

A. It is Coos Bay Harbor.

4716 Q. Is Marshfield or Coos Bay connected in any way by boat with San Francisco or Portland?

A. Yes, sir.

Q. What boat?

A. The "Czarina," owned by the Southern Pacific, which goes to San Francisco; the "Plant," owned by the Oregon Coal & Navigation Company, of San Francisco, goes to San Francisco; the boat "Breakwater," owned by the Southern Pacific, comes to Portland; also the "Alliance"—I forget what that transportation company is.

Mr. COTTON. The North Pacific Steamship Company, is it?

WITNESS. I believe it is. And there was a boat, the "Eureka," I think, that stops in there also, that makes from Portland to the Bay and from the Bay to Eureka and from Eureka to San Francisco.

Q. How large a town is Marshfield?

A. Our last census was 5,068, taken about two months ago.

Q. What are the industries that are carried on at Marshfield?

A. Coal and lumber more particularly.

Q. What kind of business is carried on in that county, in that region, other than coal and lumber?

A. Coal, lumber, and dairying would come next, and then horticulture and agriculture.

Q. How extensively is dairying carried on there?

A. I couldn't give it except as we get the history of it. It stands third on the coast in dairying interests.

Q. Your county?

A. Our county, yes. Humboldt County, California, first; Multnomah County second, and we are third, I believe, as given by those who prepare the statistics.

4717 Q. What railroads, if any, have you in Marshfield?

A. We have one now owned by the Southern Pacific, running from Marshfield to Myrtle Point, on the Coquille River.

Q. Is that the road that the Southern Pacific bought of Mr. Spreckels of San Francisco?

A. Yes, sir.

Q. How far is that from a connection with the Southern Pacific?

A. That is about 80 to 90 miles.

Q. You say it runs up the Coquille River?

A. It passes from the Bay or the tributaries of the Bay over on to the Coquille River. There is a little small divide in there, about half a mile in length.

Q. Do you know whether that road is surveyed through to a connection with the Southern Pacific?

A. The road under Mr. Spreckels was surveyed to Roseburg.

Q. Roseburg is on the Southern Pacific?

A. It is on the Southern Pacific, yes.

Q. And the construction proceeded as far as this point you have named?

A. Yes.

Q. Is there any other road built part way between the Southern Pacific and Marshfield?

A. A road is partly constructed from Drain to Coos Bay.

Q. How far is that constructed?

A. I would judge it was from 80 to 120 miles, maybe farther, in partial construction, in grades more particularly.

Q. What is that?

A. In grade more particularly.

Q. How far is the steel laid on it?

A. I would judge only a mile or two.

Q. How long ago did that partial construction of the grades
4718 and bridges take place?

A. In the early spring, I think, of 1907.

Q. They got that far in 1907, or they built that far in 1907?

A. They built that far in 1907.

Q. Since that time has anything been done?

A. No, sir; there has not.

Q. Is any part of it being operated?

A. No, sir; with probably the exception of the partial construction where the rails to Drain may have been used for supplies and cars are set in there.

Q. Now, you say you met Mr. Harriman. Did you have any negotiations or conversation with him with reference to the construction of the road into Marshfield?

A. Yes, sir.

Q. What is the history of those negotiations?

A. The committee, consisting of Dr. Mingus and Mr. Oren and myself, met Mr. Harriman last October.

Q. October or August?

A. In October.

Q. All right; go ahead.

A. Or near that time. I will say in the fall. My impression is it was October.

Q. Are you sure it wasn't August?

A. Well, I could tell better——

Q. My notes say August.

A. Well, if it was August, it was August; at least it was in the fall.

Q. Last year?

A. Yes; the latter part of last year.

Q. What happened when you met him? What happened between you and him?

A. We went as a committee to ascertain if Mr. Harriman and his interests would not consider the proposition of continuing his
4719 line on to the Bay, and we had a conversation in relation to it.

Q. What transpired at the meeting? What was the talk? What did he say and what did you say?

A. Of course we went for the purpose, as I have stated, of having him complete the line, as it had already been begun, and a good many people were brought in there on account of his beginning the line and would like to see it finished. He then wanted to know what resources we had that would justify the building of the road. We told him we had more than we had at the time he began the building of the road. He then asked if we were prepared to give any idea as

to the tonnage. We said we were not, that we were not traffic men, and suggested to him that he send somebody who was acquainted with those conditions and affairs to report for us. He said he would. Further, in conversation, he said that if we would make a showing sufficient to justify the payment of four per cent interest on the construction of the road, he would recommend its construction.

Q. What else?

A. There was a good deal of talk pro and con, but that was in substance about all that was said. It all led up to that one proposition. We, of course, made the point that if there was business sufficient to begin the road, there were additional reasons for the finishing of it at this time, because the population had greatly increased since the beginning of the road.

Q. You say that he said he would send somebody to report on the traffic possibilities?

A. He did.

Q. Did he send anybody to do that?

A. He did, about two weeks later.

4720 Q. Whom did he send?

A. Col. W. H. Holabird, of Los Angeles.

Q. Who is Col. Holabird?

A. I have no knowledge of who Col. Holabird is, except he is a very fine gentleman—apparently so.

Q. When did he make his investigation?

A. Some two or three weeks later. He came to the Bay and remained about two weeks.

Q. Did he make a report?

A. He did.

Q. Subsequent to that did you have certain correspondence with Mr. Harriman?

A. We did.

Q. Have you a copy of the report that Col. Holabird made?

A. Yes, we have a copy. It was sent us by Mr. Millar, of New York.

Q. That is, Mr. Alexander Millar, the secretary of the Union Pacific and Southern Pacific railroads?

A. I don't know personally what his connection is; I am giving the history of how that report was first secured by ourselves.

Q. Go ahead.

A. In going before Congress for an appropriation for the betterment of the Bay, we had learned that the report was favorable to the conditions there, at least so far as the improvement of the Bay was concerned, and Mr. Harriman, through his kindness, allowed us to have the report to file before the Committee of Rivers and Harbors of the House. Then, when we came back Mr. Walter Lyon, our secretary, was sent to Washington, for the purpose of helping us to secure the appropriation. He secured a copy of it. That

4721 copy he had mislaid somewhere, and we subsequently ordered Mr. Lyon to write to Mr. Millar to get another copy, and Mr. Millar sent the copy.

Q. Which you have?

A. And I didn't bring it. You asked me to get it, and we had to telegraph, and that is the telegram. That is the manner in which it reached here.

Mr. LOVETT. If he says that is a correct copy, it may go in, subject to correction.

(The paper produced by the witness was marked Complainant's Exhibit 162.)

Q. I show you Complainant's Exhibit 162. What is that?

A. This is the report of Mr. Holabird as we received it.

Q. That is Mr. Holabird's report on the railway project?

A. The railway project to Coos Bay.

Mr. SEVERANCE. I offer Complainant's Exhibit 162 in evidence.

Complainant's Exhibit 162 is as follows:

COMPLAINANT'S EXHIBIT 162. (Grimes.)

Report by W. H. Holabird upon traffic possibilities for a standard gauge railroad between Drain and Marshfield, Oregon, made at the direction of E. H. Harriman.

Western Oregon is chiefly mountainous; rugged in contour, and heavily timbered with fir, spruce, and in the Coos Bay region a superior quality of cedar. Among the many streams that flow in a general westerly direction through these mountains, the Umpqua is one of the largest and most important south of the Columbia.

The area of valley or bottom lands, save in the region of Rose-
4722 burg, is limited to narrow strips here and there, the river flowing generally through narrow passages, offering little or no opportunity for agriculture. The survey made by the Southern Pacific Co. from Drain, a section of the main line between Portland and Ashland, runs along Elk Creek to its junction with the Umpqua some sixteen miles, thence along that river to its mouth, thence along the ocean front to Coos Bay, a harbor of considerable importance. The line as projected passes through a thinly populated region, which, except for timber and its products, will afford little or no tonnage for a railway until Coos Bay is reached. The Umpqua is navigable for vessels drawing five feet or less as far as Scottsburg, some 25 miles from the river's mouth. Until Scottsburg is reached the river flows over a rough, rocky bed, carrying sufficient water for logging purposes only during the winter or rainy months. From Scottsburg to the sea the Umpqua is a broad, beautiful river. Economically speaking, it is quite equal to any river I have seen, save the Hudson or the Columbia. It is from 600 to 1,000 feet in width, with steep, sloping mountains densely covered with forest growth flanking it on either side. There are but three small towns between Drain and Coos Bay, Elkton, Scottsburg, and Gardiner, the latter a saw-mill town of considerable promise. The only industries are a salmon canning factory near Gardiner and a saw-mill and butter factory at Gardiner.

The little farms along the river and its tributaries from Scottsburg west are devoted to dairying. The mode of delivery to the
4723 factory being the motor launch, it being a unique fact that there are no county roads nor trails along the Umpqua west of Scottsburg, all the traffic being by water. The sawlogs tributary to the Umpqua will probably always find their way to the mills by floating them down the river as they are to-day. There is no coastal plain of alluvial land and but little marsh land between the mouth of the Umpqua and Coos Bay. The land to the ancient Ocean Beach is mountainous, rugged, and covered with timber. Between the ancient beach line and the present beach is a great deposit of sand, varying from one-quarter to two miles, perhaps, in width. This strip of sand, the result of sandstone erosion, is thickly strewn with logs and forest débris, the work of ages. Along the north shore of Coos Bay the sand becomes drifting dunes, making slow, but sure, headway into the forests that line a navigable inlet called North Slough. This sand will become more or less troublesome to railway maintenance along the coast, the most desirable route, the one I am advised is approved by Wm. Hood, chief engineer.

But to return to traffic possibilities, many millions of feet of logs, standing in the twenty miles of forest between the Umpqua and Coos Bay, must find their way to the mill by rail; there is no other way. I have attached several maps of Coos Bay region to this report, that you may better comprehend my description. You will observe the many inlets and streams that break the continuity of the coast and north shore lines of Coos Bay. These inlets and streams are all navigable for light-draft vessels, and by the use of motor boats have brought the agriculturist, as well as the log driver,
4724 into close communication with the merchants and mills of Marshfield and North Bend. It is a very interesting illustration of the development of gasoline motor boats to note that over two hundred are in daily use on Coos Bay and its tributaries. The fruit, milk, and other farm products are moved quickly and economically to the factory, and roads are not used at all, save between the points along the west shore of Coos Bay. Coos Bay is navigable nearly 20 miles from Marshfield. The land along the streams and on the slopes and mountains is very fertile, producing superior grasses and deciduous fruits, apples, plums, cherries, pears, berries of all kinds, as well as vegetables of all varieties in abundance and of superior quality. Apples rank with the best I have ever seen in Oregon. The production at present is not large, except potatoes, of which the production is greater than the local consumption, and of milk, which is condensed as well as made into butter. Seemingly a major portion of the level valley land is already under cultivation, not, however, of a high order. The production can easily be doubled in dairy products on the now existing farms, while evidences exist to show that the farming area can be multiplied many times should the denuded forest lands be redeemed and planted to grass and orchards, which is practical.

Hay and grain are not grown to any extent. Alfalfa hay from California is brought in by vessels and found to be a profitable feature in dairying. Owing to an unusually mild climatic condition, cattle graze all winter, no snow and but little frost occurring.

4725 Cranberries are grown in limited quantities of fine quality. I visited some of the cranberry marshes and was surprised at the yield and quality. It costs about $500 per acre to bring a cranberry marsh from a state of nature into bearing, which begins the third year from planting, but the net returns are said to be about $500 per acre after bearing begins. The great cost apparently of bringing the berry into bearing deters the average farmer, and it has not yet been brought to the attention of more wealthy people, capable of seeing and doing things, to any great degree.

Lumber or timber and its products is the chief item of interest to a common carrier like a railroad. Of standing timber in Coos County tributary to Coos Bay I must take the estimates given me, with many allowances. The mill men, the Chamber of Commerce, and the bankers state that the merchantable timber tributary to Coos Bay consists of fir, spruce, hemlock, white and red cedar, and that the white cedar is of superior quality and found nowhere else, the total estimate being sixty billion feet. My knowledge of forests, physically speaking, leads me to the conclusion that to allow for over estimates, the loss by fires and timber that can never be gotten out, fifteen billion feet will be a fairer estimate of merchantable standing timber. The cedar is almost as unique a product as redwood in California, inasmuch as it grows in the region of Coos Bay and nowhere else on earth. It is the best boat building material known and is very valuable in many other channels.

4726 With railroad transportation, an eastern market could undoubtedly be found. I have traveled through the forests of Coos County, and wonderful they are. Miles of the road over which I journeyed is so shaded by giant Douglas firs as to forever exclude the sun. Nowhere else in Oregon have been seen superior fir forests. It is the experience in all timbered regions that the advent of a railroad means increased number of mills, new markets, and vastly increased production over a region dependent upon water transportation solely. Pine lumber, like finishing stuff and sash and doors, when handled in and out of a ship, is seriously damaged and generally improperly loaded from ship to cars. Remove this very serious handicap, and the stuff will enter into the competing markets of the country in quantity ten-fold greater than now. See the result of the railroad to Gray's Harbor in Washington. The estimate of the mill owners of Coos Bay that from ten to twenty cars per day would go out by rail is not, in my opinion, an extravagant view. The largest mill is owned by C. A. Smith & Company, is of the most modern construction. I have visited many saw-mills, but never one equal to this. Cuts an average of 6,500,000 feet per month and expect to double this capacity. Ten per cent of this product is consumed locally, twenty-five to fifty per cent of all the residue, he states, would

go by rail from Marshfield to eastern markets. The long haul on this should be classed as new business, as there would be no possibility of competitors securing any portion of it. If moved by water to San Francisco or Portland, thence east, we would get but a small percentage of the business.

4727 Second in importance of the products of Coos Bay region is the coal or lignite. Note the geological map attached. How extensively this coal would be used, even with railroad transportation, I cannot predict. Fifteen hundred square miles of coal lands means an enormous tonnage, if it can be marketed. The belief exists at Marshfield that a train of twenty cars per day can be marketed along the line of your railroad, at prices that will justify its use rather than wood, and prices that will force other fuel out of the same market. It is rather a startling assertion to state that one acre of Coos Bay coal is equal to 18,750 cords of wood, yet it is so stated. The government reports give the fixed carbon of Coos Bay coal at 50.51 per cent, volatile matter 32.60, moisture 14.48, ash 2.35. How favorably this compares with bituminous coals in use on the Harriman lines, I have no means of ascertaining at this moment. The towns of Marshfield and North Bend lie close to one another, and in time will be one corporation. The population of each is about 3,500, the county population 16,000. The property of Coos County is assessed at $14,000,071. Eight new mills now on Coos Bay have a capacity of 350,000,000 feet annually, practically the entire product finding a Pacific Coast market. An air of progress and prosperity is manifest in Marshfield and North Bend, new buildings of modern type, asphalt paved street, an up-to-date hotel, and a spirit of doing things possesses the people. My own opinion is, that even with present transportation

4728 facilities, the population will greatly increase and industries will multiply. I am not visionary when I predict a city larger than San Diego, or probably as large as Eureka, California. The country is too rich in latent resources to be kept down. Its harbor will be made more and more important with a deeper channel. A large government dredge is now in the harbor ready to begin widening and deepening the channel. I am as ready to show the disadvantages of any section that I investigate, but at the same time cannot shut my eyes to the probable future of the Coos Bay region. The entire country, save the limited bottom lands, is covered by vast forests. Coal underlies a large area. A remarkably mild climate, with but little frost. A fertile soil, with great fruit-growing possibilities. Already the third county on the Pacific coast in dairy production. The harbor is one of the best on the coast, and when the channel on the bar is deepened by lengthening the jetty, will have thirty feet of water at mean high tide.

The danger in delay in building a railroad into Marshfield lies in the possibility, if not the probability, that persons or corporations unfriendly to our interests may get the only desirable right-of-way or entrance into North Bend and Marshfield. Should the Southern Pacific Company ever build, terminal facilities are of prime im-

portance, and the difficulty in the way of securing such terminals, and the increase in cost, are increasing every day.

Respectfully submitted.

(Signed) WM. H. HOLABIRD.

PORTLAND, OREGON, *Sept. 26, 1908.*

4729 Paper marked Complainant's Exhibit 163.

Q. I show you Complainant's Exhibit 163. What is that?

A. That is a copy of a telegram sent by the Chamber of Commerce of Marshfield to Mr. Harriman.

Q. It seems to be addressed to Mr. Kruttschnitt.

A. This is a copy sent back by Mr. Harriman showing all the correspondence that was had between Mr. Chamberlain and the Marshfield Chamber of Commerce.

Q. This is signed by J. T. McCormac?

A. Yes, sir.

Q. W. H. Evans, chairman?

A. Yes, sir.

Q. Did those gentlemen act for the Chamber of Commerce of Coos Bay?

A. It was a joint committee of the two chambers.

Q. I mean of Marshfield.

A. This telegram was prepared by myself and submitted to both Mr. McCormac and Mr. Evans of the Chamber of Commerce.

Q. Is Complainant's Exhibit 164 Mr. Harriman's reply to that telegram?

A. That is the reply.

Mr. SEVERANCE. I offer in evidence Complainant's Exhibits 163 and 164.

Complainant's Exhibit 163 is as follows:

COMPLAINANT'S EXHIBIT 163. (Grimes.)

MARCH 9TH, 1909,
*Marshfield, Oregon, March 3rd, 1909.*
(Via San Antonio.)

J. KRUTTSCHNITT—*On line:*

Chamber of Commerce of Marshfield and North Bend requests specifications of manner and form of guarantee indicated by
4730 wire to Governor Chamberlain February twenty-third by you to insure construction of Drain extension to Coos Bay without delay. As to the proposition of showing an earning of 4 per cent on cost of construction, we understand from press dispatches that Col. Holabird reported favorably on same after investigation at your instance relative to probable tonnage and general conditions. What further is required? Kindly wire so the Coos Bay Chamber may act.

J. T. MCCORMAC,
W. H. EVANS, *Chairman.*

Complainant's Exhibit 164 is as follows:

COMPLAINANT'S EXHIBIT 164. (Grimes.)

MARCH 9TH, 1909.

J. T. McCORMAC,
W. H. EVANS,
*Marshfield, Oregon:*

You are misinformed as to Colonel Holabird's report. My offer to your delegation last August was very plain, and if satisfactory guarantee can be had of four percent on the cost of the road each year for ten years, over and above the cost of maintenance and operation and taxes, I will recommend its construction to our committee. No one's opinion will be satisfactory. Guarantee must be on basis that deficit in any one year will be immediately paid, and the guarantee properly secured.

E. H. HARRIMAN.

4731 Q. Is Complainant's Exhibit 165 a copy of Mr. McCormac's letter replying to Mr. Harriman's telegram of the 9th?

A. Yes, sir.

Mr. SEVERANCE. I offer Complainant's Exhibit 165 in evidence.

Complainant's Exhibit 165 is as follows:

COMPLAINANT'S EXHIBIT 165. (Grimes.)

MARSHFIELD, ORE., *March 11, 1909.*

Mr. E. H. HARRIMAN,
*New York City.*

DEAR SIR: Your telegram of the 9th inst., from San Blas, Mexico, received. From the press we were led to believe that Colonel Holabird's report was that there would be sufficient traffic and tonnage to justify the completion of your road from Drain to Coos Bay.

Being barred from giving our own opinion in the matter, we can only try to meet any requirement you may make for your road. As to the proposition of a guarantee of 4 per cent above expense of operation, we cannot at this time, by law, either as to counties or municipalities, give such an obligation. As to individuals meeting such a requirement, it seems too indefinite and unbusinesslike on a part of a few to make such a bond.

We are desirous of your completing the work already begun, as the beginning of the building of this road brought several thou-
4732 sands of people here, having no other idea than its completion.

As an inducement can you not make to us a proposition that the people could reasonably meet, either in way of moneys direct or concessions that would be its equivalent, such as right-of-way, terminals, etc.

There is a fair spirit among the people of this community as to railroads, and we believe they would be more than willing to meet any

equitable proposition; so hoping we can in some other manner or form induce the completion of your road to this point,

Yours respectfully,

J. T. McCORMAC,
*President Chamber of Commerce.*

P. S. This letter was only considered by executive committee of Chamber of Commerce and has not been given to the press.

Q. Is Complainant's Exhibit 166 Mr. Harriman's reply, under date of March 18, to Exhibit 165?

A. Yes, sir.

Mr. SEVERANCE. I offer in evidence Complainant's Exhibit 166.

Complainant's Exhibit 166 is as follows:

COMPLAINANT'S EXHIBIT 166. (Grimes.)

THE OREGON RAILROAD AND NAVIGATION COMPANY,
EXECUTIVE OFFICES, 120 BROADWAY, NEW YORK.

PASADENA, *March 18, 1909.*

Mr. J. T. McCORMAC, and
Mr. W. H. EVANS,
*Marshfield Chamber of Commerce, Marshfield, Oregon.*

4733 GENTLEMEN: After the pleasant relations established between us last year and what seemed to me to be a definite understanding, I am sorry that a feeling of doubt now seems to be getting among your people, as well as others in Oregon, in relation to construction of railroad lines in your vicinity.

I enclose you herewith copy of correspondence which has taken place between Senator Chamberlain and myself recently. I do not see how there should have been any misunderstanding in regard to the construction of the line from Drain to Coos Bay.

I explained fully to your committee that such a line would be of unusual cost because of the difficulties to be encountered in crossing the rough country between those points; and, also, that the intermediate territory would produce very little traffic, and therefore the Coos Bay territory would have to provide it all in order to produce business enough to maintain the line for some years to come.

The cost of a road and equipment would be, approximately, something like $5,000,000.00. It must be remembered that your section is now served by boat connection, and there are demands from other sections that have no outlet whatever, so that it is a question of where best to place such a large amount so that it will be of the most benefit to the constructor and to the points reached.

My offer to you last summer was on the basis of either providing the tonnage, or making good any deficit, in order that maintenance, interest, taxes and 4% on cost should be realized. My telegram to Senator Chamberlain of February twenty-third covers those

4734 points, and my telegram to you of March ninth in answer to yours addressed to Mr. Kruttschnitt on the same date, was perhaps a little more explicit and cannot be misunderstood.

Now, I want to do everything I can to encourage your people, and I thought that I had gone as far as could be expected, and your committee last August so expressed themselves to me. Colonel Holabird, in his report, showed clearly that the tonnage was not now in sight to warrant the construction of the line. My offer is still good, and I will try to induce our committee to authorize its construction if you people can provide the tonnage, or make good the deficit, in case it should be necessary, for such a term of years as might seem advisable in order to protect us. Of course, the Coos Bay region will increase in value and everybody therein be benefitted if such a line were constructed. Property values would increase and the people there generally would be benefitted.

Is not a railroad constructor entitled to some consideration? I think he is, and I am sure you will agree with me.

Now then, what are you going to do?

Very truly yours,

E. H. HARRIMAN.

P. S. Since dictating the above, I have seen Mr. Calvin, who has delivered to me your letter of March eleventh. I will try, if possible, to think the matter out in some way, and I would like you to cooperate with me to the same end.

What I want your people to understand is that if $5,000,000 is expended in the construction of your road, and it does not
4735 produce sufficient earnings to pay the interest on cost, that amount of capital becomes dead, and cannot again be used until the line becomes a producer, so to speak, and would prevent us from making expenditures in some other parts of Oregon, or other sections of the country. If you can help out, so that this amount of capital can be kept alive, we would be glad to cooperate.

Q. Is Complainant's Exhibit 167 the response from Mr. McCormac to Mr. Harriman, under date of April 7th?

A. Yes.

Mr. SEVERANCE. I offer in evidence Complainant's Exhibit 167.

Complainant's Exhibit 167 is as follows:

COMPLAINANT'S EXHIBIT 167. (Grimes.)

APRIL 7, 1909.

Mr. E. H. HARRIMAN,
*New York City.*

DEAR SIR: Yours of 18th inst., from Pasadena, Calif., received, together with former communications with Governor Chamberlain and others, in answer to my communications of March 11th.

There was some doubt as to your meaning regarding "a bond" at your interview with the Committee that you met at Roseburg last

fall. Committee understood that you desired to know if there was sufficient tonnage to guarantee 4%, etc. Colonel Holabird, in
4736 his talk here before the Chamber of Commerce, made it plain that it was a matter of tonnage and no reference whatever was made as to the guarantee by bond until you made it explicit in your telegram to Governor Chamberlain on March 3rd. The guarantee by bond was taken up pretty generally by the press of the state and by them considered an unusual proposition, or in other words unprecedented, as you had not required a guarantee of this character from the people of any other section where you contemplated building; but we feel all this cannot and shall not enter into any consideration of the proposition of building your line to Coos Bay, if you desire to give serious consideration to the building of the same in the near future. There is much that can be done here that will cost effort and money to make your proposition you already have much better and stronger than it is, and especially as against competitors if they should desire to come to the Bay. This is strongly indicated in the latter part of Colonel Holabird's report, of which we have just received a copy.

In addition to this I have learned from inquiry that a reasonable bonus could be secured also, so I would suggest that if you desire to give consideration to our suggestions in this matter, that you send us a representative that will come here and look the ground over and make us a fair and frank proposition at as early a date as possible.

Yours very truly,

J. T. McCORMAC,
*Pres. Cham. Com.*

4737 Q. Is Complainant's Exhibit 168 Mr. Millar's reply for Mr. Harriman to that last letter?

A. Yes, sir.

Mr. SEVERANCE. I offer in evidence Complainant's Exhibit 168. Complainant's Exhibit 168 is as follows:

COMPLAINANT'S EXHIBIT 168. (Grimes.)

(Form No. 6.)

Subject: Oregon Western Railway—Drain to Coos Bay.

SOUTHERN PACIFIC COMPANY, EXECUTIVE OFFICES, 120 Broadway.

(In your reply please refer to —.)

ALEX. MILLAR, *Secretary.*
JOS. HELLEN, *Assistant Secretary.*

NEW YORK, *April 21st, 1909.*

Dr. J. T. McCORMAC,
*President Marshfield Chamber of Commerce,*
*Marshfield, Oregon.*

DEAR SIR: Mr. E. H. Harriman has duly received your favor of the 7th instant, regarding construction of the line from Drain to Coos Bay, and directs me to acknowledge the same.

Q. Yes.

A. Mostly by small gasoline launches.

Q. I notice in the report of Col. Holabird he states there were about two hundred steam launches there.

A. Yes.

Q. Do the farmers have steam launches?

A. Nearly all of them.

Q. What do they do—come down the river or the bay?

A. Yes, down the river or down the inlets. There are a great many inlets to the bay.

Q. That is their sole means of communication out, is it?

A. That is their sole means of communication out. There are some on the west side who come in by road—a few have to take the road coming to the bay. Some of these streams that go up are often tributaries to the river and are too small for navigation. Of course they come to the river by road, all their cream or milk or whatever it is there, and there it is picked up by the milk boats.

Q. Are there coal mines in operation?

A. Yes; there are several mines in operation.

Q. Whom are they owned by?

A. The two principal mines are owned, I presume, by the Southern Pacific; at least they are operated by that system or that small road there that owns the principal mine, the Beaver Hill mine; and the Oregon Coal & Navigation Company own what is called the Libbey mine.

Q. Is that in operation?

4742 A. That is in operation. The coal is carried out by the "Plant" boats, about 8,000 tons capacity.

Q. Steamer?

A. Yes.

Q. How is the coal that is mined by the Southern Pacific carried out?

A. That is carried out by the "Czarina."

Q. Their own boat?

A. Yes; to San Francisco, and the "Breakwater" here. The "Czarina" is a freight boat altogether, a very good boat, of about a thousand or twelve hundred capacity.

Q. Is that coal used by the railroad company itself?

A. Yes.

Q. And is it commercially sold?

A. It is used by their steamers and by their engines.

Q. They mine that for their own use?

A. They mine that for their own use.

Q. Are there other coal mines around there—more coal that is not being operated?

A. There is a big coal field; there are a good many mines. Mr. Flanagan owns a mine there which they operate for their own uses and the water works, and two or three small mines that are furnishing to the towns as well as these I speak of. They also furnish the local market.

Q. What stream, if any, does this Drain extension come down?

A. That is on the Umpqua River, one of the tributaries that reaches the Umpqua, which is, I judge, about 15 or 16 miles.

Q. Is the line located down this river to the coast to Coos Bay?

A. It is surveyed to Coos Bay.

Q. Are there any other feasible routes for railroads to reach Coos Bay from the Southern Pacific except from Drain and this
4743 Coquille River line?

A. I presume there could be other lines, but those are the most feasible routes.

Cross-examination by Mr. COTTON:

Q. The first line that was surveyed was from Roseburg, was it not?

A. Yes, sir.

Q. You are talking about a line from Eugene, which would take an entirely different route?

A. Yes; it would come down like the Smith River and come in at the Umpqua. That comes down to the lower part of the Umpqua at Gardiner.

Q. That is a road that you are earnestly asking the Eugene people to build? You think it is a very feasible route?

A. We are going to take the matter up. The Eugene people suggested it.

Q. You regard that as a very feasible route?

A. I think it would make a fair route. I haven't been over it.

Q. The transportation conditions down there have improved quite considerably, have they not, since the Harriman people have taken charge?

A. They have.

Q. There has been very decided improvement over the Spreckels management?

A. Yes.

Q. How long ago was this Drain-Coos Bay line started?

A. I will just give my impression, Mr. Cotton, because it was about the time I came there. It was either in the fall of 1906 or in the early spring of 1907.

Q. The first thing that happened, they got pretty well under construction, and they graded how far?

A. I judge they have substantially graded eight or ten miles, and in broken parts maybe fifteen or sixteen miles.

4744 Q. At the time this construction was started, lumber was in very great demand, was it not?

A. It was higher than it is now; yes.

Q. Quite considerably higher?

A. Yes; I think so.

Q. And there were large quantities of lumber moving eastward?

A. That I couldn't say because I was not acquainted with the conditions.

Q. The lumber mills you have referred to, the Simpson mills, were constructed and in operation long before this railroad was projected?

A. They have been in there for a number of years, except the C. A. Smith mill.

Q. How many years have the Simpson mills been in there?

A. I couldn't say; just as I am told.

Q. What is your understanding about it?

A. 20 or 25 years, likely.

Q. So, they have been cutting lumber for 20 or 25 years down on Coos Bay?

A. Yes; maybe longer.

Q. Now, there were a number of lumbermen along at this conference with Mr. Harriman, which took place coming out of Roseburg?

A. Mr. Oren, the representative of Mr. C. A. Smith, was along.

Q. And the representation was made that the bulk of the traffic would be lumber, wasn't it?

A. I don't know. Mr. Oren, I think, made no representation except as to lumber. I think he talked on the lumber proposition.

Q. The bulk of the tonnage moving out of Coos Bay, other than this Harriman coal, would be lumber, wouldn't it?

A. Yes, sir.

4745 Q. The dairy products would be a very, very small fraction of it?

A. Comparatively light, yes.

Q. In fact, the steamers can handle out easily all you produce along dairy lines?

A. All of our dairying is handled that way now, yes.

Q. And it would take a very small capacity, I mean comparatively small, on a railroad to handle your dairying products and your agricultural products as such?

A. I presume it would not compare to our coal and lumber.

Q. Your country is a heavily wooded country?

A. Yes.

Q. And it costs about $100 an acre to clear it, doesn't it?

A. I should judge so; anywhere from $30 to $50 up to $200.

Q. And for 10 or 15 years last past the tide lands that are susceptible for agricultural purposes, have been in cultivation and use for dairying purposes?

A. Mostly.

Q. In 1906, when the road was projected, lumber was in great demand?

A. Lumber was considerably higher then, I think.

Q. And after this road was started and well under way, Mr. Loss, the contractor, failed?

A. That is my understanding of it. I don't know what his name was.

Q. And he had a contract to build the road?

A. To construct up to Scottsburg, I think; that was my understanding of it.

Q. That represented how much?

A. I would judge two-fifths of the distance.

Q. And he went into bankruptcy and quit, and there was more or less litigation about his books and a row generally?

A. That is my understanding.

4746 Q. And quite a good deal of fuss?

A. Yes.

Q. During which time construction was suspended, because of his failure?

A. I presume that was it. That is what the understanding there was.

Q. Do you know whether that has been wound up yet?

A. I do not.

Q. Or whether it was wound up at the time of the panic? That is, in October.

A. Well, I say I do not. I have personally a little knowledge of one transaction, of a friend of mine from Salt Lake, a banker there, who had an account against the road, and I saw him about six or eight months ago, or maybe a little bit longer, here at Portland, and he said he hadn't got full settlement yet.

Q. And the winding up of this construction contract is going through the bankruptcy court and Mr. Loss is still insisting (or his assignee) on undertaking to perform the contract, or do you know about that?

A. I don't know about that.

Mr. SEVERANCE. Does he want a guaranty, too?

Mr. COTTON. No; he has a contract and would like to perform it; made in good times and would like to perform it in bad times.

Q. There has been quite a drop in the lumber business since, quite a slump, hasn't there?

A. I think the price is not as good now as it was then.

Q. In fact, very much lower?

A. I am not much acquainted with the price of lumber—in fact, I am not in the lumber business—any more than my general

4747 understanding is that lumber is lower.

Q. When Mr. Harriman had a talk with you it was sometime last fall?

A. Yes, sir.

Q. And was the matter discussed as to whether your lumber could pay any rate to get it over to the main line?

A. Yes, sir.

Q. And there were gentlemen there who represented large sawmill interests?

A. Mr. Oren was there. Mr. Simpson was to be there, but didn't come.

Q. He owns large amounts of timber?

A. Yes, he owns a considerable amount of timber.

Q. About how much timber does this Smith company own?

A. I have an impression; I have heard Mr. Smith say it was between 100,000 and 200,000 acres.

Q. Worth how much per acre, as prices go, down in your country?

A. Well, the timber which Mr. Smith has selected there is worth $20 to $50 an acre.

Q. So, therefore, Mr. Harriman was talking to one gentleman who represented an investment of from 5 to 10 million dollars of timber alone?

A. I expect he has got that much; I wouldn't want to say absolutely what Mr. Smith has.

Q. And that represented the bulk of the tonnage that was likely to come out of that country?

A. No, Mr. Simpson owns quite a bunch of timber.

Q. Well, I mean the lumber would represent about that?

A. Yes.

Q. About how much does Mr. Simpson own in timber, in value?

A. I expect he has got a million or two in value, in interest.

4748 Q. What?

A. I think Mr. Simpson has a million or two in value.

Q. Say about two millions in value. He was supposed to be practically represented at this meeting?

A. He wasn't there.

Q. He expected to be there and wasn't there, and it was explained why he wasn't there?

A. Yes, sir.

Q. Didn't Mr. Harriman state that the lumber business was falling down and that he doubted very much whether these gentlemen could pay any rate to get their lumber out to the main line?

A. He discussed the lumber proposition with them (directing his conversation to Mr. Oren) and asked them what rate they likely would want to get, that is, would stand there, to justify him building the road.

Q. And he discussed the matter of the Railroad Commission undertaking to regulate him after he got in?

A. Yes, sir.

Q. And that elsewhere in the state of Oregon, every place north of Ashland, they had the same rate on lumber that they had at Portland?

A. I believe he did make some statement to that effect.

Q. And then didn't he practically end up by saying that if these timber owners would guarantee him 4 per cent on the investment, he would build the road?

A. I don't know, Mr. Cotton, that I would want to say just that.

Q. Not timber owners generally, but the whole of the interests down there?

A. It is likely there was a misunderstanding there on the part of the committee or on the part of Mr. Harriman. Mr. Harriman

4749 absolutely desired a guaranty, as we understood, by traffic, of

4 per cent on at least $5,000,000. There was no question about that. As to the bond: that is the only question that we have ever raised with Mr. Harriman about that proposition.

Q. Didn't he state that he had made a large investment in coal down there, that he was anxious to get a railroad——

A. He did.

Q. ——but he didn't think the traffic tributary, under present circumstances, would justify the building?

A. Yes, sir.

Q. And that to take bond-holders' money and put it into an enterprise that he thought wouldn't pay, would not be right?

A. Yes. He has also made those statements in the letters.

Q. And he regarded himself as in a way interested in your country, that he had coal mines there?

Mr. SEVERANCE. They belong to the railroad company.

Mr. COTTON. I mean the railroad.

Mr. SEVERANCE. The same thing.

Mr. COTTON. No, he was talking on behalf of the railroad.

A. I will say this about Mr. Harriman: he talked very much in earnest to that committee, and they believed all of his statements; he was interested in that country, that he had investments there, that he wanted to make those investments better, and he said further, "I expect to build to Coos Bay, and of course you as a committee would like to know when, and of course it is up to me to investigate and to report to my directors a sufficient tonnage to justify the building," etc. All that conversation was entered into, and he talked very fair, and we believed Mr. Harriman meant what he said
4750 and would build to the Bay.

Q. And he did say something about a 4 per cent guaranty?

A. That 4 per cent guaranty is what he desired on the earnings of the road, to justify him in making the recommendation.

Q. And he stated that under the circumstances he was very doubtful whether the tonnage, as it existed at the time of this conversation, would be sufficient to pay 4 per cent on the cost?

A. He did, at that conversation.

Q. And that circumstances had changed from the time when they started building the road?

A. Yes, sir.

Q. And that he appreciated that fact; that if he could get a 4 per cent guaranty on the actual cost for ten years, he would build the road?

A. He didn't say that at that meeting.

Q. Well, he said something about a 4 per cent guaranty?

A. Yes, sir, he wanted a 4 per cent guaranty on $5,000,000, but there was no formal guaranty. That is the reason we asked him this other proposition. As we understood it, it was traffic alone that he wanted to justify him in building the road, and if we could make a showing to that extent, he would recommend it.

Q. Mr. Ed Wright, of "The Oregonian" was present at that time?

A. Yes. Weren't you present, too, Mr. Cotton?

Q. Yes.

A. Yes, sir, he was present.

Q. Was Mr. Harriman's notion about the 4 per cent earnings based upon the quantity of timber that you had in the country?

A. No. I don't think he expected any particular guaranty on any one product alone.

4751 Q. Wasn't his doubt expressed not with reference to the quantity of traffic in the country, but the rate which that traffic could pay?

A. He did discuss the rate that that traffic would pay, yes, sir; but that of course I didn't know anything about and didn't go much into that conversation, although he discussed those propositions, and railroad men being along, who were more intelligent, we didn't feel like taking the question up with him along that line.

Q. He was discussing that with the representative of one gentleman who had an investment down there of at least $5,000,000 in timber?

A. I don't know what his investment is. It is several millions.

Q. Several million dollars?

A. Yes.

Q. And his timber would be very much increased in value if he had railroad transportation?

A. Yes.

Q. But that Mr. Harriman expressed a very grave doubt as to whether the traffic which could move out of that country on account of the lumber situation, could afford to make——

A. Now, there was another question Mr. Harriman raised there.

Q. That is about the situation?

A. Yes, that is about the situation. He raised another question about our coal. Now, we who live on the Bay believe that the first resource in importance on the Bay ultimately will be the coal. We discussed that with him; and, if I remember, in his conversation he wondered if there would be sufficient demand for the coal, as the people were in the habit of burning slab wood, etc.

By Mr. SEVERANCE:

4752 Q. In this telegram Mr. Harriman says: "My offer to your delegation last August was very plain, and if satisfactory guarantee can be had of four per cent on the cost of the road each year for ten years, over and above the cost of maintenance and operation and taxes, I will recommend its construction to our committee. No one's opinion will be satisfactory. Guarantee must be on basis that deficit in any one year will be immediately paid, and the guarantee properly secured." Now, was there any such talk as that in that meeting, as far as you know?

A. I didn't understand that any definite proposition whatever in that conversation was made. He did make a definite proposition—there is no question about that—that he desired a 4 per cent guaranty on that construction.

Q. Who was to guarantee it? Or did he simply want you to show him you had traffic enough so he could make 4 per cent?

A. He didn't suggest any form, as we wired him. You can see there that the committee did not understand his proposition.

Q. Was there anything said in that meeting about how the earnings should be divided between the main line and the branch?

A. No.

Q. Anything said about the way the cost of operation should be divided between the main line and the branch?

A. No, we didn't go into any details whatever. It was a general proposition made by Mr. Harriman. He desired a 4 per cent guaranty on the investment, and, as we understood, on the amount of traffic. Of course he didn't suggest any form of bond; he didn't suggest any form of guaranty. But he did suggest that he desired
4753 to be guaranteed 4 per cent on the investment down there. No time of the guaranty, as I understand, was made.

Q. Did he say who was to give him the guaranty, who was to sign the guaranty?

A. I didn't understand he desired anybody to give a guaranty except in the matter of a plain statement of a guaranty.

Q. That is, that they would show him traffic enough?

A. Yes; that they would make good, in other words. All of this correspondence has been published from time to time in this state, and of course it came in a more definite form when it came to us, and that is the reason we raised the question—to see what form of guaranty they desired, and then we got his ultimate answer on that.

Q. There was nothing said, though, about how much of the through rate should be apportioned to this branch?

A. No; we didn't discuss that; we didn't go into the details.

Q. Or how much of the cost of operation should be apportioned to it?

A. No; we didn't discuss that at all.

Q. And there wasn't any basis discussed for determining whether the 4 per cent was earned?

A. No.

By Mr. COTTON:

Q. It was discussed that there was lots of timber tributary to the Southern Pacific at the present time?

A. Oh, yes.

Q. More than enough to supply any prospective demand?

A. Mr. Harriman went on to show the general conditions in the state.

Q. There was ample timber tributary to the main line of
4754 the Southern Pacific?

A. I believe he took up that position.

Q. And that timber was moving out practically on a blanket rate, and that he could not afford to build the Coos Bay line on a blanket

rate proposition, and if the line was built that line must be expected to earn at least 4 per cent on its actual cost; otherwise he thought it was wrong to build it? Wasn't that about the substance of it?

A. Yes; in part, as I understand it, Mr. Cotton.

Q. And he wanted, before he built it, the 4 per cent guaranty on actual cost?

A. That seemed to be the proposition—that he wanted the guaranty of 4 per cent. Of course no form of guaranty was discussed.

Q. No; that was not discussed, but the guaranty was?

A. It was.

Q. Didn't he use this expression, "Now I want to talk business?"

A. That is the way he came out.

Q. "I will build this road if I get 4 per cent guaranty on actual cost?"

A. That was the abstract proposition put right at us.

Q. He said, "I want to talk business"?

A. Yes.

Q. He said, "Don't tell me about your country. I want to talk business?"

A. That is right.

By Mr. SEVERANCE:

Q. You said that the service had been improved out of there since the Harriman people took hold. Are they running any more boats than the Spreckels people ran?

A. The service has been made better in this way, his road-bed has been made considerably better.

4755 Q. You mean the little short road.

A. Yes; he has improved that considerably.

Q. But has there been any difference in the service by boat?

A. Yes; he has changed the service. They ran both boats to San Francisco. He is now running one to Portland and the other to San Francisco.

Q. He has not put on any additional boats?

A. No.

Q. He has put on the same boats that Spreckels had?

A. Yes.

Q. Running one to San Francisco and the other to Portland?

A. Yes.

Q. How frequent a service to Portland?

A. Once a week.

Q. And to San Francisco?

A. Once a week, freight. There are no passengers on that boat.

Q. There used to be a passenger service to San Francisco?

A. Yes. The "Plant" does the passenger business to San Francisco.

Q. He has nothing to do with that?

A. No.

By Mr. COTTON:

Q. Before that you had no boat to Portland?
A. Except the "Alliance."
Q. The "Alliance" is still running?
A. The "Alliance" is still running.

4756 J. H. FLANAGAN,

being duly sworn as a witness on behalf of the Complainant, testified as follows:

Direct examination by Mr. SEVERANCE:

Q. Where do you live, Mr. Flanagan?
A. Marshfield, Oregon.
Q. How long have you lived there?
A. About forty years.
Q. What is your business?
A. My principal occupation is banking.
Q. Outside of that what business have you?
A. I am also connected with the water system.
Q. Are you familiar with the Coos Bay region?
A. Yes, sir; I think I am.
Q. And the region tributary to Coos Bay?
A. Yes, sir.
Q. What are the resources of that region?
A. The principal resources are timber and coal.
Q. How extensive?
A. They claim it to be 400 square miles of coal in Coos County.
Q. 400 square miles of coal?
A. Yes, according to the geological survey made by the Government.
Q. What kind or quality is it?
A. Lignite.
Q. Is it a marketable coal?
A. Yes, it has been marketed now for fifty years.
Q. Where?
A. Principally in San Francisco.
Q. What are the timber resources?
A. I couldn't say. I am not familiar with the statistics.
4757 They claim there are 70 billion feet tributary to Coos Bay.
Q. 70 billion?
A. Yes. That is not all in Coos County; part of that is in Douglas.
Q. It is tributary to the Bay?
A. It is tributary to the Bay.
Q. How are the logs brought in there that are sawed up, on the Bay?

A. Until very recently they were all brought by river and some by tide-water.

Q. How are they brought now?

A. They are building spurs now into the timber, and a great deal of it is brought to Coos Bay over the Southern Pacific or a branch of it.

Q. Over the Spreckels road?

A. It was formerly the Spreckels.

Q. So, that little road has some timber business now as well as hauling out coal?

A. Oh, yes, a great deal of it. Their main freight consists of the hauling of logs and lumber and some coal.

Q. Outside of the timber and coal business, what are the agricultural possibilities of that region?

A. The dairying possibilities are quite great, and fruit is very successfully raised there, especially apples.

Q. It is a great dairy region?

A. Yes, it is considered to be.

Q. So Mr. Grimes said. Mr. Grimes stated that there were something over 5,000 people in Marshfield. How many more people live around the Bay there?

A. I think Coos Bay has a population of between eight and ten thousand people.

Q. Of the entire Bay, including Marshfield?

A. Yes.

Q. What business are those people engaged in—those eight
4758 or ten thousand people? Does that include the farmers?

A. That includes the farmers, the mill employees, the mill-hands.

Q. The coal miners?

A. The coal miners.

Q. What is the situation of this Drain branch? You have seen it. State in detail, briefly.

A. The construction of the road was announced I think in 1905. It was announced in Coos Bay that the road was to be built and the necessary money was set aside for its construction, and about six or eight months after that actual construction of it was begun, at the Drain end, and enough rails to complete the road from Drain to, I think, all the way to Coos Bay were shipped into Drain station and a very large quantity of cement was also shipped to Drain as well as to Scottsburg.

Q. Where is Scottsburg?

A. 36 miles from Drain on the Umpqua River.

Q. How was the stuff shipped to Scottsburg?

A. By sea, and a great deal of bridge material also shipped, which is still on the ground, and there is one bridge wye put in at Drain station, and a bridge built across Elk Creek; another bridge, five or six miles farther down Elk Creek, was begun but not completed, and I think probably four or five miles graded, and some work done on the tunnels. The right-of-way was secured, so far as I know, entirely from Drain to Scottsburg.

Q. How far is Scottsburg from Coos Bay?

A. It is twenty miles from Coos Bay to Umpqua River, and about thirty miles from that point to Scottsburg.

4759 Q. Any right-of-way secured below Scottsburg?

A. My impression is that there was.

Q. And any right-of-way secured around the Bay?

A. No; they never got any rights-of-way on Coos Bay.

Q. Is that a difficult road to construct; that is to say, are the grades difficult?

A. No, we have got a very low per cent of grade. I understood that $\frac{1}{10}$ of one per cent was the heaviest grade on that road.

Q. Practically a water grade all the way?

A. Yes.

Cross-examination by Mr. COTTON:

Q. Timber is worth about how much a thousand on the stump in your country?

A. I think the highest stumpage ever paid there was two and a half a thousand—two to two and a half.

Q. And the lowest?

A. I don't think they are getting anything less than a dollar a thousand.

Q. So this 70 billion feet is worth about $70,000,000?

A. I suppose that would be probably a conservative estimate.

Q. How much timber does the Elijah Smith Company own?

A. About 40,000 acres.

Q. And the value how much—just stumpage alone?

A. I don't know what valuation is put on it at the present time. It would depend on how much stumpage. Timber is not sold on an acreage basis.

Q. No, but I mean the stumpage basis. At least a million and a half to two million dollars, isn't it?

A. Yes, I should think at least a million and a half. That would include all their holdings. They own about a hundred thou-

4760 sand acres, 40,000 of which is timber, but I don't think the timber alone would be worth a million and a half.

Q. That is, the Elijah Smith?

A. He is the president of the company.

Q. And then there is C. A. Smith there?

A. The C. A. Smith Lumber Company.

Q. And they own millions?

A. Yes, very large holdings.

Q. Four or five million dollars of timber alone?

A. They own close on to 200,000 acres in Coos and Curry and Douglas.

Q. I mean right here tributary to the Bay.

A. Well, it is all tributary to the Bay.

Q. The timber on it alone is probably worth $5,000,000 at present prices?

A. Yes, I should judge so.

Q. And the Simpson Lumber Company?

A. They own about 30,000 acres.

Q. And the timber on that, tributary to the Bay, is worth how much?

A. Oh, I think their holdings are valued at about a million and a half, including their mill.

Q. So, therefore, the Elijah Smith and the Simpson and the C. A. Smith outfit—those three people represent in timber holdings on the Bay probably $8,000,000?

A. Yes.

Q. Three men, practically?

A. Yes.

Q. That is, at the price of a dollar a thousand?

A. Yes.

Q. And stumpage up here along the Columbia River is worth about two and a half and three, isn't it?

A. Well, I just know by hearsay; I believe it is.

Q. That is, in the country out of which the same rate is
4761 made to the east as is made from Portland?

A. You mean the same rate made from Coos Bay as from Portland?

Q. No, I say where stumpage is to be had, out of which Portland rail rates are made to the East, stumpage is worth two to three dollars a thousand at the present time?

A. Yes.

Q. So, if you had Portland rates down there, the timber of these men alone would increase in value in the neighborhood of from eight to ten million dollars?

A. No question about it.

Q. Those three men.

Mr. SEVERANCE. It is stipulated that the Klamath Falls branch, so-called, concerning which testimony was given, is constructed from Weed, on the main line of the Shasta Route, to Holland, a distance of 74.9 miles; that from Holland to Klamath Falls is 9 miles; that those 9 miles are under construction and are almost completed.

(An adjournment was here taken until Monday, May 10, 1909, at 10.30 o'clock, United States District Court room in the Federal building, city of San Francisco, California.)

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